



Telecom Order CRTC 2013-520

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Ottawa, 27 September 2013

Determination of costs award with respect to the participation of the DiversityCanada Foundation in the proceeding leading to Telecom Regulatory Policy 2013-271

File numbers: 8665-C12-201212448 and 4754-414

1. By letter dated 3 April 2013, the DiversityCanada Foundation (DiversityCanada) applied for costs with respect to its participation in the proceeding leading to Telecom Regulatory Policy 2013-271 (the proceeding).
2. On 19 April 2013, Bell Canada and TELUS Communications Company (TCC) filed interventions in response to DiversityCanada's application.
3. DiversityCanada filed a reply on 10 May 2013, in which it also applied for costs incurred in preparing the reply. Bell Canada filed a response on 23 May 2013. DiversityCanada filed a final reply on 28 May 2013.

Application

4. DiversityCanada 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. DiversityCanada requested that the Commission fix its costs at \$89,578.44, consisting of \$2,250 for expert witness fees, \$85,590.72 for consultant and analyst fees, and \$1,737.72 for disbursements. DiversityCanada's claim included the Ontario Harmonized Sales Tax (HST) on fees. DiversityCanada filed a bill of costs with its application.
6. DiversityCanada claimed 336.6 hours at a rate of \$225 per hour for consultant fees, consisting of, among other things, 41.2 hours for reviewing files, 20 hours for conducting legal research, and 37.2 hours for preparing reply comments in the costs process.
7. DiversityCanada submitted that Bell Aliant Regional Communications, Limited Partnership, Bell Canada, and Télébec, Limited Partnership (collectively, Bell Canada et al.); Bragg Communications Inc. (operating as EastLink); Data & Audio-Visual Enterprises Wireless Inc. (operating as Mobilicity); Globalive Wireless Management Corp. (Globalive); MTS Inc. (MTS) and

Allstream Inc. (collectively, MTS Allstream); Public Mobile Inc. (Public Mobile); Rogers Communications Partnership (RCP); Saskatchewan Telecommunications (SaskTel); and TCC are the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents) because they currently offer or will offer prepaid wireless services, which were the focus of DiversityCanada's participation in the proceeding, and they actively participated in the proceeding.

Answer

8. In response to the application, Bell Canada and TCC argued that Ms. Celia Sankar, for whom DiversityCanada is claiming consultant fees, participated in the proceeding as an individual, or, at most, as an in-house consultant to DiversityCanada and that her costs should therefore be limited to disbursements. Bell Canada and TCC noted that, in Telecom Costs Order 2008-3, the Commission denied consultant fees claimed by an individual whom it judged to be acting not as a consultant but as the driving force of the applicant organization, and whose position was analogous to that of an individual appearing before the Commission. Bell Canada and TCC thus contended that Ms. Sankar, as DiversityCanada's volunteer executive director and the driving force behind the organization, presented her views as an individual subscriber rather than presenting, as a consultant, the views of DiversityCanada representing a group or class of subscribers. Bell Canada argued that Ms. Sankar's situation should be treated similarly to that of Mr. Jean-Francois Mezei of Vaxination Informatique (Vaxination), who participates in Commission proceedings as an individual and claims only his disbursements.
9. Bell Canada and TCC submitted that, if the Commission determines that DiversityCanada is eligible for an award of costs, the costs should be reduced from what was claimed. They argued that 1) the rate claimed for Ms. Sankar should be reduced because she is not a consultant with 25 or more years of experience; 2) the number of hours should be reduced because the amounts were not reasonably or necessarily incurred, in particular because some of the research was conducted for the purpose of Ms. Sankar's class-action lawsuit¹ and therefore not for the purposes of the proceeding; and 3) applicants are not entitled to an award of costs arising from the costs application and reply process.
10. Finally, TCC submitted that the payment of any costs awarded should be allocated according to the costs respondents' wireless revenues due to the proceeding's focus on developing a wireless code of conduct.

Reply

11. In reply, DiversityCanada argued that it was conducting a public education and mobilization campaign regarding the prepaid wireless industry, and that its representation of a group of subscribers, as well as its participation as an

¹ Bell Canada noted that Ms. Sankar is a litigant against them in a class-action lawsuit related to their prepaid services.

organization in the proceeding, derived from that campaign. DiversityCanada further argued that Ms. Sankar's role with the organization disclosed from the outset of the proceeding and that no costs had been claimed for her work in that role, but only for the research and writing services that were her professional occupation. DiversityCanada submitted that, throughout the proceeding, Ms. Sankar acted on its behalf rather than her own.

12. DiversityCanada also submitted that the hours and costs it claimed are comparable to those claimed by other applicants in relation to the proceeding and are reasonable by external standards in the writing profession. DiversityCanada added that the Commission has previously awarded costs incurred in the costs application process.

Commission's analysis and determinations

Ms. Sankar's relationship with DiversityCanada and level of experience

13. Regarding its decision in Telecom Costs Order 2008-3, the Commission notes that a costs applicant claimed costs for consultant fees in association with a submission filed on behalf of the organization "97% of the People of Canada." In that case, the Commission denied the costs claimed because it was not satisfied that a genuine consultant relationship existed between the costs applicant and the organization.
14. The Commission considers, however, that Telecom Costs Order 2008-3 arose from an unusual scenario wherein an organization that carried out no discernible activities claimed to represent a broad constituency through a unique "opt-out" membership model. DiversityCanada's situation is different in that it is a genuine organization with various members and known initiatives, and Ms. Sankar directs its activities in a manner similar to many other non-profit organizations.
15. Similarly, the Commission notes that DiversityCanada can be distinguished from Vaxination not only by its legal form (DiversityCanada is a registered corporation, while Vaxination is a registered sole proprietorship), but also by the nature of their operations, as presented in the evidence available to the Commission. Vaxination is the formal vehicle through which Mr. Mezei has chosen to carry on his own consultancy business, without any apparent employees or associates, and thus its interventions are properly treated as those of an individual.
16. With respect to Ms. Sankar's experience, the Commission considers that her long career as a journalist, researcher, and writer for media, government, and business clients, while not directly related to the telecommunications industry, is sufficiently relevant to Commission proceedings for her to be treated as a consultant within the broad definition contemplated by the Commission's *Guidelines for the Assessment of Costs* (the Guidelines), as set out in Telecom Regulatory Policy 2010-963.² The Commission therefore considers that the rates claimed in respect of consultant and analyst fees are in accordance with the rates established in the Guidelines.

² The Guidelines define a consultant or analyst as "a person who participated in a proceeding, but who was not a person who acted as legal counsel or an expert witness."

Focus of DiversityCanada's participation

17. The Commission considers that the assessment of costs in proceedings carried out pursuant to the *Telecommunications Act* (the Act) is intended to facilitate broad public participation in these proceedings. The fact that DiversityCanada's main initiatives do not generally focus on telecommunications matters does not prevent such an organization, in the Commission's view, from providing a valuable viewpoint on such matters. In the proceeding, DiversityCanada's participation focused on the issues of prepaid wireless consumers, a subset of the wireless market whose situation was otherwise not emphasized in the broad policy discussions that took place. The Commission considers that DiversityCanada contributed to a better understanding of those issues by the Commission. Accordingly, the Commission finds that DiversityCanada has satisfied the criteria for an award of costs set out in section 68 of the Rules of Procedure.

DiversityCanada's claim for costs

18. The Commission notes that it has previously allowed applicants to claim costs incurred in the costs application process as part of their participation in a proceeding. In Taxation Order 98-9, the Commission noted that this had been done on numerous occasions. The Commission also notes that its current Form I, used to summarize legal fees for costs applications, explicitly provides space to account for costs incurred in applying for costs.
19. However, the Commission considers that, given the narrow focus of DiversityCanada's intervention in the proceeding, the organization claims for its hours of participation in the proceeding are excessive for a consultant of Ms. Sankar's experience. The Commission notes that four of the five other costs applicants that claimed consultant or legal fees in the proceeding claimed significantly less than the 61.2 hours of file review and research time claimed by DiversityCanada.³ In addition, all five prepared extensive interventions on a broader cross-section of the complex issues raised in the proceeding in comparable or less time than DiversityCanada claimed.
20. The Commission thus finds that the total amount claimed by DiversityCanada was not necessarily and reasonably incurred, and should therefore be reduced. Specifically, the 61.2 hours that DiversityCanada claimed for research and file review should be reduced to 20 hours, and DiversityCanada's remaining time claims for consultant and analyst work should be reduced by 35 percent.
21. In light of the above, the total amount of costs allowed for DiversityCanada, as revised by the Commission's determinations in paragraph 20 of this order, is \$47,414.97, consisting of \$2,250 for expert witness fees, \$43,427.25 for consultant and analyst fees, and \$1,737.72 for disbursements.

³ The Consumers Council of Canada claimed 7.4 hours of such time, CIPPIC claimed 10 hours, Media Access Canada claimed 0.75 hours, l'Union des consommateurs claimed 6.25 hours, and PIAC claimed 209.65 hours, mostly for work done by its articling student.

Allocation of payment of costs

22. The Commission considers that 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 notes the submission by DiversityCanada that the costs respondents should be limited to those wireless service providers that participated in the proceeding and offer prepaid services. However, the Commission considers that it is unnecessary to depart from its usual practice of naming all the telecommunications service providers that participated in the proceeding as costs respondents. Although DiversityCanada's submission was generally limited to one particular issue, that issue was part of a broader proceeding, and it would be inefficient for the parties to the cost applications and for the Commission to attempt to parse out the particular interest associated with each cost applicant.
24. The Commission therefore finds that the appropriate costs respondents to DiversityCanada's costs application are Bell Canada et al., EastLink, Mobilicity, Globalive, MTS Allstream, Public Mobile, RCP, SaskTel, TCC, and Videotron G.P. (Videotron).
25. The Commission notes that it generally allocates the responsibility for payment of costs among costs respondents based on their telecommunications operating revenues (TORs)⁴ as an indicator of the relative size and interest of the parties involved in the proceeding. For the reasons discussed in Telecom Order 2013-521, also released today, the Commission considers that, in the present circumstances, it is appropriate to apportion the costs among the costs respondents in proportion to their TORs, based on their most recent audited financial statements. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated as follows:

Bell Canada et al.:	39.6%
TCC:	24.5%
RCP:	23.6%
MTS Allstream:	4.3%
Videotron:	3.5%
SaskTel:	2.6%
EastLink:	0.8%
Globalive:	0.7%
Public Mobile:	0.2%
Mobilicity:	0.2%

26. The Commission notes that Bell Canada filed submissions in the proceeding on behalf of Bell Canada et al. and that MTS Allstream filed joint submissions.

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

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

Directions regarding costs

27. The Commission **approves with changes** the application by DiversityCanada for costs with respect to its participation in the proceeding.
28. Pursuant to subsection 56(1) of the Act, the Commission fixes the costs to be paid to DiversityCanada at \$47,414.97.
29. The Commission directs that the award of costs to DiversityCanada be paid forthwith by Bell Canada on behalf of Bell Canada et al., by TCC, by RCP, by MTS on behalf of MTS Allstream, by Videotron, by SaskTel, by EastLink, by Globalive, by Public Mobile, and by Mobilicity, according to the proportions set out in paragraph 25.

Secretary General

Related documents

- *Determination of costs award with respect to the participation of the Consumers Council of Canada in the proceeding leading to Telecom Regulatory Policy 2013-271*, Telecom Order CRTC 2013-521, 27 September 2013
- *The Wireless Code*, Telecom Regulatory Policy CRTC 2013-271, 3 June 2013
- *Revision of CRTC costs award practices and procedures*, Telecom Regulatory Policy CRTC 2010-963, 23 December 2010
- *Determination of costs award with respect to the participation of “97% of the People of Canada” in the Telecom Public Notice 2007-15 proceeding*, Telecom Costs Order CRTC 2008-3, 8 April 2008
- *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
- Taxation Order CRTC 98-9, 11 June 1998