



## Telecom Order CRTC 2022-291

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### **Determination of costs award with respect to the participation of the Manitoba Coalition in the proceedings initiated by Tariff Notices 6 (Bell Mobility Inc.), 72 (Rogers Communications Canada Inc.), and 563 (TELUS Communications Inc.)**

#### **Application**

1. By letter dated 18 March 2022, the Aboriginal Council of Winnipeg, the Manitoba Branch of the Consumers' Association of Canada, and Harvest Manitoba (collectively, the Manitoba Coalition) applied for costs with respect to its participation in the proceedings initiated by Tariff Notices 6 (Bell Mobility Inc. [Bell Mobility]), 72 (Rogers Communications Canada Inc. [RCCI]), and 563 (TELUS Communications Inc. [TCI]) [the proceedings]. In the proceedings, the Commission considered tariff applications by wireless service providers for their provision of wholesale access services to mobile virtual network providers.
2. TCI filed an intervention, dated 31 March 2022, in response to the Manitoba Coalition's application.
3. The Manitoba Coalition 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 Manitoba Coalition submitted that the Manitoba Branch of the Consumers' Association of Canada is a volunteer, non-profit, independent organization working to represent, inform, and empower consumers in Manitoba. Harvest Manitoba is a non-profit, community-based organization representing the interests of Manitoba consumers at risk of poverty. The Aboriginal Council of Winnipeg is an Indigenous organization representing First Nations, Inuit, and Métis living in Winnipeg. Overall, the Manitoba Coalition submitted that it represented the perspective of Manitoba consumers, especially low-income and vulnerable consumers, to ensure that their communications services effectively meet their needs.

5. The Manitoba Coalition requested that the Commission fix its costs at \$4,558.50, consisting of \$3,568.50 for legal fees and \$990 for consultant and analyst fees. The Manitoba Coalition filed a bill of costs with its application.
6. The Manitoba Coalition submitted that Bell Mobility, RCCI, and TCI are the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents).
7. The Manitoba Coalition suggested that the responsibility for payment of costs should be divided among the costs respondents on the basis of their telecommunications operating revenues (TORs),<sup>1</sup> and that specific costs orders should be apportioned according to the Commission's guidelines on the apportionment for costs.

### **Answer**

8. TCI did not take a position on the costs claimed by the Manitoba Coalition. Rather, TCI argued that any costs awarded by the Commission should be allocated solely based on wireless revenues rather than TORs, the latter of which encompass wireline revenues as well as wireless revenues.
9. TCI reasoned that wireless revenues would be more appropriate because the proceedings relate exclusively to wireless services. TCI noted that in the past, the Commission has apportioned costs based on wireless revenues where the subject matter of the proceeding was limited to wireless services.

### **Commission's analysis**

10. 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.

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

11. 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 Manitoba Coalition has demonstrated that it meets this requirement. Its submissions were informed by the history and knowledge of its three member organizations, which engage with the consumers they represent, and by specific input from its team, including its consultant, regarding the impacts of these tariffs on consumers.
12. The Manitoba Coalition also satisfied the remaining criteria through its participation in the proceedings. In particular, the Manitoba Coalition's submissions regarding how the tariffs may ultimately impact consumers assisted the Commission in developing a better understanding of the matters that were considered. Further, the Manitoba Coalition participated responsibly in the proceedings by providing focused submissions to ascertain key issues and efficiently using existing extensive work already undertaken as a part of the Commission's wireless services review proceeding. As a result, the Manitoba Coalition assisted in reducing its cost of participating in the proceedings.
13. Accordingly, the Commission finds that the applicant meets the criteria for an award of costs under section 68 of the Rules of Procedure.
14. The rates claimed in respect of consultant and legal 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 Manitoba Coalition was necessarily and reasonably incurred and should be allowed.
15. 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.
16. 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 proceedings in question and have participated actively in those proceedings. The Commission considers that the following parties had a significant interest in the outcome of the proceedings and participated actively in the proceedings: Bell Mobility; Bragg Communications Incorporated, carrying on business as Eastlink; Cogeco Communications inc., on behalf of Cogeco Connexion Inc.; Fibernetics Corporation; the Independent Telecommunications Providers Association; Iristel Inc., on behalf of itself and its affiliates Ice Wireless Inc. and i-MobileCA Inc.; Quebecor Media Inc., on behalf of Videotron Ltd.; RCCI; Sogetel inc., on behalf of itself and its affiliate Sogetel Mobilité inc.; TCI; TerreStar Solutions Inc.; and Xplornet Communications Inc., as well as Xplornet Mobile Inc. Therefore, these parties are the appropriate costs respondents to the Manitoba Coalition's application for costs.

17. The Commission considers that in this case, it is appropriate to depart from its practice of allocating 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 proceedings.
18. Instead, the Commission finds it appropriate to apportion costs based on the wireless operating revenues of the costs respondents given that the Commission considered tariffs exclusively for wireless services in the proceedings.
19. 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:

<b>Company</b>	<b>Proportion</b>	<b>Amount</b>
RCCI	33.93%	\$1,546.68
Bell Mobility	33.80%	\$1,540.93
TCI	32.27%	\$1,470.89

### **2019 Policy Direction**

20. 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).<sup>2</sup> The Commission considers that the awarding of costs in this instance is consistent with subparagraph 1(a)(iv) of the 2019 Policy Direction.
21. 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 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 Manitoba Coalition promotes consumer interests.

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<sup>2</sup> *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

## Directions regarding costs

22. The Commission **approves** the application by the Manitoba Coalition for costs with respect to its participation in the proceedings.
23. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to the Manitoba Coalition at \$4,558.50.
24. The Commission **directs** that the award of costs to the Manitoba Coalition be paid forthwith by RCCI, Bell Mobility, and TCI according to the proportions set out in paragraph 19.

Secretary General

## Related documents

- *Facilities-based wholesale mobile virtual network operator (MVNO) access tariffs – Commission determinations on proposed terms and conditions*, Telecom Decision CRTC 2022-288, 19 October 2022
- *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