

## MTS Allstream v. Vancouver (2009)

When the 1993 *Telecommunications Act* was enacted, it opened up Canada's telecommunications sector to much greater free-market competition. Canadian cities, used to dealing with just one telecommunications company (telco), in relationships which may have spanned decades, were unprepared for the onslaught of new carriers battling for market shares. All of these new carriers were rushing to install new cables, towers, switching facilities and access ducts into existing, and new, municipal rights-of-ways, like roads, utility ducts and subway tunnels.

### The Legacy of 1993

Since 1993, a series of legal cases had, over time, created an offset of the rules, rights and responsibilities governing telco access to municipal rights of way (ROW). The leading decision was *Ledcor v. Vancouver* (2001). In this decision, the Canadian Radio-Television Commission (CRTC) established a series of principles (the *Ledcor Principles*) which shifted a substantial part of the costs of installing telecommunications infrastructure on to the municipalities themselves. A 2008 FCM study estimates that this shift has cost property tax payers in larger cities \$646 million since 2001, or about \$107 million per year.

### REVERSING THE TIDE: THE ALLSTREAM PRINCIPLES OF 2009

In 2009, the tide turned, in a new CRTC ruling on *MTS Allstream v. Vancouver*, which provided a much clearer guide to the costs that municipalities can recover from telecommunications companies that are accessing municipal ROW and engaging in various construction activities which require municipal oversight, approval and monitoring. The principles clarified and in part leveled the playing field between telcos and municipalities.

### Getting to Allstream

The City of Vancouver and MTS Allstream Inc. (MTSA) spent the better part of five years negotiating a comprehensive, long-term Municipal Access Agreement (MAA). Although there was agreement between the parties on a number of issues, negotiations eventually broke down and MTSA applied to the CRTC to set out the conditions under which it could gain access to rights-of-way and other municipal property and infrastructure.

The CRTC, in its decision to MTSA's case, clarified a number of the *Ledcor Principles* dealing with recoverable costs associated with the installation of telecommunications infrastructure in the municipal right-of-way or other public space. Although this classification is not set in stone, these recoverable costs are generally grouped in four categories:

- plan review and inspection costs;
- pavement degradation costs;
- lost productivity costs; and,
- relocation costs.

For complete information on cost recovery, please consult the Annex B of the *ROW Handbook*, which can be found at [knowyourrights.fcm.ca](http://knowyourrights.fcm.ca).

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Through the Ledcor and Allstream decisions, the CRTC has indicated that municipalities should recover all “causal costs” associated with the installation and maintenance of telecommunications equipment within a municipal ROW. In other words, municipalities are entitled to recover, from all telcos active in their jurisdiction, any incremental cost associated with the activities of these companies. Best practices on how to calculate the costs are being developed across the country. The ROW website is there to make sure every municipality has access to the latest information on cost calculations as well as other issues.

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