



## Telecom Decision CRTC 2023-60

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Reference: Part 1 application posted on 16 May 2022

Ottawa, 13 March 2023

*Public record: 8662-R28-202202084*

### **Rogers Communications Canada Inc. – Application to review and vary costs award orders related to Telecom and Broadcasting Decision 2022-28**

#### **Summary**

The Commission finds that there is substantial doubt as to the correctness of one of its determinations in each of the costs award orders related to Telecom and Broadcasting Decision 2022-28, in which it awarded costs to consumer groups in respect of their participation in the proceeding. Accordingly, the Commission **approves** Rogers Communications Canada Inc.'s (RCCI) application to review and vary the costs orders and reallocates responsibility for the payment of costs in the orders to Bell Canada, RCCI, and TELUS Communications Inc. in proportion to their telecommunications operating revenues, taking into account all participating subsidiaries and affiliates.

#### **Background**

1. In the proceeding that led to Telecom and Broadcasting Decision 2022-28 (the proceeding), the Commission issued the following costs award orders: Telecom Orders 2022-33, 2022-34, 2022-35, 2022-36, 2022-37, 2022-38, 2022-39, 2022-40, and 2022-41 (collectively, the orders).
2. The Commission awarded costs to the Canadian Association of the Deaf – Association des Sourds du Canada; the Canadian National Institute for the Blind (CNIB Foundation); the Canadian National Society of the Deaf-Blind, Inc.; the Consumers Council of Canada; the Deaf Wireless Canada Consultative Committee – Comité consultatif pour les Services Sans fil des Sourds du Canada; the Deafness Advocacy Association Nova Scotia; the Manitoba Coalition; the Public Interest Advocacy Centre (on its own behalf and on behalf of the National Pensioners Federation); and l'Union des consommateurs.

#### **Application**

3. On 12 May 2022, the Commission received an application from Rogers Communications Canada Inc. (RCCI), in which the company requested that the Commission review and vary all the costs award orders related to the proceeding.

4. RCCI submitted there was substantial doubt as to the correctness of the allocation of costs among the costs respondents in each of the orders, which resulted in RCCI being allocated a greater proportion of the costs relative to its size and interest in the proceeding. Specifically, RCCI submitted that in the orders, Bell Canada's size and interest based on telecommunications operating revenues (TORs)<sup>1</sup> were incorrectly deemed to be the smallest of the costs respondents.
5. On 16 May 2022, TELUS Communications Inc. (TCI) provided a response supporting RCCI's application.

### **Regulatory framework**

6. Section 56 of the *Telecommunications Act* (the Act) authorizes the Commission to award costs with respect to proceedings before it, and to order by whom and to whom any costs are to be paid.
7. The Commission set out the *Guidelines for the Assessment of Costs* (the Guidelines) in Telecom Regulatory Policy 2010-963 to guide the costs award process. The Guidelines set out the key principles that the Commission seeks to implement through its costs award regime, including ensuring that the process has the necessary flexibility to take into account the particular circumstances of each case.
8. 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. The Commission's general practice is to allocate responsibility for the payment of costs among costs respondents based on their TORs for all telecommunications services, as an indicator of the relative size and interest of the parties involved in proceedings.
9. Section 62 of the Act states that the Commission may, on application or on its own motion, review and rescind or vary any decision made by it, or rehear a matter before rendering a decision.

### **Review and vary criteria**

10. In Telecom Information Bulletin 2011-214, the Commission outlined the criteria it would use to assess review and vary applications filed pursuant to section 62 of the Act. Specifically, the Commission stated that applicants must demonstrate that there is substantial doubt as to the correctness of the original decision, for example, due to (i) an error in law or in fact, (ii) a fundamental change in circumstances or facts since the decision, (iii) a failure to consider a basic principle which had been raised in the original proceeding, or (iv) a new principle which has arisen as a result of the decision.

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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.

## Issues

11. The Commission has identified the following issues to be addressed in this decision:

- Is there substantial doubt as to the correctness of the Commission's determinations in the orders, specifically its allocation of the costs?
- If there is substantial doubt as to the correctness of the orders, how should the Commission vary its decisions?

### **Is there substantial doubt as to the correctness of the Commission's determinations in the orders, specifically its allocation of the costs?**

#### **Positions of parties**

12. RCCI noted the Commission's general practice of determining the appropriate allocation of costs based on the TORs of the costs respondents as indicators of their relative size and interest. RCCI indicated that there are evident reasons to doubt the correctness of the orders because in the orders, the relative size and interest of Bell Canada, based on TORs, was deemed to be the smallest. RCCI claimed that a quick review of Bell Canada's financial releases clearly calls into question that allocation, especially given that Bell Canada participated in the proceeding on its own behalf and on behalf of Bell Aliant, Bell Mobility Inc., and Bell MTS Inc., as well as its subsidiaries<sup>2</sup> (collectively, the Bell companies).

13. TCI agreed with RCCI that there are substantial reasons to doubt the correctness of the Commission's calculation of Bell Canada's TORs, and thus the correctness of the payment allocation between the costs respondents, given the disproportionately low allocation of costs to Bell Canada in the orders.

#### **Commission's analysis**

14. In the orders, the Commission considered the appropriate costs respondents to be those that had a significant interest and participated actively in the proceeding, consistent with its general practice. As set out in Telecom Order 2015-160, the Commission considered \$1,000 to be the minimum amount that a costs respondent should be required to pay. As a result, in each of the orders, the Commission allocated responsibility to either (i) Bell Canada, RCCI, and TCI, (ii) RCCI and TCI, or (iii) RCCI. The Commission allocated responsibility for the payment of costs based on their TORs, as indicators of their relative size and interest in the proceeding.

15. In determining Bell Canada's allocation of costs, the Commission did not consider the TORs of the Bell companies. However, because Bell Canada participated in the proceeding on behalf of the Bell companies, and because the Commission examined

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<sup>2</sup> Bell Canada's subsidiaries are Câblevision du nord de Québec inc.; DMTS; Groupe Maskatel LP; KMTS; NorthernTel, Limited Partnership; Ontera, a division of NorthernTel; and Télébec, Société en commandite.

the billing practices of telecommunications service providers across the entire range of telecommunications services in the proceeding, including wireless carriers, the Commission considers that the Bell companies had both participated actively in the proceeding through Bell Canada and had an interest in the outcome of the proceeding.

16. In light of the above, the Commission considers that it erred by not considering the TORs of all the participating Bell companies in its calculation of Bell Canada's TORs. The proportion of costs allocated to Bell Canada was therefore too low considering the participation of the Bell companies in the proceeding.

**If there is substantial doubt as to the correctness of the orders, how should the Commission vary its decisions?**

**Positions of parties**

17. RCCI and TCI indicated that if the Commission finds that an error was made, it should reallocate the responsibility for costs and provide specific directions to the costs respondents to reimburse other respondents as necessary.

**Commission's analysis**

18. The Commission considers that, similar to the approach taken in Telecom Decision 2020-33, responsibility for the payment of the orders should be reapportioned to take into consideration the participation of the Bell companies.
19. In the orders, the Commission took into account its general practice outlined in Telecom Order 2015-160 with respect to \$1,000 being the minimum amount that a costs respondent should be required to pay. For the same reasons, the Commission considers that this \$1,000 threshold for responsibility for payment should also apply in the present circumstances.
20. In light of the above, the Commission reallocates responsibility for the payment of costs as follows:

**Original Telecom Order 2022-33 Allocation**

<b>Company</b>	<b>Proportion</b>	<b>Amount</b>
RCCI	50.15%	\$1,010.51
TCI	49.85%	\$1,004.49

**Varied Telecom Order 2022-33 Allocation**

<b>Company</b>	<b>Proportion</b>	<b>Amount</b>
Bell companies	100%	\$2,015.00

**Original Telecom Order 2022-34 Allocation**

<b>Company</b>	<b>Proportion</b>	<b>Amount</b>
RCCI	36.34%	\$5,619.23
TCI	36.12%	\$5,585.76
Bell Canada	27.54%	\$4,258.98

**Varied Telecom Order 2022-34 Allocation**

<b>Company</b>	<b>Proportion</b>	<b>Amount</b>
Bell companies	42.61%	\$6,589.20
RCCI	28.78%	\$4,450.53
TCI	28.61%	\$4,424.24

**Original Telecom Order 2022-35 Allocation**

<b>Company</b>	<b>Proportion</b>	<b>Amount</b>
RCCI	50.15%	\$1,544.60
TCI	49.85%	\$1,535.40

**Varied Telecom Order 2022-35 Allocation**

<b>Company</b>	<b>Proportion</b>	<b>Amount</b>
Bell companies	59.69%	\$1,838.45
RCCI	40.31%	\$1,241.55

**Original Telecom Order 2022-36 Allocation**

<b>Company</b>	<b>Proportion</b>	<b>Amount</b>
RCCI	36.34%	\$1,576.32
TCI	36.12%	\$1,566.93
Bell Canada	27.54%	\$1,194.75

**Varied Telecom Order 2022-36 Allocation**

<b>Company</b>	<b>Proportion</b>	<b>Amount</b>
Bell companies	42.61%	\$1,848.42
RCCI	28.78%	\$1,248.48
TCI	28.61%	\$1,241.10

**Original Telecom Order 2022-37 Allocation**

<b>Company</b>	<b>Proportion</b>	<b>Amount</b>
RCCI	36.34%	\$2,305.62
TCI	36.12%	\$2,291.88
Bell Canada	27.54%	\$1,747.50

**Varied Telecom Order 2022-37 Allocation**

<b>Company</b>	<b>Proportion</b>	<b>Amount</b>
Bell companies	42.61%	\$2,703.60
RCCI	28.78%	\$1,826.10
TCI	28.61%	\$1,815.30

**Original Telecom Order 2022-38 Allocation**

<b>Company</b>	<b>Proportion</b>	<b>Amount</b>
RCCI	100%	\$1,527.50

**Varied Telecom Order 2022-38 Allocation**

<b>Company</b>	<b>Proportion</b>	<b>Amount</b>
Bell companies	100%	\$1,527.50

**Original Telecom Order 2022-39 Allocation**

<b>Company</b>	<b>Proportion</b>	<b>Amount</b>
RCCI	36.34%	\$3,910.34
TCI	36.12%	\$3,887.05
Bell Canada	27.54%	\$2,963.76

**Varied Telecom Order 2022-39 Allocation**

<b>Company</b>	<b>Proportion</b>	<b>Amount</b>
Bell companies	42.61%	\$4,585.33
RCCI	28.78%	\$3,097.05
TCI	28.61%	\$3,078.77

**Original Telecom Order 2022-40 Allocation**

<b>Company</b>	<b>Proportion</b>	<b>Amount</b>
RCCI	50.15%	\$1,114.18
TCI	49.85%	\$1,107.54

**Varied Telecom Order 2022-40 Allocation**

<b>Company</b>	<b>Proportion</b>	<b>Amount</b>
Bell companies	100%	\$2,221.72



### Original Telecom Order 2022-41 Allocation

Company	Proportion	Amount
RCCI	36.34%	\$2,868.63
TCI	36.12%	\$2,851.54
Bell Canada	27.54%	\$2,174.21

### Varied Telecom Order 2022-41 Allocation

Company	Proportion	Amount
Bell companies	42.61%	\$3,363.80
RCCI	28.78%	\$2,272.00
TCI	28.61%	\$2,258.58

21. In its submission, RCCI noted that it had already paid the amounts required by the original orders. It is not clear from the record whether Bell Canada and TCI have paid the required amounts.
22. If Bell Canada and TCI have already paid the required amounts, in order to minimize the administrative burden, the Commission **directs** Bell Canada to pay RCCI the amount of \$7,341.22 and TCI the amount of \$7,012.60.
23. If either Bell Canada or TCI has not already paid the amounts required by the original orders, the Commission **directs** Bell Canada and/or TCI to pay the costs recipients according to the original orders. The Commission then **directs** Bell Canada to pay RCCI the amount of \$7,341.22 and TCI the amount of \$7,012.60.

Secretary General

### Related documents

- *Determination of costs award with respect to the participation of the Manitoba Coalition in the proceeding that led to Telecom and Broadcasting Decision 2022-28, Telecom Order CRTC 2022-41, 17 February 2022*

- *Determination of costs award with respect to the participation of the Consumers Council of Canada in the proceeding that led to Telecom and Broadcasting Decision 2022-28, Telecom Order CRTC 2022-40, 17 February 2022*
- *Determination of costs award with respect to the participation of the Public Interest Advocacy Centre and the National Pensioners Federation in the proceeding that led to Telecom and Broadcasting Decision 2022-28, Telecom Order CRTC 2022-39, 17 February 2022*
- *Determination of costs award with respect to the participation of the Deafness Advocacy Association Nova Scotia in the proceeding that led to Telecom and Broadcasting Decision 2022-28, Telecom Order CRTC 2022-38, 17 February 2022*
- *Determination of costs award with respect to the participation of l'Union des consommateurs in the proceeding that led to Telecom and Broadcasting Decision 2022-28, Telecom Order CRTC 2022-37, 17 February 2022*
- *Determination of costs award with respect to the participation of the Deaf Wireless Canada Consultative Committee – Comité consultatif pour les Services Sans fil des Sourds du Canada in the proceeding that led to Telecom and Broadcasting Decision 2022-28, Telecom Order CRTC 2022-36, 17 February 2022*
- *Determination of costs award with respect to the participation of the Canadian Association of the Deaf-Association des Sourds du Canada in the proceeding that led to Telecom and Broadcasting Decision 2022-28, Telecom Order CRTC 2022- 35, 17 February 2022*
- *Determination of costs award with respect to the participation of the CNIB Foundation in the proceeding that led to Telecom and Broadcasting Decision 2022-28, Telecom Order CRTC 2022-34, 17 February 2022*
- *Determination of costs award with respect to the participation of the Canadian National Society of the Deaf-Blind, Inc. in the proceeding that led to Telecom and Broadcasting Decision 2022-28, Telecom Order CRTC 2022-33, 17 February 2022*
- *When and how communications service providers must provide paper bills, Telecom and Broadcasting Decision CRTC 2022-28, 10 February 2022*
- *TELUS Communications Inc. – Application to review and vary Telecom Orders 2019-170 and 2019-171, Telecom Decision CRTC 2020-33, 29 January 2020*

- *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*
- *Revised guidelines for review and vary applications, Telecom Information Bulletin CRTC 2011-214, 25 March 2011*
- *Revision of CRTC costs award practices and procedures, Telecom Regulatory Policy CRTC 2010-963, 23 December 2010*