



## Telecom Order CRTC 2017-375

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Ottawa, 23 October 2017

*File numbers: 1011-NOC2016-0192 and 4754-550*

### **Determination of costs award with respect to the participation of Media Access Canada in the proceeding that led to Telecom Regulatory Policy 2017-104**

#### **Application**

1. By letter dated 17 January 2017, Media Access Canada (MAC) applied for costs with respect to its participation in the proceeding that led to Telecom Regulatory Policy 2017-104 (the proceeding). In the proceeding, the Commission examined the policy issues surrounding the use of differential pricing practices by Internet service providers and established a framework for assessing these practices.
2. Bell Canada filed an intervention, dated 27 January 2017, in response to MAC's application. MAC filed a reply dated 30 January 2017.
3. MAC requested that its application for costs be accepted for consideration even though it was filed after the deadline, stipulated in the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (the Rules of Procedure), of 30 days following the filing of final representations in the proceeding. MAC submitted that it had always intended to apply for costs and that the delay was an inadvertent result of internal reorganization. Further, MAC argued that its application was overdue by only eight days and that there was no prejudice to the other parties to the proceeding, as they still had a chance to respond to the application. MAC argued that even if there had been prejudice to the other parties, its application should be accepted in the interests of fairness and the public interest. Finally, MAC submitted that an extension of the deadline to apply for costs would be consistent with prior Commission decisions.
4. MAC submitted that it had met the criteria for an award of costs set out in section 68 of 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.
5. In particular, MAC submitted that it represented the interests of Canadians with disabilities, as well as the organizations that make up the Access 2020 Coalition of Disabilities Stakeholders (the Coalition), which was formed to represent "one voice" for accessibility in telecommunications. MAC submitted that it provided approaches to not only protect, but potentially enhance, the experiences of Canadians with

disabilities by providing thoroughly researched submissions that were focused and specific and that evolved appropriately and necessarily through the proceeding.

6. With respect to the group or class of subscribers represented, MAC stated that as a result of its representation of the Coalition, it has unparalleled access to communities of persons with disabilities. With respect to the specific methods by which MAC has submitted that it represents the Coalition, MAC explained that it engaged Coalition members throughout the proceeding to gather feedback and consensus, as well as to gain perspectives from both experts and those with lived experiences. MAC submitted that this result was achieved through stakeholder consultations, research initiatives, and the preparation of its submissions.
7. MAC requested that the Commission fix its costs at \$41,731.53, consisting of \$39,762.06 for consultant and analyst fees and \$1,969.47 for disbursements. MAC's claim included the federal Goods and Services Tax (GST) and the Ontario Harmonized Sales Tax (HST) on fees, as applicable. MAC filed a bill of costs with its application.
8. With respect to consultants, MAC claimed 189 hours at the intermediate external consultant rate of \$165 per hour (\$35,239 total including tax) and 11.75 hours at the external rate for senior consultants of \$225 per hour (\$2,987.43 total including tax). MAC also claimed 6.5 hours at the external rate for senior consultants of \$225 per hour (\$1,497.23 total including tax and the applicable rebate) and, although it indicated in form III of its application for costs that it was entitled to a rebate of \$38.39 on this amount, it did not deduct this rebate from the total amount claimed in form V.
9. MAC submitted that telecommunications service providers that had a significant interest in the proceeding and actively participated are the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents).

## **Answer**

10. Bell Canada argued that the Commission should seek evidence to support the rates claimed by MAC. Bell Canada noted that the rates claimed for external consultants was equal to the maximum amount allowed under the *Guidelines for the Assessment of Costs* (the Guidelines), as set out in Telecom Regulatory Policy 2010-963, and that applying for the maximum amount is a common practice among costs applicants. Bell Canada argued that the Commission should seek evidence from applicants regarding the rates ordinarily charged by interveners to clients outside of Commission proceedings to ensure that costs are reasonably and necessarily incurred in accordance with subsection 70(2) of the Rules of Procedure.
11. Bell Canada also submitted that the costs respondents should be determined in accordance with the Guidelines.

## Reply

12. MAC responded that the rates claimed are in accordance with the framework established in the Guidelines. Further, MAC noted that Bell Canada did not raise an issue with the amount of time claimed, nor did it argue that the work was excessive. Therefore, MAC submitted that further inquiry by the Commission is not required.

## Commission's analysis and determinations

13. MAC's application was filed after the deadline as set out in the Rules of Procedure. However, the Commission considers that the late filing did not prejudice any party since parties were given notice of the application and had the opportunity to file an answer to it. In the circumstances, it is appropriate to consider the costs application.
14. 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.
15. 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. A costs applicant should make submissions that clearly and specifically identify and describe the group or class of subscribers it purports to represent. If the costs applicant is or represents an umbrella organization in which other smaller organizations of subscribers are members, the application should identify these member organizations. Submissions in respect of this criterion should also explain the specific method or methods by which the costs applicant represents the group or class of subscribers. In the present case, MAC identified the group it represents as including the organizations that make up the Coalition and indicated that the methods by which it represented this group were (i) direct consultation with the stakeholder groups that make up the Coalition and with individuals, and (ii) research initiatives. Accordingly, the Commission finds that MAC has satisfied the first criterion.

16. MAC has also satisfied the remaining criteria through its participation in the proceeding. In particular, MAC's submissions, especially regarding data-intensive applications that many Canadians with disabilities may rely on, assisted the Commission in developing a better understanding of how differential pricing practices by Internet service providers could affect Canadians with disabilities.
17. The Commission finds that the rates being claimed for MAC's external consultants are not excessive. The rates claimed in respect of consultant fees are in accordance with the rates established in the Guidelines, regardless of the fact that the rates claimed with respect to consultants are equal to the maximum allowable rates. The Commission does not consider it necessary or advisable to make further inquiries into the rates charged outside Commission proceedings, because this would further delay the disposition of this application, place additional burden on the applicant, and likely result in little to no impact on the amount of costs to be awarded. The Commission finds that the total amount claimed by MAC, less the rebate of \$38.39 – which MAC indicated in form III but did not deduct from the total amount in form V – was necessarily and reasonably incurred, resulting in a total amount of \$41,693.14 allowed.
18. 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.
19. 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. Given the scope of this general policy proceeding to establish a regulatory framework for examining the differential pricing practices of Internet service providers, a large number of parties had a significant interest in the outcome of the proceeding and participated actively in the proceeding.
20. As set out in the Guidelines, the Commission will generally name a maximum of 10 costs respondents for a costs award of up to \$20,000 and will add an extra respondent for each additional \$5,000 awarded. 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.
21. In light of the above, the Commission considers that the following parties are the appropriate costs respondents in the circumstances: Bell Canada; Quebecor Media Inc. on behalf of Videotron G.P. (Videotron); Rogers Communications Canada Inc. (RCCD); Saskatchewan Telecommunications (SaskTel); Shaw Cablesystems G.P. (Shaw); and TELUS Communications Company (TCC).
22. It is the Commission's general practice to allocate the responsibility for payment of costs among costs respondents based on their telecommunications operating revenues (TORs) as an indicator of the relative size and interest of the parties

involved in the proceeding.<sup>1</sup> The Commission considers that it is appropriate, in this case, to apply its general practice. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated as follows:

<b>Company</b>	<b>Percentage</b>	<b>Amount</b>
TCC	33.5%	\$13,967.20
RCCI	30.5%	\$12,716.41
Bell Canada	22.6%	\$9,422.65
Videotron	6.0%	\$2,501.59
Shaw	4.1%	\$1,709.42
SaskTel	3.3%	\$1,375.87

### **Directions regarding costs**

23. The Commission **approves, with the above-mentioned change**, the application by MAC for costs with respect to its participation in the proceeding.
24. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to MAC at \$41,693.14.
25. The Commission **directs** that the award of costs to MAC be paid forthwith by the costs respondents according to the proportions set out in paragraph 22.

Secretary General

### **Related documents**

- *Framework for assessing the differential pricing practices of Internet service providers*, Telecom Regulatory Policy CRTC 2017-104, 20 April 2017
- *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>1</sup> TORs consist of Canadian telecommunications revenues from local and access, long distance, data, private line, Internet, and wireless services. In this order, the Commission has used the TORs of the costs respondents based on their most recent audited financial statements.