



## Telecom Order CRTC 2016-158

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Ottawa, 27 April 2016

*File numbers: 8657-C12-201505505 and 4754-507*

### **Determination of costs award with respect to the participation of the Canadian Internet Policy & Public Interest Clinic in the proceeding initiated by Broadcasting and Telecom Notice of Consultation 2015-239**

#### **Application**

1. By letter dated 22 December 2015, the Canadian Internet Policy & Public Interest Clinic (CIPPIC) applied for costs with respect to its participation in the proceeding initiated by Broadcasting and Telecom Notice of Consultation 2015-239 (the proceeding). In that proceeding, the Commission asked for input on the service that the Commissioner for Complaints for Telecommunications Services Inc. (CCTS) provides to consumers; the consumer experience with the CCTS; public awareness of the CCTS; company participation in the CCTS; and the mandate, activities, structure, and funding of the CCTS.
2. The Commission did not receive any interventions in response to the application for costs.
3. 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.
4. In particular, CIPPIC submitted that it represents a significant group of subscribers that have a strong interest in the outcome of the proceeding, as the proceeding intersected with CIPPIC's mandate to advocate in the public interest on matters arising at the intersection of law and technology. CIPPIC also submitted that its intervention raised arguments and presented evidence distinct from other parties, and it provided a distinct perspective on the issues raised at the public hearing.
5. CIPPIC requested that the Commission fix its costs at \$2,100, consisting entirely of legal fees. CIPPIC filed a bill of costs with its application.
6. CIPPIC made no submission as to the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents).

## **Request for information**

7. In a letter dated 12 February 2016, it was noted that the proceeding related to both telecommunications and broadcasting issues, and that this is important because the Commission may only award costs related to telecommunications matters under the *Telecommunications Act* (the Act).
8. The letter noted that the Commission cannot predetermine the amount of time spent by costs applicants in combined telecommunications and broadcasting proceedings. In particular, it was noted that the overall division of issues in the proceeding does not necessarily translate into the amount of time that any specific costs applicant spends on either telecommunications or broadcasting matters. It was noted that only the individual costs applicant knows the amount of time allocated to particular issues and whether these issues related to telecommunications or broadcasting matters.
9. Accordingly, all costs applicants to the proceeding, including CIPPIC, were requested to provide the percentage of time spent on telecommunications matters during the proceeding, including support as to how parties determined the allocation of time spent on telecommunications as opposed to broadcasting matters.
10. In its response, dated 22 February 2016, CIPPIC submitted that it is not able to forensically distinguish between time spent on telecommunications matters and broadcasting matters in the proceeding. Nonetheless, CIPPIC conducted a review of its submissions and submitted that any time it spent on broadcasting matters was less than 5%, a *de minimis* amount. CIPPIC submitted that the primary focus of its analysis was on telecommunications matters and only tangentially touched on broadcasting matters. In this regard, CIPPIC noted that its submissions largely related to the constitution of the CCTS and the scope of its powers. CIPPIC submitted that since the time it had spent on broadcasting matters in the proceeding and the ultimate amount that could be awarded by the Broadcasting Participation Fund were *de minimis* amounts, it would not justify a separate costs application to the Broadcasting Participation Fund. Therefore, CIPPIC argued that the entire bill of costs of \$2,100 should be awarded.
11. No answers with respect to CIPPIC's response to the request for information were received from other parties.

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

12. 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.

13. CIPPIC satisfied these criteria through its participation in the proceeding. In particular, CIPPIC's submissions, especially regarding expanding the mandate of the CCTS so that its fact-finding and complaints resolutions services could be applied to a broader range of contexts, assisted the Commission in developing a better understanding of the matters that were considered. In addition, CIPPIC contributed important comments regarding the structure of the CCTS. Without CIPPIC's participation and submissions, the Commission would not have had as comprehensive an understanding of the matters before it.
14. 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.
15. The proceeding related to both telecommunications and broadcasting issues. As noted above, the Commission may only award costs related to telecommunications matters under the Act. However, parties are free to apply to the Broadcasting Participation Fund for the portion of time that they dedicated to broadcasting matters in the proceeding.
16. Based on the record of the proceeding, and given that CIPPIC's submissions during the proceeding were primarily focused on telecommunications matters and only touched on broadcasting matters tangentially, the Commission finds that awarding CIPPIC the full amount claimed is acceptable, and that the total amount claimed by CIPPIC was necessarily and reasonably incurred and should be allowed.
17. 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.
18. 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 Canada; Bragg Communications Incorporated, operating as Eastlink; the Canadian Network Operators Consortium Inc.; Cogeco Cable Inc.; MTS Inc. and Allstream Inc.; Quebecor Media Inc., on behalf of Videotron G.P.; Rogers Communications Partnership; Saskatchewan Telecommunications; Shaw Communications Inc.; TBayTel; and TELUS Communications Company (TCC).

19. 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 telecommunications operating revenues (TORs)<sup>1</sup> as an indicator of the relative size and interest of the parties involved in the proceeding.
20. However, as set out in paragraph 21 of 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. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated to TCC.

### **Directions regarding costs**

22. The Commission **approves** the application by CIPPIC for costs with respect to its participation in the proceeding.
23. Pursuant to subsection 56(1) of the Act, the Commission fixes the costs to be paid to CIPPIC at \$2,100.
24. The Commission **directs** that the award of costs to CIPPIC be paid forthwith by TCC.

Secretary General

### **Related documents**

- *Review of the structure and mandate of the Commissioner for Complaints for Telecommunications Services Inc.*, Broadcasting and Telecom Notice of Consultation CRTC 2015-239, 4 June 2015, as amended by Broadcasting and Telecom Notices of Consultation CRTC 2015-239-1, 24 July 2015, and 2015-239-2, 25 September 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

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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.