



Telecom Order CRTC 2020-62

PDF version

Ottawa, 17 February 2020

File numbers: 1011-NOC2019-0045 and 4754-626

Determination of costs award with respect to the participation of the First Mile Connectivity Consortium in the Telecom Notice of Consultation 2019-45 proceeding

Application

1. By letter filed on 15 July 2019, the First Mile Connectivity Consortium (FMCC) applied for costs with respect to its participation in the proceeding initiated by Telecom Notice of Consultation 2019-45 (the proceeding). In the proceeding, the Commission provided potential applicants, affected communities, and other interested persons with an opportunity to submit comments on the Preliminary Application Guide for the Broadband Fund. Specifically, the Commission requested that interested persons submit comments regarding the application process, the information required to be submitted for project evaluation and selection, and the Commission's proposal to disclose certain information that may be filed in confidence.
2. Eeyou Communications Network (ECN) filed an intervention, dated 5 September 2019, in response to the FMCC's application. The FMCC filed a reply dated 25 September 2019.
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 a relevant and timely submission developed through ongoing engagement with its member organizations, and (ii) structured its submission to respond to questions raised by the Commission in areas where it has expertise and direct experience. The FMCC also submitted that it offered a distinct point of view by representing communities and Indigenous groups located in the territories and the Northern parts of the provinces.
5. With respect to the group or class of subscribers that the FMCC has submitted it represents, the FMCC explained that it represents the interests of broadband Internet service providers that are established by residents of Indigenous communities in rural, remote, and Northern regions of Canada and provide telecommunications services primarily to Indigenous residents in those 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 represents this group, the FMCC explained that it conducted numerous consultations with its member organizations (by phone, videoconference, email, and face-to-face meetings) and worked directly with those organizations to develop its intervention materials.
7. The FMCC requested that the Commission fix its costs at \$11,669.63, 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. ECN indicated that the FMCC's submission cited an article that mischaracterized ECN as a non-Aboriginal organization. As a result, ECN argued that the FMCC's submission did not contribute to a better understanding of the issues. ECN also submitted that the appropriate costs respondents should not include non-profit organizations, Aboriginal networks, or private telecommunications companies that partner with Aboriginal non-profit organizations.

Reply

10. The FMCC noted that it respected ECN's characterization of its organization as a non-profit Aboriginal organization. The FMCC also noted that the costs respondents it listed were for-profit commercial telecommunications providers only, and did not include any non-profit or Indigenous organizations.

Request for information

11. There were preliminary procedural issues with the FMCC's costs application, namely that it was filed almost three months after the deadline for filing costs applications, did not indicate which parties the FMCC considered to be the appropriate costs respondents, and was not served on the other parties to the proceeding. Accordingly, in a letter dated 27 August 2019, the Commission requested that the FMCC (i) explain why it would be fair or otherwise in the public interest for the Commission to extend the application deadline, (ii) indicate the parties it considered to be the appropriate costs respondents, and (iii) serve its application on all other parties to the proceeding.
12. The FMCC filed a response dated 4 September 2019 and served the response, together with the costs application, on all other parties to the proceeding.
13. Cybera Inc. (Cybera) replied to the FMCC's 4 September 2019 response, supporting the FMCC's reasons and providing further public interest justifications for extending the

deadline for filing costs applications to accommodate the FMCC's application. Cybera also supported the FMCC's submission regarding the appropriate costs respondents.

14. In a letter dated 23 September 2019, the Commission indicated that it would be fair or otherwise in the public interest to extend the deadline for filing costs applications to accommodate the FMCC's costs application.

Commission's analysis and determinations

15. The criteria for an award of costs are set out in section 68 of the Rules of Procedure, 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.
16. 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, the FMCC has demonstrated that it meets this requirement, since it worked directly with its member organizations to develop its intervention materials. Additionally, the FMCC's submission was developed through ongoing engagement with FMCC member organizations, which provided guidance, direction, feedback, and material regarding their own unique needs and the unique needs of 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 provide and subscribe to telecommunications services. Therefore, the FMCC has met the first eligibility criterion.
17. With respect to ECN's submission that the FMCC, in its presentations, did not contribute to a better understanding of the issues, the Commission is of the view that the FMCC's structured and focused submission and distinct point of view regarding several issues, particularly (i) the specific circumstances of small, non-profit, community-based service providers; (ii) retail pricing and affordability; and (iii) the investment eligibility and assessment criteria for Indigenous non-profit applicants, assisted the Commission in developing a better understanding of the matters that were considered.
18. The FMCC also participated in the proceeding in a responsible way. Accordingly, the Commission finds that the FMCC meets the criteria for an award of costs under section 68 of the Rules of Procedure.

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 in 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, Société en commandite (collectively, Bell Canada et al.); Rogers Communications Canada Inc. (RCCI); and TELUS Communications Inc. (TCI). The Commission finds that the responsibility for payment of costs should be allocated as follows:

Company	Proportion	Amount
Bell Canada et al.	43.92%	\$5,125.30
TCI	28.47%	\$3,322.34
RCCI	27.61%	\$3,221.99

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 members of Bell Canada et al. The Commission leaves it to Bell Canada et al. to determine the appropriate allocation of the costs among themselves.

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

Policy Direction

25. The Governor in Council issued a policy direction to the Commission, which came into force on 17 June 2019, directing the Commission to consider how its decisions can promote competition, affordability, consumer interests, and innovation (2019 Policy Direction).² The FMCC's application was received on 15 July 2019; accordingly, the 2019 Policy Direction applies to this order. The Commission considers that the awarding of costs in this instance complies with paragraphs 1(a)(i) and 1(a)(v) of the 2019 Policy Direction, because it will encourage competition and investment, as well as reducing barriers to entry into the market and to competition for telecommunications service providers that are new, regional, or smaller than the incumbent national service providers. Since non-profit organizations often require financial assistance to effectively participate in proceedings, the Commission is of the view that its practice of awarding costs, as exercised in this instance, enables such organizations to provide their perspective on how the interests of broadband Internet service providers established by residents of First Nations communities in rural, remote, and Northern regions of Canada may be affected by the outcomes of the proceeding.

Directions regarding costs

26. The Commission **approves** the application by the FMCC for costs with respect to its participation in the proceeding.
27. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to the FMCC at \$11,669.63.
28. The Commission **directs** that the award of costs to the FMCC be paid forthwith by Bell Canada, RCCI, and TCI according to the proportions set out in paragraph 23.

Secretary General

Related documents

- *Call for comments – Application Guide for the Broadband Fund*, Telecom Notice of Consultation CRTC 2019-45, 14 February 2019
- *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

² *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives to Promote Competition, Affordability, Consumer Interests and Innovation*, SOR/2019-227, 17 June 2019.

- *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