



Telecom Order CRTC 2016-369

PDF version

Ottawa, 9 September 2016

File numbers: 8620-J106-201601633 and 4754-517

Determination of costs award with respect to the participation of OpenMedia Engagement Network in the proceeding initiated by Ice Wireless Inc. and Sugar Mobile Inc. relating to Rogers Communications Canada Inc.'s notice to terminate its roaming agreement with Ice Wireless Inc.

Application

1. By letter dated 15 April 2016, OpenMedia Engagement Network (OpenMedia) applied for costs with respect to its participation in the proceeding initiated by Ice Wireless Inc. (Ice Wireless), on behalf of itself and Sugar Mobile Inc. (Sugar Mobile) [collectively, Ice Wireless et al.] relating to Rogers Communications Canada Inc.'s (RCCI) notice to terminate its roaming agreement with Ice Wireless (the proceeding).
2. TELUS Communications Company (TCC) and Ice Wireless et al. filed interventions, dated 19 and 20 April 2016, respectively, in response to OpenMedia's application for costs. OpenMedia did not file a reply.
3. 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.
4. In particular, OpenMedia submitted that it was representative of a significant group of subscribers, having engaged over 45,000 Canadians through its *Stop Blocking New Providers* campaign. It also submitted that it had assisted the Commission in developing a better understanding of the matters that were considered through its distinct submissions that provided a unique perspective on the issues raised, which brought attention to the perspective of Canadian mobile phone and Internet users.
5. OpenMedia requested that the Commission fix its costs at \$3,877.50, consisting entirely of analyst fees. OpenMedia filed a bill of costs with its application.
6. OpenMedia made no submission as to the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents).

Answers

7. TCC submitted that Ice Wireless et al. and RCCI should be the sole costs respondents given that the proceeding was entirely the result of a dispute between these two entities. TCC submitted that it would leave it to the Commission to determine the responsibility for costs between the parties.
8. TCC submitted that if the Commission concluded that it would be appropriate for other interveners to be responsible for costs, it should allocate 70% of the costs between Ice Wireless et al. and RCCI, and 30% of the costs divided among the remaining interveners.
9. TCC added that if Ice Wireless et al. and RCCI are not named as the only costs respondents, the remaining 30% of costs should be divided among as many interveners as possible, to ensure an equitable decision that does not unfairly burden some parties.
10. Ice Wireless et al. did not object to OpenMedia's cost claim, so long as costs were allocated according to telecommunications operating revenues (TORs).¹ Ice Wireless et al. also submitted that the Commission should exclude any potential costs respondents who would be responsible for paying less than \$100 of a total costs award.

Commission's analysis and determinations

11. 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.

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

12. OpenMedia has satisfied these criteria through its participation in the proceeding. In particular, OpenMedia assisted the Commission in developing a better understanding of the matters that were considered by providing a consumer-focused perspective on the issue of whether Sugar Mobile is a mobile virtual network operator operating on Ice Wireless's host network. OpenMedia specified the importance of a broad interpretation of the relevant terms to avoid an inadvertent foreclosure on new innovative wireless service providers, in light of Telecom Regulatory Policy 2015-177.
13. 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.
14. 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.
15. 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. While Bell Canada; Bragg Communications Incorporated, operating as Eastlink; the Canadian Network Operators Consortium Inc.; Quebecor Media Inc., on behalf of Videotron G.P.; TCC; and Vaxination Informatique had an interest and participated in the proceeding, Ice Wireless et al. and RCCI had the greater interest in the outcome of the proceeding, which was reflected by their degree of participation. Accordingly, the Commission considers that Ice Wireless et al. and RCCI are the appropriate costs respondents.
16. The Commission generally allocates the responsibility for payment of costs among parties based on their TORs, as an indicator of the relative size and interest of the parties involved in the proceeding. 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.
17. As submitted by TCC, this was largely a bilateral dispute between Ice Wireless et al. and RCCI. The approach of allocating the responsibility for payment of costs solely based on TORs would not fairly reflect the degree of interest or participation of the parties involved. In the circumstances, it is appropriate to divide the costs evenly between Ice Wireless et al. and RCCI, as the applicant and respondent, respectively, in the proceeding.

18. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated as follows:

Company	Percentage	Amount
Ice Wireless et al.	50%	\$1,938.75
RCCI	50%	\$1,938.75

Directions regarding costs

19. The Commission **approves** the application by OpenMedia for costs with respect to its participation in the proceeding.
20. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to OpenMedia at \$3,877.50.
21. The Commission **directs** that the award of costs to OpenMedia be paid forthwith by Ice Wireless et al. and RCCI according to the proportions set out in paragraph 18.

Secretary General

Related documents

- *Regulatory framework for wholesale mobile wireless services*, Telecom Regulatory Policy CRTC 2015-177, 5 May 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