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Consultation on Amendments to Industry Canada's Antenna Tower Siting Procedures

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Canada 

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1. Intent

1. Radiocommunication antenna systems, including their supporting towers, are a matter of exclusive federal jurisdiction, with the Minister of Industry being responsible for the orderly development of communication facilities. In this context, Industry Canada is proposing specific updates to the procedures for the siting of antenna systems in order to improve transparency and to address concerns that local residents and municipalities have expressed about antenna tower siting. Comments are being sought on: the application of the procedures; an updated default public consultation process; a new construction time limit; updates to the exclusions from consultation; as well as updates to reflect the new [Canadian Environmental Assessment Act, 2012](#) (CEAA 2012).

2. Mandate

2. Under the [Radiocommunication Act](#), the Minister may, taking into account all matters that the Minister considers relevant for ensuring the orderly development and efficient operation of radiocommunication in Canada, approve each site where antenna systems, including antenna towers, may be located. The installation or operation of an antenna system that is not in accordance with the Minister's requirements may result in its alteration or removal and other sanctions against the operator in accordance with the *Radiocommunication Act*.

3. Policy

3. Although the siting of antenna systems is a matter of federal jurisdiction, Industry Canada has procedures in place to address reasonable and relevant concerns of the local land-use authority (generally, the local municipality) and the community that it represents. The main objective of the antenna siting procedures is to facilitate an open, transparent process that promotes the continued safe expansion of wireless technologies and services while ensuring that the associated infrastructure is deployed responsibly by allowing for local input into antenna siting decisions.

4. Anyone (also referred to herein as "the proponent") planning to install or modify an antenna system is required to notify and consult with the municipality and the local community as set out in Industry Canada's antenna siting procedures. Unless the proposal meets exclusion criteria, proponents must consult with the local land-use authority, with the aim of obtaining its concurrence in writing. The Department's procedures include a dispute resolution process to be followed in the event that a proponent and municipality reach an impasse, which allows either one of them to ask Industry Canada to resolve the concerns under dispute. In cases where the local authority does not have an applicable public consultation process, proponents must follow Industry Canada's default public consultation process in order to ensure that local residents are consulted.

4. Background

5. Updated procedures for the siting of antenna systems, outlined in Client Procedures Circular CPC-2-0-03, Issue 4, [Radiocommunication and Broadcasting Antenna Systems](#), came into effect on January 1, 2008. The procedures apply to everyone seeking to install or modify an antenna system, irrespective of their nature of business or legal status, including government, Crown agencies and

federally incorporated companies. The proposed changes below are suggested updates to CPC-2-0-03, Issue 4.

6. Since 2008, the mobile phone industry has experienced tremendous growth, which has been driven largely by the public's demand for mobile broadband services. To facilitate the growth, operators of mobile services have sought to install a growing number of new antenna systems and, increasingly, the locations sought for the new installations are located in residential neighbourhoods. This is because the antenna systems must be located nearby to those who use the services in order that Canadians have access to the latest and fastest services. Consequently, finding appropriate locations has become more difficult and has resulted in growing concerns about antenna systems, highlighting the importance of including municipalities and communities in the process.

7. The vast majority of antenna installations are constructed in a spirit of cooperation between municipalities, other land-use authorities, local residents and proponents and in accordance with any applicable consultation procedures. However, given the factors of growth, all stakeholders are interested in ensuring that antenna siting procedures keep pace with current circumstances.

8. On February 28, 2013, the Federation of Canadian Municipalities (FCM) and the Canadian Wireless Telecommunications Association (CWTA) announced the release of an [Antenna System Siting Protocol Template](#).¹ The two national organizations worked together in partnership in order to establish a template to provide municipalities with a tool to develop customized protocols for the siting of antenna systems within their municipality. Industry Canada supports development of local consultation protocols and stakeholders working together to find mutually agreeable solutions.²

9. The members of both the FCM and CWTA support the use of the protocol template as a model for an effective public consultation process under Industry Canada's antenna siting procedures. Municipalities that are members of the FCM are not obligated to use the protocol template; however, it is recognized that there is merit in harmonizing antenna siting protocols across the country. Some of the proposed updates, outlined in Section 5 below, align Industry Canada's antenna siting procedures with key elements of the FCM/CWTA protocol template.

10. Moreover, since the publication of the antenna siting procedures in 2008, Industry Canada has received and responded to several requests for clarification. Some of the proposed updates reflect these clarifications. Furthermore, the procedures require an update to reflect the new CEAA 2012.

11. This document refers to "antenna systems," which are normally composed of an antenna and some type of supporting structure. For the purposes of this consultation, we will refer to all structures that are built for the purpose of supporting antennas as "towers." Most antennas have their own integral mast so that they can be fastened directly to a building or a tower. Thus, where this document refers to an "antenna," the term includes the integral mast or other fastener. Finally, for the purposes of this document, a "proposal" means either the planned installation or modification of an antenna or an antenna system.

¹ The [FCM/CWTA template](#) can be found on the FCM's website.

² See Industry Canada's [Guide to Assist Land-use Authorities in Developing Antenna Siting Protocols](#).

5. Review of Updates

12. The following are proposed updates to Industry Canada's antenna siting procedures and a discussion on the rationale for the updates. Noteworthy changes appear in **bold** text.

5.1 Antenna Siting Procedures

Proposed Update to Section 1.2 of CPC-2-0-03

The requirements of this document apply to anyone (referred to in this document as the proponent) who is planning to install or modify an antenna system, regardless of the type. **This includes telecommunications carriers,³ businesses, governments, Crown agencies and the public. Anyone who proposes, uses or owns an antenna system must follow these procedures. The requirements also apply to those who install towers or antenna systems on behalf of others or for leasing purposes ("third party tower owners").** As well, parts of this process contain obligations that apply to existing antenna system owners.

Rationale for Update

13. The term "telecommunications carriers", or "carriers", replaces the terms "Personal Communications Services (PCS)" and "cellular" in order to capture various types of operators that provide a broad range of services that have evolved significantly over the past 30 years. Over this period, Canadians have increasingly demanded better coverage, faster data rates and more advanced, data-intensive mobile applications, such as video-on-demand. In response, carriers have deployed ubiquitous, high-capacity radio networks based on state-of-the-art technologies, which rely on antenna systems, including towers.

14. Third party tower owners have become more prevalent in Canada and other countries. This is especially true in the United States where carriers rely extensively on the sites provided by third party tower owners. In Canada, under the *Radiocommunication Act*, the Minister's mandate on siting applies to any mast, tower or other structure built for the purpose of supporting an antenna. This is the case whether the proponent is subject to a radio authorization or wishes to build on behalf of, or in order to lease antenna space to, an authorized user. Accordingly, Industry Canada is of the view that the antenna siting procedures should be updated to explicitly include third party tower owners.

15. Industry Canada is seeking comments on the proposed update.

³ Under the *Telecommunications Act*, "telecommunications common carrier" means a person who owns or operates a transmission facility used by that person or another person to provide telecommunications services to the public for compensation.

5.2 Industry Canada's Default Public Consultation Process

Proposed Update to Section 4.2 of CPC-2-0-03

Public Notification

1. Proponents must ensure that the local public, the land-use authority and Industry Canada are notified of the proposed antenna system. As a minimum, proponents must provide a notification package (see Appendix 2) to the local public (including nearby residences, community gathering areas, public institutions, schools, etc.), neighbouring land-use authorities, businesses, and property owners, etc. located within a radius of three times the tower height, measured from the tower base or the outside perimeter of the supporting structure, whichever is greater. For the purpose of this requirement, the outside perimeter begins at the furthest point of the supporting mechanism, be it the outermost guy line, building edge, face of the self-supporting tower, etc. **Public notification of an upcoming consultation must be clearly marked, making reference to the proposed antenna system, so that it is not misinterpreted as junk mail. The notice must be sent by regular mail or be hand delivered. The face of the envelope must clearly indicate that the recipient is within the prescribed notification radius of the proposed antenna system.**
2. It is the proponent's responsibility to ensure that the notification provides at least 30 days for written public comment.
3. In addition to the minimum notification distance noted above, in areas of seasonal residence, the proponent, in consultation with the land-use authority, is responsible for determining the best manner to notify such residents to ensure their engagement.
4. In addition to the public notification requirements noted above, proponents of antenna systems that are proposed to be 30 metres or more in height must place a notice in a local community newspaper circulating in the proposed area. **Height is measured from the lowest ground level at the base, including foundation, to the tallest point of the antenna system. Any attempt to artificially reduce the height (addition of soil, aggregate, etc.) is unacceptable.**

Rationale for Update

16. Industry Canada requires that nearby residents be consulted regarding non-excluded antenna proposals. The Department is concerned that residents may not realize that they have received notification of a proposed tower. The FCM/CWTA protocol template includes specific language to be used on the outside of the envelope addressed to the occupant.⁴ Industry Canada supports the use of clear messaging to identify the notification and prevent the notification as being viewed as junk mail.

17. Similarly, the Department has concerns regarding notification when the proposed support structure is 30 metres or more in height. The update includes new language to clarify how height is measured.

18. Industry Canada is seeking comments on the appropriateness of these proposed updates.

⁴ See [FCM/CWTA protocol template](#), page 20.

5.3 Post-Consultation Construction Time Limit

Proposed New Section 4.4 to be added to CPC-2-0-03

Whether the proponent followed a land-use authority's process or Industry Canada's default public consultation process, construction of an antenna system must be completed within three years of conclusion of consultation. After three years, previous consultations will no longer be deemed to be valid.

Rationale for Update

19. The FCM/CWTA protocol template includes a limit on the duration of a concurrence by a municipality.⁵ Specifically, a concurrence will remain in effect for a maximum of three years from the date that it was issued.

20. The Department agrees that there is benefit in specifying a time frame for construction following completion of the consultation given that many factors, such as additional residential development, could occur in the interim.

21. Industry Canada is seeking public input on the appropriateness of specifying a three-year time frame for completion of construction.

5.4 Exclusions

Proposed Update to Section 6 of CPC-2-0-03

All proponents must consult the land-use authority and the public unless a proposal is specifically excluded. Individual circumstances vary with each antenna system installation and modification, and the exclusion criteria below should be applied in consideration of local circumstances. Consequently, it may be prudent for the proponent to consult even though the proposal meets an exclusion noted below. Therefore, when applying the criteria for exclusion, proponents should consider such things as:

- the antenna system's physical dimensions, including the antenna, mast, and tower, compared to the local surroundings;
- the location of the proposed antenna system on the property and its proximity to neighbouring residents;
- the likelihood of an area being a community-sensitive location; and
- Transport Canada's marking and lighting requirements for the proposed structure.

The following proposals are excluded from land-use authority and public consultation requirements, but must still satisfy the General Requirements outlined in Section 7:

- ***New Antenna Systems***: where the height is less than 15 metres above ground level. **This exclusion does not apply to antenna systems to be used by broadcasting undertakings or**

⁵ See [FCM/CWTA protocol template](#), page 24.

telecommunications carriers;

- **Existing Towers:** modifications may be made, or the tower may be replaced, to facilitate sharing or the addition of antennas, provided that the total height increase is no greater than 25% of the height of the initial antenna system installation.⁶ **No increase in height may occur within one year of completion of the initial construction;**
- **Non-Tower Structures:** antennas on buildings, water towers, lamp posts, etc. may be installed provided that the height of the structure is not increased by more than 25%; **and**
- **Temporary Antenna Systems:** used for special events or emergency operations and must be removed three months after the start of the emergency or special event.

No consultation is required prior to performing maintenance on an existing antenna system.

Proponents who are not certain if their proposals are excluded, or whether consultation may still be prudent, are advised to contact the land-use authority and/or Industry Canada for guidance.

Height is measured from the lowest ground level at the base, including foundation, to the tallest point of the antenna system. Any attempt to artificially reduce the height (addition of soil, aggregate, etc.) will not be taken into account in the measurement.

Rationale for Update

22. Industry Canada has concerns about the application of the current exclusions. In developing the FCM/CWTA protocol template, the FCM and CWTA agreed that proponents will follow all or part of the consultation process for previously excluded antenna systems, as long as these requirements are reasonable. Industry Canada believes that local residents and municipalities should be consulted and the proposed update modifies certain exclusions.

23. The explosive demand for broadband services is accelerating new site development. With advancements in wireless technology, new sites will increasingly involve smaller cells deployed in localized indoor and outdoor areas. Newer technologies will be deployed on utility poles and street lamps. The smaller cells will also transmit signals at power levels much lower than existing larger cells. Some installations may also be less visible (e.g. rooftop installation). Given that the small cells cover a smaller area, more installations will be required to provide the same coverage area as a larger cell.

24. With this proposed update to its procedures, Industry Canada's objective is to allow local residents and municipalities to be informed about new commercial towers in their communities. However, municipalities and proponents may feel increased administrative burden if these proponents must consult on all towers. The Department recognizes the potential administrative burden from this update; however, the antenna siting procedures also provide municipalities and other land-use authorities with the latitude to exclude certain antenna systems from all, or part of, their consultation process or to have different public consultation processes tailored to different types of locations or structures.

25. Industry Canada is seeking comments on the updates to the exclusions proposed above.

⁶ Initial antenna system installation refers to the system as it was first consulted on or installed.

5.5 Canadian Environmental Assessment Act, 2012

Proposed Update to Section 7.4 of CPC-2-0-03

Industry Canada requires that the installation and modification of antenna systems be done in a manner that complies with appropriate environmental legislation. **This includes the [Canadian Environmental Assessment Act, CEAA 2012](#), where the antenna system is incidental to a physical activity or project designated under CEAA 2012, or is located on federal lands.**

An antenna system may not proceed where it is incidental to a designated project (as described in the [Regulations Designating Physical Activities](#)), or is otherwise expressly designated by the Minister of the Environment without satisfying certain requirements applicable to designated projects. Therefore, a proponent of this type of project must contact Industry Canada for direction on how to proceed.

Any proposed antenna system on federal land may not proceed without a determination of environmental effects by Industry Canada. In order to assist the Department in making such a determination, proponents must submit a project description to Industry Canada, considering and addressing those elements of the environment described in CEAA 2012, as well as any determination of environmental effects that may have been made by the authority responsible for managing the federal land. Industry Canada may also require further information before it can complete its assessment. Industry Canada will inform the proponent of the results of its determination and may impose conditions related to mitigating any adverse effects after making its determination and/or may need to refer the matter to the Governor-in-Council under CEAA 2012.

Also, notices under Industry Canada's default public consultation process require written confirmation of the project's status under CEAA 2012 (e.g., whether it is incidental to a designated project or, if not, whether it is on federal lands).

In addition to CEAA requirements, proponents are responsible to ensure that antenna systems are installed and operated in a manner that respects the local environment and that complies with other statutory requirements, such as those under the *Canadian Environmental Protection Act, 1999*, the *Migratory Birds Convention Act, 1994*, and the *Species at Risk Act*, as applicable.

For projects north of the 60th parallel, environmental assessment requirements may arise from federal statutes other than the aforementioned Acts or from Comprehensive Land Claim Agreements. Industry Canada requires that installation or modification of antennas or antenna-supporting structures be done in accordance with these requirements, as appropriate.

Rationale for Update

26. Industry Canada's antenna siting procedures require an update to reflect the requirements of CEAA 2012. The Act offers an updated approach that responds to Canada's current economic and environmental context. The former CEAA captured thousands of small and routine proposals that had little risk of significant adverse environmental effects. CEAA 2012 focuses on major proposals with significant risks to the environment. Under the former CEAA, the vast majority of antenna installations

were excluded from environmental assessment, and so, even fewer assessments are anticipated under CEEA 2012.

27. Industry Canada is seeking comments on these updates.

6. Submitting Comments

28. Industry Canada is seeking comments on the specific updates noted above, and also welcomes comments on any other suggested changes to [CPC-2-0-03](#) that relate to the above updates. Industry Canada may make consequential updates elsewhere in the antenna siting procedures (CPC-2-0-03).

29. Respondents are requested to provide their comments in electronic format (Microsoft Word or Adobe PDF) to the following [email address](mailto:spectrum.operations@ic.gc.ca): spectrum.operations@ic.gc.ca. Soon after the close of the comment period, all comments will be posted on Industry Canada's [Spectrum Management and Telecommunications website](#) at www.ic.gc.ca/spectrum. All comments will be reviewed and considered by Industry Canada in order to arrive at the final procedures.

30. Written submissions should be addressed to the Director, Spectrum Management Operations, Industry Canada, 235 Queen Street, Ottawa, Ontario K1A 0H5. All submissions should cite the *Canada Gazette*, Part I, the publication date, the title and the notice reference number (DGSO-001-14). Parties should submit their comments no later than March 31, 2014, to ensure consideration.