



Telecom Order CRTC 2016-137

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Ottawa, 15 April 2016

File numbers: 8662-C182-201508235 and 4754-499

Determination of costs award with respect to the participation of OpenMedia.ca in the proceeding leading to Telecom Decision 2016-60

Application

1. By letter dated 1 October 2015, OpenMedia.ca (OpenMedia) applied for costs with respect to its participation in the proceeding leading to Telecom Decision 2016-60 (the proceeding). In the proceeding, the Canadian Network Operators Consortium Inc. (CNO) requested that the Commission review and vary certain determinations made in Telecom Regulatory Policy 2015-177.
2. Specifically, CNO challenged the Commission's determinations to continue to forbear from the regulation of full mobile virtual network operators' (MVNOs) access services, as well as wholesale tower and site sharing. CNO submitted that the Commission erred in law and in fact, and that it failed to consider basic principles that would have rendered a different outcome.
3. The Commission did not receive any interventions in response to the application for costs.
4. OpenMedia 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.
5. In particular, OpenMedia submitted that it represented a group of subscribers with a significant interest in the outcome of the proceeding. In the proceeding, the Commission examined whether its regulatory framework with respect to the participation of MVNOs in the mobile wireless services market was an appropriate approach to enable Canadians to enjoy mobile wireless services that are of high quality, competitive, and responsive to consumers' needs. As such, the proceeding affected all Canadians, which falls under OpenMedia's public interest mandate. OpenMedia also submitted that its contributions were distinct from those of other parties, and that it provided a distinct perspective on the issues raised in the proceeding.

6. OpenMedia requested that the Commission fix its costs at \$3,947.50, consisting of \$1,527.50 for in-house analyst fees, and \$2,420.00 for external analyst fees.
7. OpenMedia made no submission as to the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents).

Commission's analysis and determinations

8. The criteria for an award of costs are set out in section 68 of the Rules of Procedure, which reads as follows:

68. The Commission must determine whether to award final costs and the maximum percentage of costs that is to be awarded on the basis of the following criteria:

(a) whether the applicant had, or was the representative of a group or a class of subscribers that had, an interest in the outcome of the proceeding;

(b) the extent to which the applicant assisted the Commission in developing a better understanding of the matters that were considered; and

(c) whether the applicant participated in the proceeding in a responsible way.

9. OpenMedia has satisfied these criteria through its participation in the proceeding. In particular, OpenMedia represented consumer interest as a community-based, citizen-engaged organization. As well, OpenMedia made constructive submissions in the proceeding, for example, with respect to the innovative role that MVNOs could play in the Canadian mobile wireless services market, including as vectors of greater competition to the benefit of Canadian consumers.
10. The rates claimed in respect of 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 OpenMedia was necessarily and reasonably incurred and should be allowed.
11. 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.
12. The Commission 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 considers that the following parties had a significant interest in the outcome of the proceeding and participated actively in the proceeding:
Bell Mobility Inc.; Bragg Communications Incorporated, operating as Eastlink;

CNOC; Cogeco Cable Inc.; MTS Inc., Saskatchewan Telecommunications, and TBayTel collectively; Quebecor Media Inc., on behalf of Videotron G.P.; Rogers Communications Partnership; TELUS Communications Company (TCC); and WIND Mobile Corp.

13. The Commission generally allocates the responsibility for payment of costs among parties that had a significant interest in the outcome of the proceeding and that participated actively in the proceeding based on their telecommunications operating revenues (TORs),¹ as reported in their most recent audited financial statements. However, the Commission has occasionally departed from this approach in circumstances where it would not fairly reflect the interests or degree of participation of the parties concerned.
14. Given the focus of the proceeding, the approach of allocating the responsibility for payment of costs based only on TORs would yield a result that does not fairly reflect the interests or degree of participation of the parties concerned. In the circumstances, the Commission finds it appropriate for CNOC to be a costs respondent and to be responsible for payment of 40% of the costs, given that it initiated the proceeding and therefore had a very significant interest in the outcome. The Commission finds that the responsibility for payment of the remaining costs should be allocated to other parties that had an interest in the outcome of the proceeding and in proportion to their TORs.
15. In Telecom Order 2015-160,² the Commission considered \$1,000 to be the minimum amount that a party should be required to pay due to the administrative burden that small costs awards impose on both the applicant and costs respondents. Based on this approach, the Commission finds that TCC should also be a costs respondent.
16. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated as follows:

Company	Percentage	Amount
TCC	60%	\$2,368.50
CNOC	40%	\$1,579.00

Directions regarding costs

17. The Commission **approves** the application by OpenMedia for costs with respect to its participation in the proceeding.

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

² See paragraph 21.

18. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to OpenMedia at \$3,947.50.
19. The Commission **directs** that the award of costs to OpenMedia be paid forthwith by CNOC and TCC according to the proportions set out in paragraph 16.

Secretary General

Related documents

- *The Canadian Network Operators Consortium Inc. – Application to review and vary Telecom Regulatory Policy 2015-177*, Telecom Decision CRTC 2016-60, 18 February 2016
- *Regulatory framework for wholesale mobile wireless services*, Telecom Regulatory Policy CRTC 2015-177, 5 May 2015
- *Determination of costs award with respect to the participation of the Ontario Video Relay Service Committee in the proceeding initiated by Telecom Notice of Consultation 2014-188*, Telecom Order CRTC 2015-160, 23 April 2015
- *Revision of CRTC costs award practices and procedures*, Telecom Regulatory Policy CRTC 2010-963, 23 December 2010
- *New procedure for Telecom costs awards*, Telecom Public Notice CRTC 2002-5, 7 November 2002