Minutes - Executive Policy Committee – July 19, 2006

Minute No. 539
Report - Standing Policy Committee on Infrastructure Renewal and Public Works - July 11, 2006

Item No. 3 **Amendment to MTS Allstream Inc. - Public Telephone Services Agreement**
File GK-3.1

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

The Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Infrastructure Renewal and Public Works and submits the following to Council:

1. That an Agreement for a period of five (5) years with MTS Allstream Inc., for the placement of public telephones, including advertising, upon public street rights-of-way and City-owned/operated buildings/properties be approved.

2. That Commissions, as outlined on Schedule B to the report of the Director of Public Works dated June 8, 2006, form part of the said Agreement, subject to the addition of a statement related to inclusion of advertising in the "Revenues".

3. That the Chief Administrative Officer be delegated the authority to renew the said Agreement upon its expiration in five years, and for subsequent renewals, with each renewal period not to exceed five years.

4. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

Minutes - Executive Policy Committee – July 19, 2006

Report - Standing Policy Committee on Infrastructure Renewal and Public Works – July 11, 2006

DECISION MAKING HISTORY:

Moved by Councillor Clement,

That the recommendation of the Standing Policy Committee on Infrastructure Renewal and Public Works be concurred in and forwarded to Council.

Carried

STANDING COMMITTEE RECOMMENDATION:

On July 11, 2006, the Standing Policy Committee on Infrastructure Renewal and Public Works concurred in the administrative recommendation and submitted the matter to the Executive Policy Committee and Council.

RE: AMENDMENT TO MTS ALLSTREAM INC. PUBLIC TELEPHONE SERVICES AGREEMENT

FOR SUBMISSION TO: **Standing Policy Committee on Infrastructure Renewal and Public Works**

ORIGINAL REPORT SIGNED BY: **L.S.W. Larkin, P. Eng., Director of Public Works**

REPORT DATE: **June 8, 2006**

RECOMMENDATION:

That:

a) An Agreement, for a period of five years with MTS Allstream Inc. for the placement of public telephones, including advertising, upon public street rights-of-way and City-owned/operated buildings/properties be approved;

b) Commissions Schedule B, attached hereto, form part of the Agreement, subject to the addition of a statement related to inclusion of advertising in the "Revenues";

c) The proper officers of the City be authorized to do all things necessary to implement the intent of the foregoing, including the execution of any documents related thereto; and

d) Council delegate the authority to renew this Agreement upon its expiration in five years, and for subsequent renewals, with each renewal period not to exceed five years, to the Chief Administrative Officer.

Report Summary

Key Issues:

- MTS Allstream Inc. has requested a new five-year Agreement that would also allow advertising to be displayed on the public telephones, with the City sharing in the advertising revenue.

- Third party advertising (i.e. a sign drawing attention to a business or service not conducted at that location) is not permitted on private property in the downtown area. The vast majority of public telephone installations in the downtown are on public street rights-of-way, public buildings or public lands. There is some third party advertising on public street rights-of-way that

supports a public amenity such as a bus shelter, bench or recycling containers that is established by Agreement with the City.

- This Agreement will result in third party advertising on public street rights-of-way in the downtown. However, such advertising would be similar to what is permitted on bus shelters and benches, OMG re-cycling bins, and bicycle racks by way of Agreement with the City.

- The addition of the advertising component will enhance the viability of the public telephone service and ensure that such phone service is made readily available, including at those geographic locations where there is a known need for the public telephone service, but where the revenue generated may not justify continuation of the service.

Implications of the Recommendation(s):

General Implications

None
√ For the organization overall and/or for other departments
√ For the community and/or organizations external to the City
Involves a multi-year contract

Comment(s): Implementation of this recommendation will ensure that public telephone services will be made available at a number of sites on public street rights-of-way, public spaces and buildings, while generating commission revenue for the City.

Policy Implications

No
√ Yes

Comment(s): This Agreement will introduce third party advertising on public street rights-of-way (similar to what is permitted by contract for bus shelters, bush benches, OMG recycling bins and bicycle racks) in conjunction with a public service (public telephones).

Regulatory Implications

√ None
Eliminates or reduces regulatory impact
Proposes regulatory impact

Comment(s):

Environmental Implications

√ No
Yes

Comment(s):

Human Resources Implications

√ No

Yes

Comment(s):

Financial Implications

√ Within approved current and/or capital budget

Current and/or capital budget adjustment required

Comment(s): The public telephones and advertising will be installed and maintained by MTS Allstream Inc. The anticipated annual commission revenue payable to the City is $33,000, which is proposed to be re-directed to the Public Works Department Annual Operating Account to be allocated to the various Divisions responsible for maintaining public rights-of-way, civic buildings and properties.

Report

REASON FOR THE REPORT:

The Standing Policy Committee on Infrastructure Renewal and Public Works, being the body responsible for the management of public street rights-of-way and maintenance of civic buildings/properties, is charged with agreements such as the above referenced.

HISTORY:

The City of Winnipeg currently has an Agreement, effective March 1, 1999, with MTS Allstream Inc., for the installation, maintenance and operation of public telephones at approximately 232 public street rights-of-way and building/property locations. An Agreement of this type, originally authorized by Council, has been in effect for more than 25 years and continues to be at the pleasure of the City. Although the Agreement, effective March 1, 1999, was for a five-year period ending February 29, 2004, it has been extended by the Director of Public Works, as authorized by the Standing Policy Committee on Public Works on November 18, 1998, for three subsequent one-year periods ending February 28, 2007.

Mr. David Driedger, Sales Consultant, Payphones/Prepaid Card Services, and Diane Ives Lewis, Product Manager, Payphones, MTS Allstream Inc., of which MTS Communications Inc. is a division, requested a new five-year Agreement that would allow advertising to be displayed on the public telephones, with the City sharing in the advertising revenue

DISCUSSION:

The Existing Agreement:

There currently are approximately 232 public telephones in place in the City, 141 on public street rights-of-way, and 91 within City-owned or operated property or buildings such as City Hall, Pan Am Pool, etc. In 2004, the commission paid to the City was approximately $30,000, which is equivalent to an average annual commission of approximately $130 per public telephone. The current agreement provides for a commission to the City based on ranges of annual gross revenue per public telephone. Such a commission rate varies from a low of 0% for low use public telephones, to a high of 14% for high use public telephones. Although the agreement does not provide for a guaranteed minimum commission, historically, as referred to above, on average, $130 in commission annually has been generated per public telephone.

The Public Works Department does not support the concept of City-wide exclusivity to any one communication company for public telephone service. However, to assist each company to recover initial investment, it is deemed reasonable to grant each and every company that installs a public telephone on the public street rights-of-way exclusivity within 100 metres of an installed public telephone for a five year period. No such exclusivity is considered necessary for public telephones installed within City-owned or operated buildings or properties, since such installations involve minimal cost. MTS Allstream Inc. currently has exclusive rights for public telephone services within 100 metres of an existing public telephone installed on a public street right-of-way. In order to maintain viability and to secure their investment in the public telephone installations, it is recommended that the 100 metre exclusivity of installation on existing installations on public street rights-of-way be maintained in the new proposed five-year Agreement. With such a provision, competitors may still offer public telephone services to the City. It should be noted that no such offers have been made to the City since the latest amendment to this Agreement came into effect on March 1, 1999.

The Proposed New Agreement:

As part of the new Agreement, MTS Allstream Inc. proposes to maintain the current commission schedule and to include advertising on the public telephones. It is proposed that the advertising revenue generated by each public telephone be added to the revenue normally generated by the public telephone in computing the commission payable to the City. It is anticipated that advertising would result in an additional $3,000 annually in commission revenue to the City. Consequently, the anticipated annual commission revenue to the City is approximately $33,000 for the 232 public telephone installations or approximately $140 per public telephone. This additional revenue will be earmarked for maintenance at the sites, including improved streets maintenance in the downtown area.

Based on the following factors:

(1) the cost of supplying each outdoor public telephone with electrical power is paid by MTS Allstream Inc. directly to the utility and there is no significant incremental cost to the City associated with providing lighting for indoor public telephones;

(2) the Public Works Department's mandate includes the provision of streets and public off-street facilities that are safe and environmentally friendly, and that the availability of public telephones is a convenience to citizens, particularly in instances of an emergency; and

(3) the administration cost such as site review, record maintenance, etc., and the additionally incurred maintenance cost such as sidewalk and building cleaning,

etc., associated with these installations is approximately $130 per average public telephone annually, or $30,160 for the 232 installations;

the proposed MTS Allstream Inc. Agreement will result in little, if any, net income to the City (i.e. a cost of $30,160 associated with street/building maintenance and administration, versus an estimated commission revenue of $33,000).

MTS Allstream Inc. has advised that the intent of advertising on public telephones is to supplement declining revenues that public telephones are experiencing and the ever increasing cost of maintenance. They provide public telephone service to many areas of Winnipeg, including those which may experience somewhat higher levels of vandalism. In order to justify maintaining public telephones under such circumstances in which revenue generation may not be as high as elsewhere, but where they recognize a need to provide a service that is equitable with other parts of the City, they consider revenue as a whole from all public telephones on City property to justify the continued operation of public telephones in the higher vandalism areas. MTS Allstream Inc. advises that they have a program that fosters a high level of maintenance as well as cleanliness of the public telephones to ensure that the installations are pleasing in appearance and not distractive to the surrounding environment.

MTS Allstream Inc. advised that, in addition to retail entities, targeted advertisers will include entertainment ventures such as Winnipeg Blue Bombers, Winnipeg Symphony, Centennial Concert Hall and Winnipeg Gold Eyes, as well as service groups from all levels of government who provide assistance such as Crisis Lines, Teen Assistance Services, Family Services, and Addiction Services. Advertising is a common practice on public telephones located in private businesses throughout the province and in facilities such as the Winnipeg International Airport. It would be the intent of MTS Allstream Inc. to proceed with the advertising on a programmed basis and only where and when requested by an advertiser. MTS Allstream Inc. has advised that with respect to advertisers, they reserve the right to use their discretion to deny advertising which they believe to be potentially either in bad taste, controversial, or insensitive to current community and/or City standards.

Various models of public telephone canopies are shown on the attached Drawing F06-17. The oldest model, being Model 120-L as shown on Photo “D”, is the largest in overall size of the four canopies currently in use and is being phased out. Accordingly, over time, as the older units are replaced with newer models, the overall size of the public telephone canopies will be smaller rather than larger and will be more aesthetically pleasing.

The locations of the public telephones are shown on the attached Schedule “A” 1.0, being outdoor locations within the public street rights-of-way, Schedule “A”1.1, being outdoor locations outside the public street rights-of-way, and Schedule “A” 2.0, being indoor locations.

Perspectives of the Planning, Property and Development Department on the Proposed New Agreement:

The Planning Property and Development Department has commented as follows on the public telephones with advertising proposal:

1) *Any removal or relocation of public telephones should be specifically approved by the Public Works Department and any such approval should be based on maintaining convenient public access to public telephone services and any proposed new locations should not conflict with pedestrian flow.*

This suggestion is reasonable and appropriate and is in line with the Public Works Department's existing practice.

2) *The number, size and placement of the advertising signs mounted on the outside of the canopy of the public telephone should be limited, and the signs should not be illuminated.*

The Public Works Department recommends that no more than one sign per side panel be permitted on the exterior of the canopy facing outwards (one per side), the size of the advertising sign be no larger than 18 inches by 22 inches, and that the advertising not be illuminated. MTS Allstream Inc. would also be requested to comply with the Canadian Advertisers - Code of Advertising Standards with a clause providing the City the right to cause MTS Allstream Inc. to remove any advertising deemed immoral, not reputable, or otherwise unacceptable.

3) *Specifying that a portion of the advertising, as suggested by MTS Allstream Inc., be allocated to non-profit clients.*

It may be difficult to ensure that a specific percentage of the advertising be used by non-profit groups, since such a demand will be determined by how many such groups wish to advertise on the public telephones. However, the Public Works Department will suggest to MTS Allstream Inc. that a percentage of their advertising be targeted for non-profit groups in their marketing efforts.

4) *Ensuring that MTS Allstream Inc. understands that any proposed installation of public telephones on private property will be subject to applicable zoning requirements and review by the Planning Property and Development Department.*

The public telephone installations that are part of this Agreement are on public street rights-of-ways, public buildings and public spaces such as parks. Advertising on public telephones in public buildings will be dealt with by the Public Works Department and the respective building administrators. Advertising on public

telephones in public spaces outside of the public street rights-of-way and public buildings such as in parks, will be dealt with on a case by case basis.

The Appearance of the Public Telephones with Advertising:

Figures 1 and 2 below provide examples of the two styles of advertising MTS Allstream Inc. is interested in adding to public telephones located on City property.

Figure 1 – “Mini-Billboard” advertising example.



MTS Allstream Inc. has already been using the “Mini-Billboard” advertising panel shown in Figure 1 on public telephones throughout rural Manitoba, including other cities and towns. The “Mini-Billboard” features a 10.5 in. x 7 in. frame mounted within the canopy directly above the public telephone.

Figure 2 – “Panel” advertising example.



Figure 2 shows the “Panel” advertising frame which has dimensions of 18 in. x 22 in. and would be mounted on the exterior of the side of the public telephone canopy. MTS Allstream Inc. has also already been using this panel in Manitoba locations outside of Winnipeg.

Considerations for a New Agreement with the Advertising Provision:

In as much as there is no net cost to the City for public telephone services for which there is an apparent public demand, and since MTS Allstream Inc. has previously provided this service and has maintained its commitments to the Agreement to the satisfaction of the City, it is recommended that an Agreement with MTS Allstream Inc. for the placement of public telephones, including advertising, be approved.

MTS Allstream Inc. maintains the public telephones on a regular basis such that they are clean and pleasing in appearance and blend with the surrounding environment.

With regard to the control on the type of advertising, it is proposed, as discussed above, that MTS Allstream Inc. be required to comply with the “Canadian Advertisers - Code of

Advertising Standards". Specifically, it is suggested that the following wording, taken from an excerpt from the Community Services Department's standard advertising agreement, be incorporated into the new agreement:

> *"The advertising to be displayed shall be in accordance with the regulations and standards set by the Canadian Advertising Council and shall be of a moral and reputable standard. The City will not accept advertising which is likely, in light of prevailing community standards, to be considered of questionable taste or offensive in its style, content or presentation. The City may, at its sole discretion, determine any advertising to be of an immoral or not reputable standard or unacceptable and the City may request the removal of such Advertising.*
>
> *Where MTS Allstream Inc. and the City are in dispute about the compliance of the Advertising with the guidelines (whether before or after the installation of advertising), the City will refer the advertisement to the Canadian Advertising Council for immediate adjudication of the Canadian Code of Advertising Standards".*

It should be noted that the design of the public telephones that are installed in historic areas such as the Exchange District are such that the appearance of the device is unique and respectful of the heritage nature of the district. MTS Allstream Inc. refers to these public telephones, a photo of which is attached, as "Traditional Pedestals". MTS Allstream Inc. has indicated that they do not intend to place any exterior side panel advertising on these Traditional Pedestal public telephones.

MTS Allstream Inc. noted that they provide public telephone services to areas of the City that have high levels of vandalism and that they combine the revenues from all of the public telephones on City property to justify retaining public telephones that do not produce sufficient revenues, but do supply a required communication service to the neighbourhood. MTS Allstream Inc. further indicated their interest in adding an advertising component to its public telephones is to supplement declining revenues the public telephones are experiencing and as a result of increased costs for maintaining public telephones, including repairs associated with vandalism.

Consultations:

In preparing this report, Materials Management Branch was consulted. They expressed a general concern regarding the amount of advertising currently in existence on City streets (for example, on waste receptacles) and the potential for additional advertising to possibly detract from the value of Transit's advertising contracts (on bus benches, bus shelters, etc.).

Winnipeg Transit indicated that, based on MTS Allstream Inc.'s proposed advertising format and revenue projections, they are not concerned that this advertising will present a competitive threat to Transit's advertising contractors.

The Planning, Property and Development Department advised that there is some third party advertising that supports a public amenity such as a bus shelter, bench or recycling containers, and is established by Agreement with the City. Their comments have been addressed within the body of the report above.

Summary:

It is suggested that, in many instances, the service provided by the public telephones is not unlike that provided by bus shelters, benches, and recycling containers upon which third party advertising is permitted where established by Agreement with the City. It is noteworthy that there currently are MTS Allstream Inc. public telephones installed in certain bus shelters, including in the downtown such as at the bus shelter on Portage Avenue adjacent to the MTS Centre.

MTS Allstream Inc., has advised that the additional revenue generated by the proposed advertising will be used to minimize the number of public telephones that they elect to remove because of declining revenues and/or vandalism, even though such public telephones are located in geographic areas where there is a demonstrated or apparent need for such a service in that many users do not have the convenience of ready access to a private telephone or a cell phone.

MTS Allstream Inc. has also advised that they intend to target not just advertising of a retail nature, but also levels of government and private sector service groups who are trying to reach people requiring assistance, including crisis lines, addiction services, teen assistance services and family assistance services. With respect to the downtown area, they indicated that their intention is to specifically target advertising for local entertainment offerings such as local sport teams and other cultural amenities, many of which are located in the downtown, and whose attendees have occasion to patronize downtown businesses.

MTS Allstream Inc. has in place a maintenance program that ensures damaged, vandalized, or graffiti-stricken public telephones are attended to expediently, thus resulting in an aesthetically pleasing environment for the community.

Financial Impact Statement

Date: June 1, 2006

Project Name:

Amendment to MTS Allstream Inc. Public Telephone Services Agreement

First Year of Program **2007**

	2007	2008	2009	2010	2011
Capital					
Capital Expenditures Required	$ -	$ -	$ -	$ -	$ -
Less: Existing Budgeted Costs	-	-	-	-	-
Additional Capital Budget Required	$ -	$ -	$ -	$ -	$ -
Funding Sources:					
Debt - Internal	$ -	$ -	$ -	$ -	$ -
Debt - External	-	-	-	-	-
Grants (Enter Description Here)	-	-	-	-	-
Reserves, Equity, Surplus	-	-	-	-	-
Other - Enter Description Here	-	-	-	-	-
Total Funding	$ -	$ -	$ -	$ -	$ -
Total Additional Capital Budget Required	$ -				
Total Additional Debt Required	$ -				
Current Expenditures/Revenues					
Direct Costs	$ 30,160	$ 30,160	$ 30,160	$ 30,160	$ 30,160
Less: Incremental Revenue/Recovery	33,000	33,000	33,000	33,000	33,000
Net Cost/(Benefit)	$ (2,840)	$ (2,840)	$ (2,840)	$ (2,840)	$ (2,840)
Less: Existing Budget Amounts	-	-	-	-	-
Net Budget Adjustment Required	$ (2,840)	$ (2,840)	$ (2,840)	$ (2,840)	$ (2,840)

Additional Comments:

Original signed by Darcy Stewart, CA

Manager of Finance & Administration

IN PREPARING THIS REPORT THERE WAS:

Internal Consultation With and Concurrence By:

- Corporate Finance, Materials Management Branch
- Winnipeg Transit
- Planning, Property and Development Department
- Corporate Services, Legal Services Division

External Consultation With:

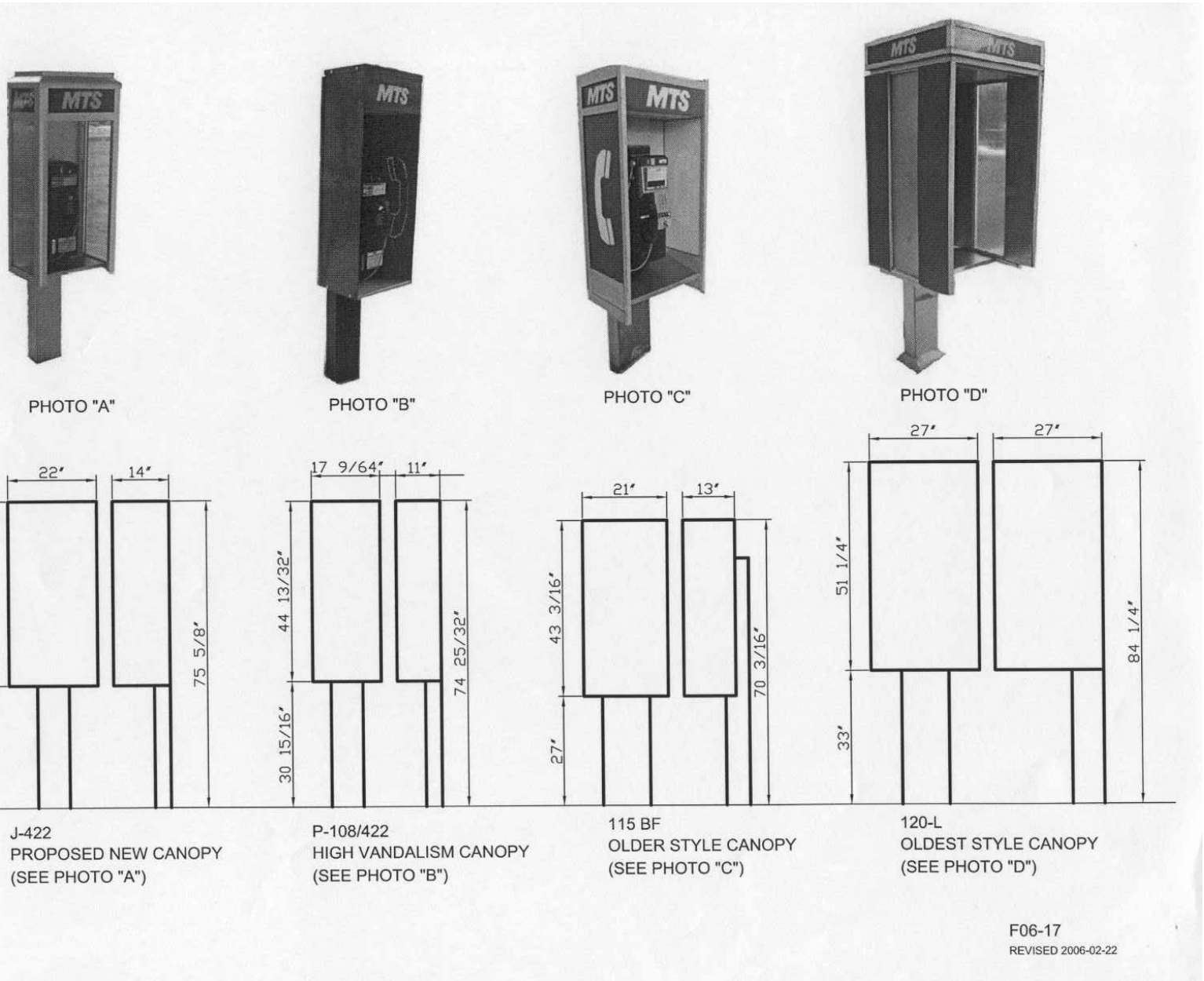
- David Driedger, Sales Consultant, and Diane Ives Lewis, Product Manager, MTS Allstream Inc. Public Affairs

THIS REPORT SUBMITTED BY:

Department: Public Works
Division: Transportation
Prepared by:
Carl Sitarz, Traffic Analyst…….. .. 986-5067
Diana Emerson, P. Eng., MCIP, Traffic Management Engineer…..986-5900
Processed by: Carol Kawaza, Transportation Clerk ……... 986-5288

File No. MTS File/OG -16

Attachments


MTS
PHOTO "A"
PHOTO "B"
PHOTO "C"
PHOTO "D"
22″
14″
45 3/8″
75 5/8″
30 1/4″
17 9/64″
11″
44 13/32″
74 25/32″
30 15/16″
21″
13″
43 3/16″
70 3/16″
27″
27″
27″
51 1/4″
84 1/4″
33″
J-422
PROPOSED NEW CANOPY
(SEE PHOTO "A")
P-108/422
HIGH VANDALISM CANOPY
(SEE PHOTO "B")
115 BF
OLDER STYLE CANOPY
(SEE PHOTO "C")
120-L
OLDEST STYLE CANOPY
(SEE PHOTO "D")
F06-17
REVISED 2006-02-22


MTS
MTS

COMMISSIONS

1.0 Commissions

1.1 The commission rate payable by the Licensee to the City in respect of each public telephone subject to this Agreement shall be based on the revenues generated by the public telephones (the "Revenues"). For purposes of this Schedule B, the Revenues shall consist of revenue from both local and long distance calls originating from the public telephone that is billed and received by the Licensee and that is paid for either by coins, collect call, a calling card issued by the Licensee, commercial credit cards, prepaid cash cards issued by the Licensee, third number billing, Zenith or any other means of paying for the call, but the Revenues shall exclude (i) calls using the network, calling cards or other facilities of a competitor of the Licensee to the extent that the Licensee is unable to record revenue in respect of any such calls; (ii) all amounts paid for applicable sales, commodity and value-added taxes, such as provincial retail sales tax and goods and services tax; and (iii) revenues from the settlement of long distance calls that are not wholly carried or transmitted by the Licensee.

1.2 For purposes of determining the commission rate that will apply in respect of each public telephone, the Licensee, on March 1st in each year during the term (the "Calculation Date"), shall calculate the Revenues generated by the public telephone during the twelve (12) month period preceding the Calculation Date (the "Annual Revenues"). Where a public telephone is a new installation, the Annual Revenues for the first year of the operation of the public telephone shall be estimated by the Licensee. The Annual Revenues shall be used to determine the applicable commission rate, as set out in section 1.5 below, that will apply and remain in effect for a period of twelve (12) months following the Calculation Date. Thereafter, the applicable commission rate for the next twelve (12) month period shall be determined in the manner specified in this section 1.2.

1.3 The commissions payable by the Licensee to the City shall be calculated by multiplying the actual Revenues generated by the public telephone by the applicable commission rate as determined in accordance with section 1.2 above, and by dividing the product by twelve (12). This monthly commission amount shall be paid to the City on a monthly basis, provided that such amount is equal to or greater than Fifty Dollars ($50.00). If the monthly commission amount is less than Fifty Dollars ($50.00), the commission amount will be carried forward to the next ensuing month or months, and will be paid once the accrued commissions are equal to or greater than Fifty Dollars ($50.00). the Licensee shall pay the City the accrued commissions at the end of any twelve (12) month period while this Agreement is in effect, notwithstanding that such accrued commissions may be less than Fifty Dollars ($50.00). No interest will be calculated or payable on any outstanding balance of commissions payable under this Agreement.

1.4 The Licensee's records of the Revenues, and the calculation of the Annual Revenues by the Licensee for purposes of determining the applicable commission rate, shall be final and binding.

1.5 The commission rates applicable during the term of this Agreement are as follows:

ANNUAL REVENUES PER PUBLIC TELEPHONE		**COMMISSION** RATE **PER PUBLIC TELEPHONE** (5 Year Term)
Indoor Location	Outdoor Location	
less than $1,000.00	less than $2,000.00	0%
$1,000.00 - $2,999.99	$2,000.00 - $3,999.99	8%
$3,000.00 - $5,999.99	$4,000.00 - $6,999.99	10%
$6,000.00 - $9,999.99	$7,000.00 - $9,999.99	12%
equal to or greater than $10,000.00	equal to or greater than $10,000.00	14%