



Telecom Order CRTC 2016-138

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Determination of costs award with respect to the participation of the Canadian Internet Policy and Public Interest Clinic in the proceeding leading to Telecom Decision 2016-60

Application

1. By letter dated 26 October 2015, the Canadian Internet Policy and Public Interest Clinic (CIPPIC) applied for costs with respect to its participation in the proceeding leading to Telecom Decision 2016-60 (the proceeding). In the proceeding, the Canadian Network Operators Consortium Inc. (CNO) requested that the Commission review and vary certain determinations made in Telecom Regulatory Policy 2015-177.
2. Specifically, CNO challenged the Commission's determinations to continue to forbear from the regulation of full mobile virtual network operators' (MVNOs) access services, as well as wholesale tower and site sharing. CNO submitted that the Commission erred in law and in fact, and that it failed to consider basic principles that would have rendered a different outcome.
3. The Commission did not receive any interventions in response to the application for costs.
4. CIPPIC 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.
5. In particular, CIPPIC submitted that the proceeding addressed issues such as competition and innovation in the mobile wireless market, which align with CIPPIC's core mandate to advance the public interest in areas related to the intersection of law, technology, and policy. CIPPIC stated that it contributed to a better understanding of the matters that were considered by presenting evidence and raising arguments that were distinct from those of other interveners, as well as by enriching the record that informed the policy analysis.
6. CIPPIC requested that the Commission fix its costs at \$2,700, consisting entirely of in-house legal fees.

7. CIPPIC made no submission as to the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents).

Commission's analysis and determinations

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. CIPPIC has satisfied these criteria through its participation in the proceeding. As a public interest and Internet-policy-focused legal clinic, CIPPIC represented a group of subscribers that had an interest in the outcome of the proceeding. As well, CIPPIC contributed to a better understanding of the matters that were considered through its arguments in favour of CNOC's application. For instance, CIPPIC provided evidence of market conditions in other countries to demonstrate how different MVNOs' business models can enhance network investments in Canada.
10. The rates claimed in respect of legal fees are in accordance with the rates established in the Commission's *Guidelines for the Assessment of Costs*, as set out in Telecom Regulatory Policy 2010-963. The Commission finds that the total amount claimed by CIPPIC was necessarily and reasonably incurred and should be allowed.
11. 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.
12. 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:
Bell Mobility Inc.; Bragg Communications Incorporated, operating as Eastlink; CNOC; Cogeco Cable Inc.; MTS Inc., Saskatchewan Telecommunications, and TBayTel collectively; Quebecor Media Inc., on behalf of Videotron G.P.; Rogers

Communications Partnership; TELUS Communications Company (TCC); and WIND Mobile Corp.

13. The Commission generally allocates the responsibility for payment of costs among parties that had a significant interest in the outcome of the proceeding and that participated actively in the proceeding based on their telecommunications operating revenues (TORs),¹ as reported in their most recent audited financial statements. However, the Commission has occasionally departed from this approach in circumstances where it would not fairly reflect the interests or degree of participation of the parties concerned.
14. Given the focus of the proceeding, the approach of allocating the responsibility for payment of costs based only on TORs would yield a result that does not fairly reflect the interests or degree of participation of the parties concerned. In the circumstances, the Commission finds it appropriate for CNOC to be a costs respondent and to be responsible for payment of 40% of the costs, given that it initiated the proceeding and therefore had a very significant interest in the outcome. The Commission finds that the responsibility for payment of the remaining costs should be allocated to other parties that had an interest in the outcome of the proceeding and in proportion to their TORs.
15. In Telecom Order 2015-160,² the Commission considered \$1,000 to be the minimum amount that a party should be required to pay due to the administrative burden that small costs awards impose on both the applicant and costs respondents. Based on this approach, the Commission finds that TCC should also be a costs respondent.
16. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated as follows:

Company	Percentage	Amount
TCC	60%	\$1,620
CNOC	40%	\$1,080

Directions regarding costs

17. The Commission **approves** the application by CIPPIC for costs with respect to its participation in the proceeding.

¹ TORs consist of Canadian telecommunications revenues from local and access, long distance, data, private line, Internet, and wireless services.

² See paragraph 21.

18. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to CIPPIC at \$2,700.
19. The Commission **directs** that the award of costs to CIPPIC be paid forthwith by CNOC and TCC according to the proportions set out in paragraph 16.

Secretary General

Related documents

- *The Canadian Network Operators Consortium Inc. – Application to review and vary Telecom Regulatory Policy 2015-177*, Telecom Decision CRTC 2016-60, 18 February 2016
- *Regulatory framework for wholesale mobile wireless services*, Telecom Regulatory Policy CRTC 2015-177, 5 May 2015
- *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