



## Telecom Order CRTC 2024-247

PDF version

Ottawa, 22 October 2024

*File numbers: 1011-NOC2023-0056 and 4754-748*

### **Determination of costs award with respect to the participation of the First Mile Connectivity Consortium in the proceeding initiated by Telecom Notice of Consultation 2023-56**

#### **Application**

1. By letter dated 25 May 2024, the First Mile Connectivity Consortium (FMCC) applied for costs with respect to its participation in the proceeding initiated by Telecom Notice of Consultation 2023-56 (the proceeding). In the proceeding, the Commission reviewed the existing framework for wholesale high-speed access services in light of changing market conditions, the significant challenges in implementing the framework, and the importance to Canadians of having access to greater choice and more affordable services.
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 participated in a responsible way.
4. Specifically, the FMCC submitted that it represents First Nations broadband service providers. These service providers were established by members of First Nations communities who are residents of remote and outlying regions, and operate in rural, remote, and northern regions of the country. The FMCC also sought to represent the unserved and underserved regions that exist across Canada, including northern parts of provinces without year-long road access, and other isolated communities.
5. The FMCC further submitted that it had assisted the Commission in developing a better understanding of the matters considered and raised additional considerations in the proceeding. For instance, the FMCC's submissions included

comments and recommendations regarding demand, competition, the 2023 Policy Direction,<sup>1</sup> and access to facilities.

6. The FMCC requested that the Commission fix its costs at \$16,145.00, consisting entirely of external consultant fees. The FMCC's claim included partial federal Goods and Services Tax (GST) on fees less the rebate to which the FMCC is entitled in connection with the GST. The FMCC filed a bill of costs with its application.
7. For external consultant fees, the FMCC claimed 4 hours at a rate of \$110 per hour for a consultant to conduct research; 46 hours at a rate of \$225 per hour for a consultant to review the file, draft the intervention, comments, and reply comments, and to perform client consultations; 16 hours at a rate of \$225 an hour for another consultant to review the file, draft the intervention, application for costs, comments, and reply comments, and to review and file their final reply; and 7 hours at a rate of \$225 per hour for an additional consultant to review the file, as well as to prepare the intervention, comments, and reply comments.
8. The FMCC submitted that major telecommunications service providers who participated in the proceeding are the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents).

### **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

---

<sup>1</sup> *Order Issuing a Direction to the CRTC on a Renewed Approach to Telecommunications Policy*, SOR/2023-23, 10 February 2023.

FMCC has demonstrated that it meets this requirement, since it represented First Nations broadband service providers, as well as the unserved and underserved communities that exist across Canada.

11. The FMCC has also satisfied the remaining criteria through its participation in the proceeding. The FMCC's submissions highlighted how the Commission could better support wholesale-based competition across all regions of the country, particularly areas that do not currently have significant wholesale-based competition, including many Indigenous communities. These submissions assisted the Commission in developing a better understanding of the matters that were considered.
12. Furthermore, the FMCC participated in the proceeding in a responsible way by complying with the Rules of Procedure, and by respecting the deadlines and processes set out in the proceeding.
13. The rates and disbursements claimed are in accordance with the *Guidelines for the Assessment of Costs* (the Guidelines), 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.
14. 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.
15. 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. In this case, the Commission considers it appropriate to limit the cost respondents to those who participated in the hearing, because they demonstrated the most significant interest in the proceeding.
16. The Commission therefore considers that the following parties had a significant interest in the outcome of the proceeding and participated actively in the proceeding: Beanfield Technologies Inc.; Bell Canada; Bragg Communications Incorporated, carrying on business as Eastlink; Cogeco Connexion Inc.; Competitive Network Operators of Canada; Rogers Communications Canada Inc. (RCCI); Saskatchewan Telecommunications; TBayTel; TELUS Communications Inc. (TCI); Transat Télécom inc.; WaveDirect Telecommunications Ltd.; and Xplore Inc.
17. 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.<sup>2</sup>

18. 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.
19. 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	39.8%	\$6,425.71
TCI	35.5%	\$5,731.48
Bell Canada	24.7%	\$3,987.81

### **Directions regarding costs**

20. The Commission approves the application by the FMCC for costs with respect to its participation in the proceeding.
21. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to the FMCC at \$16,145.00.
22. The Commission directs that the award of costs to the FMCC be paid forthwith by RCCI, TCI, and Bell Canada according to the amounts set out in paragraph 19.

Secretary General

### **Related documents**

- *Notice of hearing – Review of the wholesale high-speed access service framework*, Telecom Notice of Consultation CRTC 2023-56, 8 March 2023, as amended by Telecom Notices of Consultation CRTC 2023-56-1, 11 May 2023; 2023-56-2, 4 July 2023; 2023-56-3, 6 November 2023; and 2023-56-4, 8 April 2024
- *Guidance for costs award applicants regarding representation of a group or a class of subscribers*, Telecom Information Bulletin CRTC 2016-188, 17 May 2016

---

<sup>2</sup> TORs consist of Canadian telecommunications revenues from local and access, long distance, data, private line, Internet, and wireless services.

- *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*