



Telecom Order CRTC 2019-168

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File numbers: 1011-NOC2018-0098 and 4754-608

Determination of costs award with respect to the participation of the Canadian Internet Policy and Public Interest Clinic and OpenMedia Engagement Network in the proceeding that led to Telecom Decision 2018-475

Application

1. By letter dated 23 November 2018, the Canadian Internet Policy and Public Interest Clinic (CIPPIC) and OpenMedia Engagement Network (OpenMedia) [collectively, CIPPIC/OpenMedia] applied for costs with respect to their participation in the proceeding that led to Telecom Decision 2018-475 (the proceeding). In the proceeding, the Commission considered proposals by Bell Mobility Inc. (Bell Mobility), Rogers Communications Canada Inc. (RCCI), and TELUS Communications Inc. (TCI) [collectively, the national wireless carriers] for lower-cost data-only mobile wireless service plans, which were filed pursuant to Telecom Notice of Consultation 2018-98.
2. Bell Canada, on behalf of Bell Mobility, and TCI filed interventions, dated 3 December 2018, in which they addressed general issues raised in the six costs applications filed with respect to the proceeding, including CIPPIC/OpenMedia's application.
3. Commission staff issued a request for information regarding CIPPIC/OpenMedia's application on 10 December 2018. CIPPIC/OpenMedia responded to this request on 17 December 2018.
4. CIPPIC/OpenMedia submitted that they 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 they represented a group or class of subscribers that had an interest in the outcome of the proceeding, they had assisted the Commission in developing a better understanding of the matters that were considered, and they had participated in a responsible way.
5. In particular, CIPPIC/OpenMedia submitted that they had an interest in the proceeding in their own right and that they represent the views of Canadian Internet subscribers, including signatories to a petition they had initiated, which allowed for the Commission to understand the views of those subscribers. CIPPIC/OpenMedia

further submitted that their contribution made distinct and valuable submissions on the usage requirements of lower-cost data-only plans.

6. CIPPIC/OpenMedia also submitted that their participation in the proceeding was responsible and that their costs were necessarily and reasonably incurred.
7. CIPPIC/OpenMedia requested that the Commission fix their costs at \$11,039.50, consisting of \$5,047.00 for legal fees and \$5,992.50 for in-house analyst fees. CIPPIC/OpenMedia filed a bill of costs with their application.
8. CIPPIC/OpenMedia claimed 24.5 hours at a rate of \$206 per hour for legal fees, and a total of 12.75 days at a rate of \$470 per day for five in-house analysts.
9. CIPPIC/OpenMedia did not take a position as to who should be the appropriate parties to pay any costs awarded by the Commission (costs respondents), but noted that the Commission has a formula for the assessment of costs respondents in its *Guidelines for the Assessment of Costs* (the Guidelines), as set out in Telecom Regulatory Policy 2010-963.

Answer

10. Bell Canada argued that all the telecommunications service providers (TSPs) that participated in the proceeding should be named costs respondents, with the responsibility for payment of costs allocated based on their telecommunications operating revenues (TORs).¹
11. Conversely, TCI argued that the costs respondents should be limited to the national wireless carriers as well as Ice Wireless Inc. (Ice Wireless), Quebecor Media Inc. (QMI), and Shaw Communications Inc. (Shaw). TCI further argued that the responsibility for payment of costs should be apportioned based on mobile wireless service revenues only, rather than TORs. TCI cited the costs awards issued (e.g. in Telecom Order 2017-362) in connection with the proceeding that led to Telecom Regulatory Policy 2017-200 as an example of the Commission making a similar determination in the past.

Request for information

12. On 10 December 2018, Commission staff issued a request for information in which it asked the six costs applicants to address how the Commission's determinations in Telecom Orders [2018-437](#) and [2018-438](#) and Telecom Decision [2018-439](#) might apply to the costs they were claiming for their participation in the proceeding. Commission staff further asked CIPPIC/OpenMedia to clarify the number of

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

analysts who had worked on the file and the fees claimed for them, as the application forms contained reference to a sixth analyst.

13. In their response, CIPPIC/OpenMedia did not address the above determinations, and clarified that only five analysts had been used. A time sheet for a sixth analyst had been included in the application package in error, and no fees had been claimed for this sixth analyst in the application.

Commission's analysis and determinations

14. 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.

15. The Commission finds that CIPPIC/OpenMedia have satisfied the criteria for an award of costs set out in section 68 of the Rules of Procedure. Specifically, the Commission finds that CIPPIC/OpenMedia represented a group or class of subscribers that had an interest in the outcome of the proceeding, including those with whom they directly engaged. CIPPIC/OpenMedia also assisted the Commission in developing a better understanding of the matters that were considered, and they participated in a responsible way.
16. The rates claimed in respect of legal and analyst fees are in accordance with the rates established in the Guidelines.
17. Therefore, the Commission finds that the total amount claimed by CIPPIC/OpenMedia was necessarily and reasonably incurred and should be allowed.
18. 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.
19. 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: the national wireless carriers, Bragg Communications Incorporated, carrying on business as Eastlink (Eastlink); Cogeco Communications Inc. (Cogeco); Ice Wireless; QMI, on behalf of Videotron Ltd. (Videotron); Saskatchewan Telecommunications (SaskTel); Shaw; SSi Micro Ltd. (SSi Micro); and Xplornet Communications Inc. (Xplornet).

20. While Telecom Notice of Consultation 2018-98, which initiated the proceeding, was directed towards the national wireless carriers in particular, the submissions of the other companies in the proceeding made clear that they also had a significant interest in its outcome. Many argued strenuously against the Commission imposing any additional form of regulation because of their view that it would impact their own ability to compete in the market.
21. Therefore, the Commission finds that the following parties are the appropriate costs respondents to CIPPIC/OpenMedia's application for costs: Bell Mobility, Cogeco, Eastlink, Ice Wireless, RCCI, SaskTel, Shaw, SSi Micro, TCI, Videotron, and Xplornet.
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 TORs as an indicator of the relative size and interest of the parties involved in the proceeding.²
23. 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.
24. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated as follows:

Company	Proportion	Amount
TCI	37.5%	\$4,139.81
RCCI	36.4%	\$4,018.38
Bell Mobility	26.1%	\$2,881.31

² In this order, the Commission has used the TORs of the costs respondents based on their most recent audited financial statements.

Directions regarding costs

25. The Commission **approves** the application by CIPPIC/OpenMedia 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 CIPPIC/OpenMedia at \$11,039.50.
27. The Commission **directs** that the award of costs to OpenMedia, on behalf of CIPPIC/OpenMedia, be paid forthwith by TCI, RCCI, and Bell Mobility according to the proportions set out in paragraph 24.

Secretary General

Related documents

- *Lower-cost data-only plans for mobile wireless services*, Telecom Decision CRTC 2018-475, 17 December 2018
- *Deaf Wireless Canada Consultative Committee – Application to review and vary Telecom Order 2018-66*, Telecom Decision CRTC 2018-439, 28 November 2018
- *Determination of costs award with respect to the participation of the Canadian National Society of the Deaf-Blind, Inc. in the Telecom Notice of Consultation 2017-33 proceeding*, Telecom Order CRTC 2018-438, 28 November 2018
- *Determination of costs award with respect to the participation of the Deaf Wireless Canada Consultative Committee in the Telecom Notice of Consultation 2017-33 proceeding*, Telecom Order CRTC 2018-437, 28 November 2018
- *Lower-cost data-only plans for mobile wireless services*, Telecom Notice of Consultation CRTC 2018-98, 22 March 2018; as amended by Telecom Notice of Consultation CRTC 2018-98-1, 10 May 2018
- *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
- *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