



Telecom Order CRTC 2022-157

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Determination of costs award with respect to the participation of the First Mile Connectivity Consortium in the proceeding initiated by Telecom Notice of Consultation 2019-406

Application

1. By letter dated 9 April 2021, the First Mile Connectivity Consortium (FMCC) applied for costs with respect to its participation in the proceeding initiated by Telecom Notice of Consultation 2019-406 (the proceeding). In the proceeding, the Commission invited comments on potential barriers and/or regulatory solutions to building new facilities or interconnecting to existing broadband facilities in underserved areas of Canada.
2. The Commission did not receive any interventions in response to the application for costs.
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. 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 First Nations communities in rural, remote, and northern regions of Canada and that primarily provide telecommunications services to such communities. The FMCC also submitted that they contribute materially to meet the unique needs of those organizations and the people based in the regions they service. The FMCC noted that, while it emphasizes the interests of northern Indigenous communities, it also prioritizes the interests of unserved and underserved communities and regions across the country. The specific method they used to represent this group or class was to meet to prepare submissions and evidence that spoke to the issues set out in Telecom Notice of Consultation 2019-406.
5. The FMCC requested that the Commission fix its costs at \$52,000, consisting entirely of consultant and analyst fees. The FMCC's claim included the federal Goods and Services Tax. The FMCC filed a bill of costs with their application.

6. The FMCC claimed 165.0 hours at a rate of \$225 per hour for external consultant fees for preparing submissions and comments for the proceeding, and 95.0 hours at a rate of \$165 per hour for another external consultant, for preparing submissions and comments for the proceeding and for preparing its application for costs.
7. The FMCC submitted that Bell Canada; Cogeco Communications Inc., on behalf of its subsidiary Cogeco Connexion Inc. (Cogeco); Northwestel Inc. (Northwestel); Rogers Communications Canada Inc. (RCCI); Shaw Cablesystems G.P. (Shaw); TELUS Communications Inc. (TCI); and Xplornet Communications Inc. (Xplornet) are the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents).
8. The FMCC suggested that allocation of costs among the costs respondents should be determined by the Commission.

Commission's analysis

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, the FMCC has demonstrated that they meet this requirement. The FMCC represents First Nations broadband providers working in remote and northern regions, First Nations residents of rural, remote and northern regions of Canada, as well as those residing in unserved and underserved regions across the country. As stated in Telecom Order 2017-164, although the individual members of the FMCC are telecommunications service providers, their status as community-based organizations with the distinct objective of providing rural and remote First Nations communities with Internet services distinguishes them from general commercial providers. When considered under the first of the costs criteria, the fact that the FMCC's members are able to represent the unique interests of First Nations subscribers and communities, as well as those of

unserved and underserved subscribers and communities across Canada, qualifies them to claim costs when other telecommunications providers typically could not.

11. The FMCC has also satisfied the remaining criteria through its participation in the proceeding. In particular, the FMCC's submissions, especially regarding the impacts of COVID-19 on the specific circumstances of small/non-profit/community-based service providers and their customers, barriers to transport networks, barriers to support structures, and other related issues (such as community engagement requirements, Indigenous and treaty rights, financing challenges, training and capacity-building, operational subsidies, and considerations related to spectrum and satellite technologies) assisted the Commission in developing a better understanding of the matters that were considered. The FMCC also participated in the proceeding in a responsible manner. The FMCC structured their submissions to respond to questions raised by the Commission in areas where the organization and its contracted parties have expertise and direct experience.
12. The rates claimed in respect of consultant fees 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. Given the extensive nature of the FMCC's submissions, the Commission finds that the total amount claimed by the FMCC 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. In its application, the FMCC named Bell Canada, Cogeco, Northwestel, RCCI, Shaw, TCI, and Xplornet as the costs respondents. The Commission has generally determined, however, 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.
15. The Commission considers that the following parties had a significant interest in the outcome of the proceeding and participated actively in the proceeding and are therefore the appropriate costs respondents: Bell Canada (including Bell Aliant, Bell MTS, DMTS and KMTS) on behalf of itself and on behalf of Bell Mobility Inc., Groupe Maskatel LP, NorthernTel Limited Partnership (including Ontera), Northwestel Inc., and Télébec, Société en commandite (collectively, Bell et al.); Bragg Communications Inc., carrying on business as Eastlink; Cogeco; RCCI; Saskatchewan Communications (SaskTel); Shaw; TBayTel; TekSavvy; TCI; Quebecor Media Inc. on behalf of its subsidiary Videotron Ltd. (Videotron); and Xplornet Communications Inc.
16. The Commission additionally 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.

Accordingly, the Commission finds that the responsibility for payment of costs should be allocated as follows:²

Company	Proportion	Amount
Bell et al.	39.9%	\$20,748.00
TCI	26.4%	\$13,728.00
RCCI	25.4%	\$13,208.00
Videotron	5.8%	\$3,016.00
SaskTel	2.5%	\$1,300.00

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

2019 Policy Direction

18. The Governor in Council issued a policy direction in which it directed the Commission to consider how its decisions can promote competition, affordability, consumer interests, and innovation (the 2019 Policy Direction).³ The Commission considers that the awarding of costs in this instance is consistent with subparagraph 1(a)(iv) of the 2019 Policy Direction.

19. By facilitating the participation of a group that represents consumer interests, this order contributes to enhancing and protecting the rights of consumers in their relationships with telecommunications service providers. Since consumer groups

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

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

³ *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

often require financial assistance to effectively participate in Commission proceedings, the Commission is of the view that its practice of awarding costs, as exercised in this instance, enables such groups to provide their perspectives on how consumer interests may be affected by the outcomes of the proceedings. In light of the above, the Commission considers that its determination to award costs to the FMCC promotes consumer interests.

Directions regarding costs

20. The Commission **approves** the application by the FMCC for costs with respect to their participation in the proceeding.
21. Pursuant to subsection 56(1) of the *Telecommunications Act*, Commission fixes the costs to be paid to the FMCC at \$52,000.
22. The Commission **directs** that the award of costs to the FMCC be paid forthwith by Bell Canada on behalf of Bell et al., TCI, RCCI, Videotron, and SaskTel according to the proportions set out in paragraph 16.

Secretary General

Related documents

- *Call for comments regarding potential barriers to the deployment of broadband-capable networks in underserved areas in Canada*, Telecom Notice of Consultation CRTC 2019-406, 10 December 2019; as amended by Telecom Notice of Consultation CRTC 2019-406-1, 20 December 2019; and 2019-406-2, 21 April 2020
- *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 Consumer's 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