



Telecom Order CRTC 2023-32

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Determination of costs award with respect to the participation of the First Mile Connectivity Consortium in the proceeding initiated by Telecom Notice of Consultation 2020-366

Application

1. By letter dated 22 July 2022, the First Mile Connectivity Consortium (FMCC) applied for costs with respect to its participation in the proceeding initiated by Telecom Notice of Consultation 2020-366 (the proceeding). In the proceeding, the Commission considered measures to make access to poles owned by Canadian carriers more efficient.
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 had participated in a responsible way.
4. With respect to the group or class of subscribers that the FMCC submitted that it represents, the FMCC noted that it represents the interests of First Nations broadband service providers operating in rural, remote, and northern regions of Canada. The FMCC noted that those providers have been established by members of First Nations communities who reside in remote and outlying regions of the country.¹ Further, the FMCC explained that, while its emphasis is on northern Indigenous communities, the organization seeks to address similar challenges experienced by other communities outside of the north including those related to access to affordable, adequate infrastructure and services.

¹ Specifically, the FMCC noted that it represents: (i) First Nations Technology Council, British Columbia; (ii) First Nations Technical Services Advisory Group, Alberta; (iii) Broadband Communications North, Manitoba; (iv) Clear Sky Connections, Manitoba; (v) Keewaytinook Okimakanak K-Net Services, Ontario; (vi) Western James Bay Telecom Network, Ontario; (vii) Mattawa First Nations Management, Ontario; (viii) First Nations Education Council, Quebec; (ix) Eeyou Communication Network, Quebec; and (x) Atlantic Canada First Nations Help Desk, Nova Scotia.

5. The FMCC requested that the Commission fix its costs at \$23,060.25, consisting entirely of consultant and analyst fees. The FMCC's claim included the federal Goods and Services Tax (GST). The FMCC filed a bill of costs with its application.
6. The FMCC submitted that Bell Canada; Bragg Communications Incorporated, carrying on business as Eastlink (Eastlink); Cogeco Connexion Inc. (Cogeco); Northwestel Inc. (Northwestel), Quebecor Media Inc. on behalf of its subsidiary Videotron Ltd. (Videotron); Rogers Communications Canada Inc. (RCCI); Saskatchewan Telecommunications (Sasktel); Shaw Cablesystems G.P. (Shaw); TELUS Communications Inc. (TCI); and Xplornet Communications Inc. (Xplornet) were the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents).
7. The FMCC suggested that the allocation of costs amongst the costs respondents should be determined by the Commission.

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, the FMCC has demonstrated that it meets this requirement. The FMCC represents First Nations broadband providers operating in rural and northern regions, residents of those communities, as well as those residing in unserved and underserved regions across Canada. As stated in Telecom Order 2017-164 and reiterated in Telecom Order 2022-157, although the primary members of the FMCC are telecommunications service providers, their status as community-based organizations with the distinct objective of providing rural and remote First Nations communities with Internet services distinguishes them from general commercial providers. When considered under the first of the costs criteria, the fact that the FMCC's members are able to represent the

unique interests of First Nations subscribers and communities, as well as those of unserved and underserved subscribers and communities across Canada, qualifies them to claim costs when other telecommunications providers typically could not.

10. The FMCC has also satisfied the remaining criteria through its participation in the proceeding. In particular, the FMCC's submissions, especially regarding access to poles and support structures in remote and northern regions, assisted the Commission in developing a better understanding of the matters that were considered. The FMCC also participated in the proceeding in a responsible manner through its structured submissions in response to the call for comments as well as in its response to requests for information.
11. The rates claimed in respect of consultant and analyst fees are in accordance with the rates established in 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. .
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. In its application, the FMCC identified Bell Canada, Cogeco, Eastlink, Northwestel, RCCI, Sasktel, Shaw, TCI, Videotron, and Xplornet as costs respondents. The Commission has generally determined, however, 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. The Commission considers that the following parties also had a significant interest in the outcome of the proceeding and participated actively in the proceeding, and as a result should be considered costs respondents: BC Hydro and Power Authority, Beanfield Technologies Inc., other subsidiaries of BCE Inc.² in addition to Bell Canada and Northwestel (collectively, Bell Canada et al.), the British Columbia Broadband Association, Canadian Association of Wireless Internet Service Providers, the Canadian Communication Systems Alliance, the Canadian Electricity Association,³ the Community Fibre Company Inc., the Competitive Network Operators of Canada, Hydro-Québec, the Independent Telecommunications Providers Association, Iristel Inc., TbayTel, TekSavvy Solutions Inc., and Zayo Group, LLC.
14. The Commission considers that, consistent with its practice, it is appropriate to allocate the responsibility for payment of costs among the costs respondents based on their telecommunications operating revenues (TORs) as an indicator of the relative

² These include Bell Aliant, a division of Bell Canada; Bell MTS, a division of Bell Canada; DMTS, a division of Bell Canada; Groupe Maskatel LP, which includes Téléphone de Saint-Victor; Téléphone Upton and Téléphone de Saint-Éphrem; KMTS, a division of Bell Canada; NorthernTel, Limited Partnership; Ontera, a division of NorthernTel; and Télébec, Société en commandite

³ In March 2022, the Canadian Electricity Association became Electricity Canada.

size and interest of the parties involved in the proceeding.⁴ The Commission notes that while some of the costs respondents do not report TORs, no submissions were received proposing an alternative to TORs as a principled framework to fairly and efficiently apportion costs among the various costs respondents that are not telecommunications service providers. As a result, the Commission considers it appropriate to exclude all parties that do not report TORs to the Commission.

15. 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.
16. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated as follows:⁵

Company	Proportion	Amount
RCCI	35.3%	\$8,146.47
TCI	33.3%	\$7,674.45
Bell et al.	24.6%	\$5,664.47
Videotron	6.8%	\$1,574.86

17. Consistent with its general approach, articulated in Telecom Costs Order 2002-4, the Commission makes Bell Canada responsible for payment on behalf of Bell et al. The Commission leaves it to the members of Bell et al. to determine the appropriate allocation of the costs among themselves.

2019 Policy Direction

18. 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).⁶ The Commission

⁴ TORs consist of Canadian telecommunications revenues from local and access, long distance, data, private line, Internet, and wireless services.

⁵ In this order, the Commission has used the TORs of the costs respondents based on their most recent audited financial statements.

⁶ *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

considers that the awarding of costs in this instance is consistent with subparagraph 1(a)(iv) of the 2019 Policy Direction.

19. 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 FMCC promotes consumer interests.

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 \$23,060.25.
22. The Commission **directs** that the award of costs to the FMCC be paid forthwith by Rogers, TCI, Bell Canada on behalf of Bell et al., and Videotron according to the proportions set out in paragraph 16.

Secretary General

Related documents

- *Regulatory measures to make access to poles owned or controlled by Canadian carriers more efficient*, Telecom Notice of Consultation/Decision CRTC 2023-31, 15 February 2023
- *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

- *Action Réseau Consommateur, the Consumers' Association of Canada, Fédération des associations coopératives d'économie familiale and the National Anti-Poverty Organization application for costs – Public Notice CRTC 2001-60, Telecom Costs Order CRTC 2002-4, 24 April 2002*