



Telecom Order CRTC 2018-348

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Ottawa, 4 September 2018

File numbers: 1011-NOC2017-0112 and 4754-586

Determination of costs award with respect to the participation of Media Access Canada in the Telecom Notice of Consultation 2017-112 proceeding

Application

1. By letter dated 20 January 2018, Media Access Canada (MAC) applied for costs with respect to its participation in the proceeding initiated by Telecom Notice of Consultation 2017-112 (the proceeding). In the proceeding, the Commission examined matters related to the establishment of the broadband funding regime, including its governance, operating, and accountability frameworks, as well as eligibility and assessment criteria for proposed projects.
2. The Commission did not receive any interventions in response to the application for costs.
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. With respect to the group or class of subscribers that MAC has submitted it represents, MAC indicated that as a coordinating body for the Access 2020 Coalition,¹ it represented the interests of Canadians with various disabilities. With respect to the specific methods by which MAC represented this group or class, MAC explained that it engaged the Access 2020 Coalition members throughout the proceeding and that it routinely forwarded its submissions to the Access 2020 Coalition for review and comment.
5. MAC also submitted that it provided a fuller understanding of the concerns and unique perspective of Canadians with disabilities related to the development of the broadband funding regime. MAC argued that its contributions to the proceeding included realistic, practical, and unique suggestions to protect and enhance the experience of Canadians with disabilities.

¹ MAC submitted that the Access 2020 Coalition is a collaboration of organizations of and for Canadians with disabilities that have an interest in telecommunications and broadcasting issues.

6. MAC requested that the Commission fix its costs at \$31,074.11, consisting of \$5,650.00 for external legal fees and \$25,424.11 for external consultant fees. With respect to MAC's legal fees, MAC submitted that it had a retainer agreement with external counsel such that a flat fee would be charged for the legal work, irrespective of the actual amount of time required. Therefore, while MAC submitted the required Form 1s for legal fees based on the actual work done, MAC claimed only the amount charged according to the retainer agreement. MAC's claim included the federal Goods and Services Tax (GST) and the Ontario Harmonized Sales Tax (HST) on fees, as applicable. MAC filed a bill of costs with its application.
7. MAC submitted that the telecommunications service providers that had a significant interest in the outcome of the proceeding and that actively participated in the proceeding are the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents).
8. MAC suggested that the responsibility for payment of costs be divided among the costs respondents based on their telecommunications operating revenues (TORs).²

Commission's analysis and determinations

9. 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.
10. 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. Specifically, the organizations that make up the Access 2020 Coalition represent a broad group of Canadians with various disabilities who have an interest in matters related to the broadband funding regime and its impact on Canadians with disabilities. Through MAC's extensive consultation with these organizations, as described on the record of this costs proceeding, MAC represented them effectively.

² TORs consist of Canadian telecommunications revenues from local and access, long distance, data, private line, Internet, and wireless services.

11. MAC has also satisfied the remaining criteria through its participation in the proceeding. In particular, MAC's submissions, especially regarding the unique concerns related to the development of the broadband funding regime raised by Canadians with disabilities, assisted the Commission in developing a better understanding of the matters that were considered.
12. The rates claimed in respect of the external consultants are in accordance with the rates established in the *Guidelines for the Assessment of Costs* (the Guidelines), as set out in Telecom Regulatory Policy 2010-963. With respect to the amount MAC claimed for legal fees, the legal costs claimed, based on the flat-fee retainer agreement, are less than the costs that would have been incurred had MAC claimed external legal fees based on the rates established in the Guidelines. MAC's efforts to reduce its legal fees through the retainer agreement are encouraged and acceptable in the circumstances. Accordingly, the Commission finds that the total amount claimed by MAC was necessarily and reasonably incurred and should be allowed.
13. 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.
14. 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 all the telecommunications service providers that participated in the proceeding had a significant interest in the outcome of the proceeding and participated actively throughout the proceeding.
15. The Commission considers that, consistent with its practice, it is appropriate to allocate 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.³ However, as set out in Telecom Order 2015-160, the Commission considers \$1,000 to be the minimum amount that a costs respondent should be required to pay due to the administrative burden that small costs awards impose on both the applicant and costs respondents.
16. Accordingly, the Commission finds that the following parties are responsible for payment of costs: Bell Canada, on its own behalf and on behalf of Bell Mobility Inc., NorthernTel, Limited Partnership, Northwestel Inc., and Télébec, Limited Partnership (collectively, the Bell companies); Quebecor Media Inc., on behalf of Videotron Ltd. (Videotron); Rogers Communications Canada Inc. (RCCI); Shaw Cablesystems G.P. (Shaw); and TELUS Communications Inc. (TCI).⁴ The Commission finds that the responsibility for payment of costs should be allocated as

³ In this order, the Commission has used the TORs of the costs respondents based on their most recent audited financial statements.

⁴ In the proceeding, submissions were received from TELUS Communications Company (TCC). However, effective 1 October 2017, TCC's assets were legally transferred to TCI and TCC ceased to exist. For ease of reference, "TCI" is used in this order.

follows:

Company	Percentage	Amount
Bell companies ⁵	40.4%	\$12,553.94
TCI	26.3%	\$8,172.49
RCCI	24.8%	\$7,706.38
Videotron	5.0%	\$1,553.71
Shaw	3.5%	\$1,087.59

17. Consistent with its general approach articulated in Telecom Costs Order 2002-4, the Commission makes Bell Canada responsible for payment on behalf of the Bell companies. The Commission leaves it to the members of the Bell companies to determine the appropriate allocation of the costs among themselves.

Directions regarding costs

18. The Commission **approves** the application by MAC for costs with respect to its participation in the proceeding.
19. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to MAC at \$31,074.11.
20. The Commission **directs** that the award of costs to MAC be paid forthwith by Bell Canada on behalf of the Bell companies, TCI, RCCI, Videotron, and Shaw according to the proportions set out in paragraph 16 above.

Secretary General

Related documents

- *Development of the Commission's broadband funding regime*, Telecom Notice of Consultation CRTC 2017-112, 25 April 2017; as amended by Telecom Notice of Consultation CRTC 2017-112-1, 24 July 2017

⁵ Bell Canada's TORs include those of MTS Inc. On 1 April 2017, Bell Canada amalgamated with MTS Inc., which is now operating as Bell MTS, a division of Bell Canada.

- *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
- *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