



Telecom Order CRTC 2018-349

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Determination of costs award with respect to the participation of the First Mile Connectivity Consortium in the Telecom Notice of Consultation 2017-112 proceeding

Application

1. By letter dated 5 February 2018, the First Mile Connectivity Consortium (FMCC) 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. Xplornet Communications Inc. (Xplornet) filed an intervention, dated 15 February 2018, in response to the FMCC's application. The FMCC filed a reply dated 23 February 2018.
3. The FMCC 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, the FMCC submitted that it (i) provided relevant and timely submissions developed through ongoing collaboration with its member organizations, and (ii) structured its submissions to respond to questions raised by the Commission in areas where it has expertise and direct experience. The FMCC added that it offered a distinct point of view by representing communities and Indigenous groups located in the Northern parts of the provinces and in the territories.
5. With respect to the group or class of subscribers that the FMCC has submitted it represents, the FMCC explained that it represented the interests of broadband Internet service providers that are established by residents of First Nations communities in rural, remote, and Northern regions of Canada and that provide telecommunications services primarily to First Nations residents of these regions. The FMCC noted that while it focuses on the interests of Northern Indigenous communities, it also prioritizes the interests of unserved and underserved communities and regions across the country.

6. With respect to the specific methods by which the FMCC submitted that it represented this group, the FMCC explained that it conducted a number of consultations (by phone, videoconference, and email, as well as through face-to-face meetings) with FMCC member organizations and that it worked directly with its members and other Indigenous technology organizations and governments to develop its positions.
7. The FMCC requested that the Commission fix its costs at \$55,714.50, consisting entirely of external consultant fees. The FMCC's claim included the federal Goods and Services Tax (GST) on fees. The FMCC filed a bill of costs with its application.
8. The FMCC made no submission as to the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents).

Answer

9. Xplornet submitted that the Commission should carefully assess whether the FMCC satisfies the criteria for a costs award and deny or reduce the FMCC's costs accordingly. In particular, Xplornet noted that among the FMCC's members are Keewaytinook Okimakanak K-Net Services (K-Net) and the Western James Bay Telecom Network (WJBTN), for-profit Internet service providers that compete directly with Xplornet, as well as the Native Communications Society of the Northwest Territories (NCS). Xplornet argued that the FMCC includes members that are able to provide funding to offset all or a portion of the FMCC's costs and that Xplornet should not be required to subsidize the participation of its direct competitors in the proceeding.

Reply

10. The FMCC noted that it is an independent, non-profit, national association that represents First Nations broadband service providers operating in rural, remote, and Northern regions. According to the FMCC, these regional organizations have been established by and for First Nations community members in these regions. The FMCC submitted that these organizations have extensive first-hand knowledge of residents' broadband service needs and the funds required to install and operate broadband facilities and services in these regions.
11. With respect to Xplornet's submission regarding K-Net, the WJBTN, and the NCS, the FMCC submitted that all of these organizations were established to meet the communications needs of residents of remote Indigenous communities.

Commission's analysis and determinations

12. 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.
13. Xplornet's challenge of the FMCC's eligibility for costs is based on the first criterion mentioned above.
14. As noted in Telecom Order 2017-164, while organizations such as K-Net and the WJBTV are telecommunications service providers, these entities can be distinguished from general commercial providers in that they are community-based organizations with the specific objective of providing rural and remote First Nations communities with Internet services.
15. The NCS's operations, which include NCS Productions Ltd. and CKLB-FM, focus on Aboriginal culture through radio and television broadcasting. Similar to K-Net and the WJBTV, the NCS is an Indigenous organization with a distinct focus on meeting the needs of residents of remote Indigenous communities by providing them with Aboriginal programming. This distinguishes it from other general commercial organizations.
16. As a result, rather than representing commercial interests, the above organizations were uniquely able to represent the views of First Nations community members in rural and remote areas of Canada regarding the issues raised in the proceeding. The FMCC also confirmed that it received no direct and specific financial assistance in connection with its participation in the proceeding.
17. 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. The FMCC has demonstrated this representation by, for example, working directly with its members and other Indigenous technology organizations and governments to develop its submissions in the proceeding. As well, the FMCC contributed material regarding the unique needs of its member organizations and people in rural, remote, and Northern regions. Accordingly, the Commission finds that the FMCC represented the interests of Indigenous community members in remote areas who subscribe to telecommunications services and that, therefore, the FMCC has met the first eligibility criterion.

18. The FMCC has also satisfied the remaining criteria through its participation in the proceeding. In particular, the FMCC's submissions, especially regarding eligibility criteria for funding and prioritization, as well as its comments on governance and administrative issues, assisted the Commission in developing a better understanding of the matters that were considered.
19. The rates claimed in respect of external consultant fees 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 the FMCC was necessarily and reasonably incurred and should be allowed.
20. 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.
21. 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.
22. 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 telecommunications operating revenues (TORs) as an indicator of the relative size and interest of the parties involved in the proceeding.¹ 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.
23. 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); Cogeco Communications Inc. (Cogeco); Quebecor Media Inc., on behalf of Videotron Ltd. (Videotron); Rogers Communications Canada Inc. (RCCI); Saskatchewan Telecommunications (SaskTel); Shaw Cablesystems G.P. (Shaw); and TELUS Communications Inc. (TCI).² The Commission finds that the responsibility for payment of costs should be allocated as follows:

¹ TORs consist of Canadian telecommunications revenues from local and access, long distance, data, private line, Internet, and wireless services. In this order, the Commission has used the TORs of the costs respondents based on their most recent audited financial statements.

² 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.

Company	Percentage	Amount
Bell companies ³	38.6%	\$21,505.80
TCI	25.1%	\$13,984.34
RCCI	23.8%	\$13,260.05
Videotron	4.8%	\$2,674.30
Shaw	3.3%	\$1,838.58
SaskTel	2.5%	\$1,392.86
Cogeco	1.9%	\$1,058.57

24. 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

25. The Commission **approves** the application by the FMCC 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 the FMCC at \$55,714.50.

27. The Commission **directs** that the award of costs to the FMCC be paid forthwith by Bell Canada on behalf of the Bell companies, TCI, RCCI, Videotron, Shaw, SaskTel, and Cogeco according to the proportions set out in paragraph 23 above.

Secretary General

Related documents

- *Determination of costs award with respect to the participation of the First Mile Connectivity Consortium in the proceeding leading to Telecom Regulatory Policy 2016-496, Telecom Order CRTC 2017-164, 19 May 2017*

³ 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.

- *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
- *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