



## Telecom Order CRTC 2019-167

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*File numbers: 1011-NOC2018-0098 and 4754-605*

### **Determination of costs award with respect to the participation of the Forum for Research and Policy in Communications in the proceeding that led to Telecom Decision 2018-475**

#### **Application**

1. By letter dated 23 November 2018, the Forum for Research and Policy in Communications (FRPC) applied for costs with respect to its participation in the proceeding that led to Telecom Decision 2018-475 (the proceeding). In the proceeding, the Commission considered proposals by Bell Mobility Inc. (Bell Mobility), Rogers Communications Canada Inc. (RCCI), and TELUS Communications Inc. (TCI) [collectively, the national wireless carriers] for lower-cost data-only mobile wireless service plans, which were filed pursuant to Telecom Notice of Consultation 2018-98.
2. Bell Canada, on behalf of Bell Mobility, and TCI filed interventions, dated 3 December 2018, in which they addressed general issues raised in the six costs applications filed with respect to the proceeding, including the FRPC's application.
3. The FRPC 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, the FRPC submitted that it represents the interests of Canadian mobile wireless service subscribers, and in particular those concerned with the affordability of mobile wireless plans. The FRPC further submitted that it had assisted the Commission by providing empirical research and analysis, including the results of a national survey and detailed comments focused on the implementation of the telecommunications policy objectives set out in section 7 of the *Telecommunications Act* (the Act).
5. The FRPC also submitted that its participation in the proceeding was responsible and that its costs were necessarily and reasonably incurred.
6. The FRPC requested that the Commission fix its costs at \$44,828.98, consisting of \$22,274.18 for legal fees and \$22,554.80 in disbursements. The FRPC's claim

included the Ontario Harmonized Sales Tax (HST) for both the legal fees and the disbursements. The FRPC filed a bill of costs with its application.

7. The FRPC claimed 38.89 hours for senior external legal counsel at a rate of \$250 per hour and 74 hours for junior external counsel at a rate of \$135 per hour. The \$22,554.80 claimed by the FRPC for disbursements is entirely for the survey conducted for it by Forum Research Inc.
8. The FRPC submitted that all telecommunications companies that provide wireless services are the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents).

### **Answer**

9. Bell Canada argued that all the telecommunications service providers (TSPs) that participated in the proceeding should be named costs respondents, with the responsibility for payment of costs allocated based on their telecommunications operating revenues (TORs).<sup>1</sup>
10. Conversely, TCI argued that the costs respondents should be limited to the national wireless carriers, as well as Ice Wireless Inc. (Ice Wireless), Quebecor Media Inc. (QMI), and Shaw Communications Inc. (Shaw). TCI further argued that the responsibility for payment of costs should be apportioned based on mobile wireless service revenues only, rather than TORs. TCI cited the costs awards issued (e.g. in Telecom Order 2017-362) in connection with the proceeding that led to Telecom Regulatory Policy 2017-200 as an example of the Commission making a similar determination in the past.
11. TCI also argued that the costs claimed by the FRPC, as well as by other costs applicants, should be reduced, given that the survey conducted for the FRPC was substantially duplicative of the surveys put forward by the Manitoba Coalition and the Public Interest Advocacy Centre, and that the associated costs would have been lower had these applicants collaborated to a greater extent.

### **Reply**

12. In reply, the FRPC submitted that the surveys in question were not duplicative, as they employed different means of contacting respondents, asked different questions, and sought Canadians' views for different purposes. The FRPC also noted that while parties are permitted to collaborate, organize, and file submissions together, such collaboration is not a requirement.

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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.

## **Request for information**

13. On 10 December 2018, Commission staff issued a request for information in which it asked the six costs applicants to address how the Commission's determinations in Telecom Orders [2018-437](#) and [2018-438](#) and Telecom Decision [2018-439](#) might apply to the costs they were claiming for their participation in the proceeding.
14. The FRPC did not make further submissions with respect to these determinations.

## **Commission's analysis and determinations**

15. 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.
16. The Commission finds that the FRPC has satisfied the criteria for an award of costs set out in section 68 of the Rules of Procedure. Specifically, the Commission finds that the FRPC represented a group or class of subscribers that had an interest in the outcome of the proceeding, it assisted the Commission in developing a better understanding of the matters that were considered, and it participated in a responsible way. In particular, the FRPC provided empirical research and analysis including the results of a national survey, as well as detailed comments that focused on the implementation of the telecommunications policy objectives.
  17. The rates claimed by the FRPC 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.
  18. The Commission finds that the legal fees claimed by the FRPC were necessarily and reasonably incurred and should be allowed.
  19. The Commission appreciates the FRPC's use of a survey to gather and report on the views of Canadian mobile subscribers. However, the Commission considers that this survey can be distinguished from other surveys filed in the proceeding in that it

generally provided less assistance in developing a better understanding of the matters that were considered. In particular, this survey mainly posed questions related to mobile wireless services at a higher level, and did not address the specific subject matter of the proceeding, namely, lower-cost data-only plans, in a significantly distinct or detailed manner. Further, the Commission notes that this survey was among the most expensive conducted by costs applicants in this proceeding.

20. Given the above, the Commission reduces the FRPC's costs associated with the survey by 20%.
21. The Commission therefore fixes the FRPC's total costs for its participation in the proceeding at \$40,318.02.
22. 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.
23. 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 considers that the following parties had a significant interest in the outcome of the proceeding and participated actively in the proceeding: the national wireless carriers, as well as Bragg Communications Incorporated, carrying on business as Eastlink (Eastlink); Cogeco Communications Inc. (Cogeco); Ice Wireless; QMI, on behalf of Videotron Ltd. (Videotron); Saskatchewan Telecommunications (SaskTel); Shaw; SSi Micro Ltd. (SSi Micro); and Xplornet Communications Inc. (Xplornet).
24. While Telecom Notice of Consultation 2018-98, which initiated the proceeding, was directed towards the national wireless carriers in particular, the submissions of the other companies in the proceeding made clear that they also had a significant interest in its outcome. Many argued strenuously against the Commission imposing any additional form of regulation because of their view that it would impact their own ability to compete in the market.
25. Therefore, the Commission finds that the following parties are the appropriate costs respondents to the FRPC's application for costs: Bell Mobility, Cogeco, Eastlink, Ice Wireless, RCCI, SaskTel, Shaw, SSi Micro, TCI, Videotron, and Xplornet.
26. 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.<sup>2</sup>

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

27. 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.
28. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated as follows:

Company	Proportion	Amount
TCI	32.2%	\$12,982.40
RCCI	31.3%	\$12,619.54
Bell Mobility	22.4%	\$9,031.24
Videotron	6.4%	\$2,580.35
Shaw	4.5%	\$1,814.31
SaskTel	3.2%	\$1,290.18

### Directions regarding costs

29. The Commission **approves, with changes**, the application by the FRPC for costs with respect to its participation in the proceeding.
30. Pursuant to subsection 56(1) of the Act, the Commission fixes the costs to be paid to the FRPC at \$40,318.02.
31. The Commission **directs** that the award of costs to the FRPC be paid forthwith by TCI, RCCI, Bell Mobility, Videotron, Shaw, and SaskTel according to the proportions set out in paragraph 28.

Secretary General

### Related documents

- *Lower-cost data-only plans for mobile wireless services*, Telecom Decision CRTC 2018-475, 17 December 2018
- *Deaf Wireless Canada Consultative Committee – Application to review and vary Telecom Order 2018-66*, Telecom Decision CRTC 2018-439, 28 November 2018
- *Determination of costs award with respect to the participation of the Canadian National Society of the Deaf-Blind, Inc. in the Telecom Notice of*

- Consultation 2017-33 proceeding*, Telecom Order CRTC 2018-438, 28 November 2018
- *Determination of costs award with respect to the participation of the Deaf Wireless Canada Consultative Committee in the Telecom Notice of Consultation 2017-33 proceeding*, Telecom Order CRTC 2018-437, 28 November 2018
  - *Lower-cost data-only plans for mobile wireless services*, Telecom Notice of Consultation CRTC 2018-98, 22 March 2018; as amended by Telecom Notice of Consultation CRTC 2018-98-1, 10 May 2018
  - *Determination of costs award with respect to the participation of the Forum for Research and Policy in Communications in the proceeding that led to Telecom Regulatory Policy 2017-200*, Telecom Order CRTC 2017-362, 16 October 2017
  - *Review of the Wireless Code*, Telecom Regulatory Policy CRTC 2017-200, 15 June 2017
  - *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