



## Telecom Order CRTC 2013-523

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Ottawa, 27 September 2013

### **Determination of costs award with respect to the participation of the Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic in the proceeding leading to Telecom Regulatory Policy 2013-271**

File numbers: 8665-C12-201212448 and 4754-417

1. By letter dated 18 April 2013, the Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic (CIPPIC), on behalf of itself and OpenMedia.ca (OpenMedia), applied for costs with respect to its participation in the proceeding leading to Telecom Regulatory Policy 2013-271 (the proceeding).
2. On 29 April 2013, TELUS Communications Company (TCC) filed an intervention in response to CIPPIC's application. CIPPIC filed a reply on 9 May 2013.

#### **Application**

3. CIPPIC submitted that it had met the criteria for an award of costs set out in section 68 of the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (the Rules of Procedure) because it represented a group or class of subscribers that had an interest in the outcome of the proceeding, it had assisted the Commission in developing a better understanding of the matters that were considered, and it had participated in a responsible way.
4. CIPPIC requested that the Commission fix its costs at \$49,006.11, consisting of \$45,952.50 for legal fees, \$2,115 for analyst fees, and \$938.61 for disbursements. CIPPIC filed a bill of costs with its application.
5. CIPPIC made no submission as to the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents).

#### **Answer**

6. In response to the application, TCC did not object to CIPPIC's eligibility for costs, but noted that Mr. Tamir Israel, CIPPIC's staff counsel, appeared at the hearing both as in-house counsel for CIPPIC and as external counsel for OpenMedia. TCC submitted that some portion of the hours charged by Mr. Israel should be billed at the \$600-per-day in-house counsel rate as work done for CIPPIC instead of for OpenMedia, subject to CIPPIC providing a breakdown of which work was done for which client. TCC also submitted that the costs in this proceeding should be allocated on the basis of wireless revenues rather than on the usual basis of

telecommunications operating revenues (TORs)<sup>1</sup> due to the proceeding's focus on developing a wireless code of conduct.

## Reply

7. CIPPIC submitted in reply that it would be impossible to produce a detailed breakdown as TCC had suggested, because all the work done by CIPPIC in the proceeding was done on behalf of OpenMedia. CIPPIC further submitted that both the Commission and the courts have judged it appropriate for the legal staff of allied public interest organizations to bill external rates when the relationship between the two organizations warrants it.
8. CIPPIC argued that, given the complexity of the proceeding and its subject matter, the costs that it and other costs applicants claimed were by no means high. In addition, in CIPPIC's view, there was little to no duplication among the interventions of the costs applicants.

## Commission's analysis and determinations

9. The Commission finds that CIPPIC has satisfied the criteria for an award of costs set out in section 68 of the Rules of Procedure. Specifically, the Commission finds that CIPPIC represented a group or class of subscribers that had an interest in the outcome of the proceeding, it assisted the Commission in developing a better understanding of the matters that were considered through its well-sourced and detailed submissions on a broad cross-section of issues related to the wireless market, and it participated in a responsible way.
10. With respect to TCC's submission regarding the rates CIPPIC claimed for legal fees, the Commission notes CIPPIC's reference to precedents regarding the use of external counsel by co-operating public interest organizations. In Telecom Order 2010-85, the Commission found it appropriate for the Campaign for Democratic Media (CDM) to claim outside counsel rates for CIPPIC, noting "CDM stated that it did not have a permanent retainer with CIPPIC, CIPPIC is not on staff with CDM, and CDM did not contribute to overhead, insurance, or bar fees for CIPPIC counsel." The Commission finds that these facts are also applicable to the relationship between OpenMedia and CIPPIC.
11. Accordingly, the Commission notes that the rates claimed in respect of legal and analyst fees are in accordance with the rates established in the Commission's *Guidelines for the Assessment of Costs*, as set out in Telecom Regulatory Policy 2010-963. The Commission finds that the total amount claimed by CIPPIC was necessarily and reasonably incurred and should be allowed.

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<sup>1</sup> TORs consist of Canadian telecommunications revenues from local and access, long distance, data, private line, Internet, and wireless services.

12. The Commission considers that this is an appropriate case in which to fix the costs and dispense with taxation, in accordance with the streamlined procedure set out in Telecom Public Notice 2002-5.
13. The Commission notes that it has generally determined that the appropriate costs respondents to an award of costs are the parties that have a significant interest in the outcome of the proceeding in question and have participated actively in that proceeding. The Commission notes that it made all wireless service providers parties to this proceeding, and that they all participated actively throughout the proceeding. The Commission therefore finds that the appropriate costs respondents to CIPPIC's application for costs are Bell Aliant Regional Communications, Limited Partnership, Bell Canada, and Télébec, Limited Partnership (collectively, Bell Canada et al.); Bragg Communications Inc. (operating as EastLink); Data & Audio-Visual Enterprises Wireless Inc. (operating as Mobilicity); Globalive Wireless Management Corp. (Globalive); MTS Inc. (MTS) and Allstream Inc. (collectively, MTS Allstream); Public Mobile Inc. (Public Mobile); Rogers Communications Partnership (RCP); Saskatchewan Telecommunications (SaskTel); TCC; and Videotron G.P. (Videotron).
14. The Commission notes that it generally allocates the responsibility for payment of costs among costs respondents based on their TORs as an indicator of the relative size and interest of the parties involved in the proceeding. For the reasons discussed in Telecom Order 2013-521, also released today, the Commission considers that, in the present circumstances, it is appropriate to apportion the costs among the costs respondents in proportion to their TORs, based on their most recent audited financial statements. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated as follows:

Bell Canada et al.:	39.6%
TCC:	24.5%
RCP:	23.6%
MTS Allstream:	4.3%
Videotron:	3.5%
SaskTel:	2.6%
EastLink:	0.8%
Globalive:	0.7%
Public Mobile:	0.2%
Mobilicity:	0.2%

15. The Commission notes that Bell Canada filed submissions in the proceeding on behalf of Bell Canada et al. and that MTS Allstream filed joint submissions. Consistent with its general approach articulated in Telecom Costs Order 2002-4, the Commission makes Bell Canada responsible for payment on behalf of Bell Canada et al. and MTS responsible for payment on behalf of MTS Allstream, and leaves it to the members of the companies to determine the appropriate allocation of the costs among themselves.

## Directions regarding costs

16. The Commission **approves** the application by CIPPIC for costs with respect to its participation in the proceeding.
17. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to CIPPIC at \$49,006.11.
18. The Commission directs that the award of costs to CIPPIC be paid forthwith by Bell Canada on behalf of Bell Canada et al., by TCC, by RCP, by MTS on behalf of MTS Allstream, by Videotron, by SaskTel, by EastLink, by Globalive, by Public Mobile, and by Mobilicity, according to the proportions set out in paragraph 14.

Secretary General

## Related documents

- *Determination of costs award with respect to the participation of the Consumers Council of Canada in the proceeding leading to Telecom Regulatory Policy 2013-271*, Telecom Order CRTC 2013-521, 27 September 2013
- *The Wireless Code*, Telecom Regulatory Policy CRTC 2013-271, 3 June 2013
- *Revision of CRTC costs award practices and procedures*, Telecom Regulatory Policy CRTC 2010-963, 23 December 2010
- *Determination of costs awards with respect to the participation of certain parties in the Telecom Public Notice 2008-19 proceeding*, Telecom Order CRTC 2010-85, 12 February 2010
- *New procedure for Telecom costs awards*, Telecom Public Notice CRTC 2002-5, 7 November 2002
- *Action Réseau Consommateur, the Consumers' Association of Canada, Fédération des associations coopératives d'économie familiale and the National Anti-Poverty Organization application for costs – Public Notice CRTC 2001-60*, Telecom Costs Order CRTC 2002-4, 24 April 2002