



## Telecom Order CRTC 2024-273

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Ottawa, 5 November 2024

*File numbers: 1011-NOC2024-0025 and 4754-743*

### **Determination of costs award with respect to the participation of Option consommateurs in the proceeding initiated by Telecom Notice of Consultation 2024-25**

#### **Application**

1. By letter dated 3 May 2024, Option consommateurs applied for costs with respect to its participation in the proceeding initiated by Telecom Notice of Consultation 2024-25 (the proceeding). In the proceeding, the Commission is considering whether to modify existing tariffs to address the deployment of wireless facilities, such as small cells, on support structures owned or controlled by incumbent local exchange carriers.
2. The Commission did not receive any interventions in response to the application for costs.
3. Option consommateurs 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, Option consommateurs submitted that it represents all Quebec consumers, with a particular interest in the most vulnerable consumers. Option consommateurs represents consumers and promotes their rights by garnering public support and regularly appearing in the media, writing briefs, participating in parliamentary committees, and engaging in class actions.
5. Option consommateurs submitted that it had assisted the Commission in developing a better understanding of the matters that were considered, notably by (i) providing the Commission with the point of view of the end-user, (ii) providing context on initiatives developed in the United States and the European Union to promote facilities-based competition, and (iii) advocating for a technology-neutral approach to the application of access rates to support structures for fifth-generation (5G) technologies. Option consommateurs argued that access to support structures is crucial to fostering competition in the telecommunications sector, where infrastructure investment costs constitute a significant barrier to entry and expansion of services.

6. Option consommateurs requested that the Commission fix its costs at \$4,000, consisting entirely of legal fees. Specifically, Option consommateurs claimed five days for in-house counsel at a rate of \$800 per day. Option consommateurs filed a bill of costs with its application.
7. Option consommateurs submitted that the telecommunications service providers (TSPs) that participated in the proceeding are the appropriate parties to be required to pay any costs awarded by the Commission, and that those costs should be based on their telecommunications operating revenues (TORs)<sup>1</sup> (the costs respondents).

### **Commission's analysis**

8. 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.
9. 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, Option consommateurs has demonstrated that it meets this requirement. Option consommateurs is a non-profit organization whose mission is to help consumers and defend their rights. Option consommateurs demonstrated that the outcome of this proceeding is of interest to all consumers of telecommunications services, and that restrictions on access to support structures imposed by TSPs could impede the development of new 5G-based services in Canada or limit competition for those services, which would have an impact on the innovation, quality, and price of telecommunications services offered to consumers.
10. Option consommateurs has also satisfied the remaining criteria through its participation in the proceeding. In particular, Option consommateurs' submissions,

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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.

especially regarding the end-user perspective on access to support structures and the light shed on the initiatives developed in other jurisdictions to promote facilities-based competition, assisted the Commission in developing a better understanding of the matters that were considered. Accordingly, the Commission finds that the applicant meets the criteria for an award of costs under section 68 of the Rules of Procedure.

11. The rates claimed in respect of 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 Option consommateurs was necessarily and reasonably incurred and should be allowed.
12. 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.
13. 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.
14. The Commission considers that the following parties had a significant interest in the outcome of the proceeding and participated actively in the proceeding: Bell Canada and Bell Mobility Inc. (collectively, the Bell companies); Bragg Communications Incorporated, operating as Eastlink; Quebecor Media Inc., on behalf of Freedom Mobile Inc. and Videotron Ltd.; Rogers Communications Canada Inc. (RCCI); Saskatchewan Telecommunications; and TELUS Communications Inc. (TCI).
15. The Commission considers that in this case, it is appropriate to deviate 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 proceeding. The Commission considers it appropriate to allocate the costs based on the respondents' wireless operating revenues (WORs), given that the Commission examined rates exclusively for wireless services in the proceeding.
16. 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.
17. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated as follows:<sup>2</sup>

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<sup>2</sup> In this order, the Commission has used the WORs of the costs respondents based on their most recent audited financial statements.

<b>Company</b>	<b>Proportion<sup>3</sup></b>	<b>Amount</b>
Bell companies	34.32%	\$1,372.63
RCCI	33.72%	\$1,348.69
TCI	31.97%	\$1,278.67

### **Directions regarding costs**

18. The Commission approves the application by Option consommateurs for costs with respect to its participation in the proceeding.
19. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to Option consommateurs at \$4,000.
20. The Commission directs that the award of costs to Option consommateurs be paid forthwith by the Bell companies, RCCI, and TCI according to the proportions set out in paragraph 17.

Secretary General

### **Related documents**

- *Call for comments – Attachment of wireless facilities to support structures owned or controlled by incumbent local exchange carriers*, Telecom Notice of Consultation CRTC 2024-25, 5 February 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

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<sup>3</sup> Percentages have been rounded up to the nearest hundredth.