



Telecom Order CRTC 2024-250

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Ottawa, 22 October 2024

File numbers: 1011-NOC2023-0056 and 4754-746

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

Application

1. By letter dated 22 May 2024, the OpenMedia Engagement Network (OpenMedia) applied for costs with respect to its participation in the proceeding initiated by Telecom Notice of Consultation 2023-56 (the proceeding) during the period of 6 April 2023 to 1 October 2023. 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. OpenMedia's application relates only to the costs it incurred during the period it represented itself. Any costs incurred while it participated with the Public Interest Advocacy Centre (PIAC) are the subject of a separate costs application.
2. The Commission did not receive any interventions in response to the application for costs.
3. OpenMedia 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, OpenMedia submitted that it represents the interests of all home Internet consumers in Canada, specifically low-income and vulnerable consumers who may face challenges in affording reliable telecommunications services.
5. OpenMedia further submitted that it had assisted the Commission in developing a better understanding of the matters that were considered and raised additional issues in the proceeding. For instance, OpenMedia's submissions included information about consumer demand of fibre Internet service and the necessity of wholesale-based competition to better serve Canadian consumers.
6. OpenMedia requested that the Commission fix its costs at \$9,987.50 for in-house consultant fees. OpenMedia filed a bill of costs with its application.

7. OpenMedia claimed 21.25 days for in-house consultants at a rate of \$470 per day to prepare evidence, perform case management, and draft the intervention and comments.
8. OpenMedia 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). OpenMedia 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

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, OpenMedia has demonstrated that it meets this requirement. OpenMedia represents the interests of consumers across Canada, with a particular emphasis on consumers of home Internet services.
11. OpenMedia has also satisfied the remaining criteria through its participation in the proceeding. In particular, OpenMedia's submissions, especially regarding Canadian consumers' need for competition to support affordable Internet services, assisted the Commission in developing a better understanding of the matters that were considered.
12. Furthermore, OpenMedia 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 claimed in respect of consultant fees 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 OpenMedia 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 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.
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 Communications inc., on behalf of 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 TORs as an indicator of the relative size and interest of the parties involved in the proceeding.¹
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:²

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.

Company	Proportion	Amount
RCCI	39.8%	\$3,975.03
TCI	35.5%	\$3,545.56
Bell Canada	24.7%	\$2,466.91

Directions regarding costs

20. The Commission approves the application by OpenMedia 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 OpenMedia at \$9,987.50.
22. The Commission directs that the award of costs to OpenMedia be paid forthwith by RCCI, TCI, and Bell Canada according to the proportions 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
- *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