

9.1.4




PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

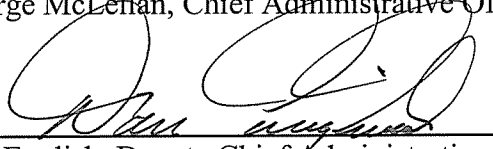
Halifax Regional Council
February 22, 2005

TO: Mayor Kelly and Members of Halifax Regional Council

SUBMITTED BY:



George McLellan, Chief Administrative Officer



Dan English, Deputy Chief Administrative Officer

DATE: February 10, 2005

SUBJECT: Internetworking Atlantic Municipal Access Agreement

ORIGIN

Staff

RECOMMENDATION

It is recommended that Council approve the execution of the Municipal Access Agreement with Internetworking Atlantic attached to this report as Appendix "A".

BACKGROUND

Internetworking Atlantic Inc. (IAI) is a small telecommunications carrier focussed on developing, constructing and managing fibreoptic networks. In July 2003, Council approved the execution of a municipal access agreement/encroachment agreement (MAA) with Internetworking Atlantic which IAI ultimately reconsidered because of the Ledcor Supreme Court of Canada decision which was released shortly thereafter.

DISCUSSION

Further negotiations have recently taken place with IAI and HRM. It is currently proposed that IAI remit to HRM 4% of its gross revenues which is in line with the 4% of local gross subscriber revenues that is the basis upon which Aliant remits payment to HRM in respect of its use of the ROW. Because IAI is a small firm, its customers are generally providing the upfront capital costs to construct the fibreoptic networks. In that case, IAI will be bringing those payments into revenues over a period of time and will remit its annual encroachment fee on the basis of the amount paid in the year in which it is recognized for accounting purposes. The 4% of gross revenues should create a relatively even playing field as far as the fees paid by Aliant, a level playing field being one of HRM's objectives in establishing the terms to this agreement.

BUDGET IMPLICATIONS

This represents new revenues to HRM.

FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Capital and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Capital and Operating reserves, as well as any relevant legislation.

ALTERNATIVES

Continue discussions with IAI.

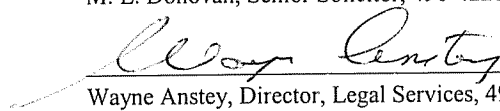
ATTACHMENTS

Draft Internetworking Atlantic Inc. Municipal Access Agreement

Additional copies of this report, and information on its status, can be obtained by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: M. E. Donovan, Senior Solicitor, 490-4226

Report Approved by:


Wayne Anstey, Director, Legal Services, 490-4229

Appendix "A"

This Encroachment Agreement made this day of , 2005.

BETWEEN:

INTERNETWORKING ATLANTIC INC.
(hereinafter referred to as IAI.)

Of the One Part

- and -

HALIFAX REGIONAL MUNICIPALITY
(hereinafter referred to as HRM)

Of the Second Part

Whereas by resolution of Halifax Regional Municipality Council passed at its meeting of July 15, 2003, Council consented to the issuance of an encroachment license for future telecommunication facilities constructed and used by IAI, on, over, under and along HRM streets, as amended by resolution of its meeting of February , 2005;

And Whereas the consideration for the issuance of the encroachment license is the annual payment of 4% of gross subscriber revenues together with other good and valuable consideration;

HRM THEREFORE agrees, for streets owned and controlled by HRM, to issue the necessary permits for the occupation of HRM streets by IAI, subject to the following terms and conditions:

1. (1) IAI agrees to annually pay to HRM four (4%) percent of its gross revenues earned from telecommunication services provided by IAI facilities located within HRM boundaries.
- (2) The first payment shall be made on the execution of this Agreement and thereafter on the anniversary date of this Agreement.
- (3) For the purposes of this agreement, "gross revenues" includes any deferred revenues for telecommunication services, and where that payment is booked as revenue over a period of years, in that case the 4% shall be paid as the revenues are recognized.

The term of this agreement is for a period of five years with a right of renewal each and every year for a one year term subject to termination on 6 months notice by either party prior to the end of the term of the agreement.

3. IAI agrees to consult with HRM re network routings to facilitate connections to HRM sites, and agrees to make such changes as suggested by HRM where such changes would not impose a material change in cost to IAI.
4. IAI shall be subject to and comply with the normal HRM Utility Permit process as well as the Street & Services Permit process as defined by the HRM Streets Bylaw, No. S -300, and all fees and construction requirements.
5. For further clarity, but subject always to future bylaw amendments by HRM Regional Council, the permit fees for Streets & Services permits consist of
 1. \$100.00 for each Streets & Services Permit;
 2. a non-refundable maintenance fee for street cuts in the amount of 15% of the total restoration costs based on current unit prices(\$250.00 minimum); and
 3. reasonable performance security where a cut is made in the street, which will be held for 6 months after approval of the restoration work by the HRM Engineer, to be returned upon the completion of the 6 month period if the works have proven to meet the required street restoration standard.
6. Permits may be issued on a phased basis as determined by the HRM Engineer.
7. HRM shall be the final approval authority for the location of all underground facilities, installation specifications and the number and types of above-ground telecommunications such as pedestals and kiosks.
8. If relocation of IAI facilities to facilitate municipal improvements is required, IAI shall move its facilities on reasonable notice from HRM and shall be responsible for its own relocation costs. HRM will not be responsible for the relocation of any telecommunication services or facilities.
9. As part of the best management practice employed by HRM in respect of its streets, IAI agrees to install over and above its own planned requirements as excess capacity when installing new underground conduits by open cut, along or across a street, and when

requested by the Engineer, one (1) four inch (4") conduit, or the equivalent thereof, which excess capacity will remain the property of IAI.

10. IAI shall have the right to allow a Third Party to attach to its facility and to charge and recover a fee from the Third Party provided that the Third Party has a valid MAA with the Municipality.
11. IAI shall provide to HRM record drawings as to location of its infrastructure in both hard copy and in AutoCAD Drawing File format and any data file or text file shall be transferred in ASCII format, within 60 days of completing the installation of any facility either above or below ground.
12. IAI shall provide to the HRM Engineer a list of emergency contact personnel available at all times and shall ensure that the aforementioned list is always current.
13. IAI agrees that HRM is not responsible, either directly or indirectly, for any damage to IAI's facilities that may result from the activities of HRM, its officers, employees, contractors or agents, nor is HRM liable either on the basis of gross negligence or on any other basis to IAI for any consequential or economic losses on account of the actions of HRM its agents or employees working in, under, over, along, upon and across its streets and roads or other HRM owned or occupied property.
14. HRM agrees that IAI is not responsible on the basis of gross negligence or on any other basis to HRM for any consequential or economic losses on account of the actions of IAI in respect of loss of service provided to HRM on any portion of its IAI fibreoptic cable.
15. Subject to section 13, IAI covenants and agrees to indemnify and save harmless HRM's agents, officers, elected officials, employees and assigns from any and all losses, claims, including any claim for injurious affection, charges, damages and expenses which HRM may at any time bear, sustain or suffer, by reason, or on account of the placement, installation, relocation, maintenance or use of IAI's equipment in, on, under, over, along or across a street or road, and IAI will, upon demand and at its own sole risk and expense, defend any and all suits, actions or other legal proceedings which may be brought or instituted by third persons against HRM on any such claim, demand or cause of action, and will pay and satisfy and judgment or decree which may be rendered against HRM for any and all legal expenses incurred in connection therewith. IAI's obligation to indemnify and save harmless HRM shall survive the termination of this agreement.

16. IAI shall maintain insurance in sufficient amount and description as will protect IAI and HRM from claims for damages, personal injury including death, and for claims from property damage which may arise from IAI's operations within HRM property under this agreement, including by IAI's agents or employees while engaged in the work of placing, maintaining, renewing or removing the equipment within HRM streets and such coverage shall include all costs, charges and expenses reasonably incurred from such claims.
17. Without limiting the generality of the above insurance provisions, IAI shall ensure that:
 - (a) the limits of liability for personal injury, death, bodily injury and property damage, including loss of use thereof, combined shall be for not less than five million (\$5M) for each occurrence;
 - (b) the comprehensive general liability insurance shall extend to cover the contractual obligations of IAI as stated within this agreement, shall be in the name of IAI and shall name HRM as an additional insured;
 - (c) all policies shall provide that they cannot be cancelled, lapsed or materially changed without at least 30 days notice to HRM by registered mail; and
 - (d) evidence of insurance satisfactory to the Manager of Procurement shall be provided prior to the execution of this agreement.
18. IAI agrees to comply with the requirements of the Nova Scotia Occupational Health & Safety Act and all regulations enacted pursuant thereto. Specifically IAI agrees to exercise the due diligence required by the Nova Scotia Occupational Health & Safety Act by ensuring that, to the extent possible, its requirements are followed by its employees, contractors or agents.
19. IAI agrees to annually provide certification from a chartered accountant, licensed to practice in the Province of Nova Scotia, together with and in support of its annual payment of fees, certifying that the gross revenues as set out in section 1 of this Agreement are as stated. IAI agrees to provide to HRM's auditors access to its books on two weeks notice to confirm that payments are being rendered in accordance with the terms of this agreement.

IN WITNESS WHEREOF the proper officers of the parties hereto have affixed their signatures and applied their seals on the day and year first above written.

**INTERNETWORKING ATLANTIC
INC.**

**HALIFAX REGIONAL
MUNICIPALITY**

Mayor

Municipal Clerk