



Telecom Order CRTC 2024-248

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Ottawa, 22 October 2024

File numbers: 1011-NOC2023-0056 and 4754-745

Determination of costs award with respect to the participation of the Public Interest Advocacy Centre and the OpenMedia Engagement Network in the proceeding initiated by Telecom Notice of Consultation 2023-56

Application

1. By letter dated 22 May 2024, the Public Interest Advocacy Centre (PIAC) in conjunction with the OpenMedia Engagement Network (OpenMedia) [collectively, the Applicants] applied for costs with respect to their participation in the proceeding initiated by Telecom Notice of Consultation 2023-56 (the proceeding). PIAC clarified that its representation included OpenMedia only after 1 October 2023, and that the costs incurred by OpenMedia during that portion of the proceeding are included in the application for costs. All costs incurred by OpenMedia before PIAC began representing OpenMedia are the subject of a separate costs application.
2. 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.
3. The Commission did not receive any interventions in response to the application for costs.
4. The Applicants 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, the Applicants submitted that they represent the interests of all home Internet consumers in Canada, specifically low-income and vulnerable consumers who may face challenges in affording reliable telecommunications services. The Applicants added that they sought to address burdens on customers of Internet service providers that are not subject to wholesale access tariffs. They also argued that service-based competition can deliver significant innovation in the market.

6. The Applicants further submitted that they had assisted the Commission in developing a better understanding of the matters that were considered and raised additional issues in the proceeding. For instance, the Applicants' submissions included notations on in-market promotional pricing from incumbents' fibre-based retail Internet services. They contrasted these notations with existing fibre-to-the-node and third-party Internet access tariffs to show incumbent's tendency to price retail fibre-to-the-premises services below their wholesale services. Furthermore, they showed the Commission's past treatment of such conduct in various decisions regarding price floors and other regulatory structures.
7. The Applicants requested that the Commission fix its costs at \$48,362.79, consisting of \$46,376.71 for legal fees, \$35.55 for office disbursements, and \$1,950.53 for a representative to travel to attend the hearing (including transportation, accommodation, and meals). The Applicants' claim included the Ontario Harmonized Sales Tax (HST) on some fees less the rebate to which the Applicants are entitled in connection with the HST. The Applicants filed a bill of costs with their application.
8. The Applicants claimed 98.5 hours for external counsel at a rate of \$290 per hour to perform file review and legal research, draft request for information (RFI) responses, replies to interventions, final comments, and motions, as well as attend the hearing. The Applicants claimed 21.25 days at a rate of \$600 per day for two in-house counsel to perform file review and legal research, draft the intervention, replies, and RFI responses, as well as prepare for the hearing. The Applicants additionally claimed 16.75 days at a rate of \$235 per day for an articling student to perform file review, legal research, and hearing preparation, draft interventions and RFI responses, as well as to attend the hearing.
9. The Applicants submitted that, in accordance with the approach set out in Telecom Regulatory Policy 2010-963, parties who participated actively in the proceeding are the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents). The Applicants suggested that the responsibility for payment of costs should be divided among the costs respondents based on their telecommunications operating revenues (TORs).

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.

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 Applicants have demonstrated that they meet this requirement. The Applicants represent the interests of consumers across Canada, with a particular emphasis on consumers of home Internet services.
12. The Applicants have also satisfied the remaining criteria through their participation in the proceeding. In particular, the Applicants' submissions, especially regarding service-based competition, assisted the Commission in developing a better understanding of the matters that were considered.
13. Furthermore, the Applicants 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.
14. The rates claimed in respect of legal fees and disbursements are in accordance with 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 Applicants 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 proceeding in question and have participated actively in that proceeding. In the present case, the Commission considers that the appropriate costs respondents are the parties who participated in the hearing, because they demonstrated the most significant interest in the proceeding.
17. 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 Communications inc., on behalf of Cogeco Connexion Inc. (Cogeco); Competitive Network Operators of Canada; Rogers Communications Canada Inc. (RCCI); Saskatchewan Telecommunications (SaskTel); TBayTel; TELUS Communications Inc. (TCI); Transat Télécom inc.; WaveDirect Telecommunications Ltd.; and Xplore Inc.

18. 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.¹
19. 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.
20. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated as follows:²

Company	Proportion	Amount
RCCI	37.6%	\$18,184.41
TCI	33.5%	\$16,201.54
Bell Canada	23.3%	\$11,268.53
SaskTel	3.0%	\$1,450.88
Cogeco	2.6%	\$1,257.43

Directions regarding costs

21. The Commission approves the application for costs with respect to the Applicants' participation in the proceeding.
22. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to the Applicants at \$48,362.79.
23. The Commission directs that the award of costs to the Applicants be paid forthwith by RCCI, TCI, Bell Canada, SaskTel, and Cogeco according to the proportions set out in paragraph 20.

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;

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.

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
- *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