



Telecom Order CRTC 2017-379

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Determination of costs award with respect to the participation of Media Access Canada in the proceeding that led to Telecom Regulatory Policy 2017-200

Application

1. By letter filed on 27 April 2017, Media Access Canada (MAC) applied for costs with respect to its participation in the proceeding that led to Telecom Regulatory Policy 2017-200 (the proceeding). In the proceeding, the Commission undertook a review of the Wireless Code (the Code).
2. The Commission did not receive any interventions in response to the application for costs. However, in response to a Commission staff letter to potential costs respondents seeking comment on how any costs awarded in this case should be allocated, Bell Mobility Inc. (Bell Mobility); Quebecor Media Inc., on behalf of Videotron G.P. (Videotron); and TELUS Communications Company (TCC) provided comments.
3. MAC 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, MAC submitted that it represents the interests of a broad range of Canadians with various disabilities, noting that it had highlighted their specific concerns in a manner that was practical, realistic, and unique in the context of the proceeding.
5. With respect to the group or class of subscribers that MAC has submitted it represents, MAC explained that, while it does not consider itself an umbrella organization, it is made up of member-groups from across the country that focus on various forms of disability advocacy. MAC submitted that its member groups are not subject to its direct control or influence.
6. With respect to the specific methods by which MAC has submitted that it represents this group or class, MAC explained that it engages its membership in consultations including surveys and in-person discussions in order to understand how a

Commission proceeding may impact these groups, and that its positions are developed by consensus.

7. MAC requested that the Commission fix its costs at \$56,576.79 consisting of \$11,151.57 for legal fees, \$45,273.45 for consultant fees, and \$151.77 for disbursements. MAC's claim included the Ontario Harmonized Sales Tax (HST) on fees. MAC filed a bill of costs with its application.
8. MAC submitted that the telecommunications service providers that (a) were party to the proceeding, (b) had a significant interest in the proceeding, and (c) participated actively in it are the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents).
9. MAC suggested that the responsibility for payment of costs should be apportioned on the basis of the Commission's past practice.

Additional process

10. On the subject of allocation, TCC submitted that, if the Commission does determine that MAC is eligible for an award of costs, the award should be allocated among costs respondents on the basis of wireless revenue rather than telecommunications operating revenues (TORs),¹ given that the subject matter of the proceeding focused exclusively on wireless services. It noted that certain information regarding wireless revenues appears in the Commission's annual *Communications Monitoring Report*.
11. Videotron agreed with TCC. In its view, it would be unreasonable under the circumstances of this case to allocate costs on the basis of telecommunications revenues that did not stem from the provision of wireless services.
12. Bell Mobility argued that there was no reason to deviate from the Commission's general practice of allocating costs on the basis of TORs. It submitted that potential costs respondents are free to structure their affairs such that separate entities report telecommunications revenues to the Commission for wireless and wireline business segments respectively.

Commission's analysis and determinations

Eligibility and amounts claimed

13. 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:

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

- (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.
14. In Telecom Information Bulletin 2016-188, the Commission provided guidance regarding how an applicant may demonstrate that it satisfies the first criterion with respect to its representation of interested subscribers. In the present case, MAC has demonstrated that it meets this requirement. The consensus-based, consultative approach of MAC in discerning and presenting the views of its constituent members ensures that the concerns of a broad spectrum of disabled Canadians are brought before the Commission.
 15. MAC has also satisfied the remaining criteria through its participation in the proceeding. In particular, MAC's submissions, especially regarding the Code's interaction with provincial consumer protection legislation and how accessibility measures related to the Code might be updated, assisted the Commission in developing a better understanding of the matters that were considered.
 16. The rates claimed in respect of legal fees, consultant fees and disbursements are in accordance with the rates established in the *Guidelines for the Assessment of Costs*, as set out in Telecom Regulatory Policy 2010-963. The Commission finds that the total amount claimed by MAC was necessarily and reasonably incurred and should be allowed.
 17. 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.

Costs respondents and allocation

18. 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.
19. The Commission considers that Bell Mobility; Bragg Communications Incorporated, operating as Eastlink (Eastlink); Freedom Mobile Inc. (Freedom Mobile), Rogers Communications Canada Inc. (RCCI); Saskatchewan Telecommunications (SaskTel); TCC; and Videotron had a significant interest in the outcome of the proceeding and participated actively throughout the proceeding. Therefore, these parties are the appropriate costs respondents to MAC's application for costs.
20. It is the Commission's general practice to allocate the responsibility for the payment of costs among costs respondents based on their TORs. In general, the Commission considers that TORs are indicators of the relative size and interest of the parties involved in proceedings.
21. However, in Telecom Order 2017-362, the Commission determined that a deviation from the Commission's general practice was justified on the issue of allocation.

22. In that order, the Commission determined that it would be appropriate to allocate 92% of the applicants' costs in that case between Bell Mobility, RCCI, and TCC, drawing upon the allocation of wireless revenue market share from the most recent time period detailed in the Commission's 2015 *Communications Monitoring Report* (the report).² The remaining 8% was to be allocated evenly between the other costs respondents in that case.
23. The Commission considers that a similar approach is appropriate in the present case as well, which flows from the same proceeding as Telecom Order 2017-362, and which gives rise to similar considerations.
24. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated as follows:

Company	Percentage	Amount
RCCI	35%	\$19,801.87
Bell Mobility	29%	\$16,407.27
TCC	28%	\$15,841.49
Eastlink	2%	\$1,131.54
Freedom Mobile	2%	\$1,131.54
SaskTel	2%	\$1,131.54
Videotron	2%	\$1,131.54

Directions regarding costs

25. The Commission **approves** the application by MAC for costs with respect to its participation in the proceeding.
26. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to MAC at \$56,576.79.
27. The Commission **directs** that the award of costs to MAC be paid forthwith by the costs respondents according to the proportions set out in paragraph 24.

Secretary General

² As of the initiation of the proceeding, this was the most current volume of the report.

Related documents

- *Determination of costs award with respect to the participation of the Forum for Research and Policy in Communications in the proceeding that led to Telecom Regulatory Policy 2017-200*, Telecom Order CRTC 2017-362, 16 October 2017
- *Review of the Wireless Code*, Telecom Regulatory Policy CRTC 2017-200, 15 June 2017
- *Guidance for costs award applicants regarding representation of a group or a class of subscribers*, Telecom Information Bulletin CRTC 2016-188, 17 May 2016
- *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