



Telecom Information Bulletin CRTC 2016-188

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Guidance for costs award applicants regarding representation of a group or a class of subscribers

The Commission provides guidance on the type of information that will generally assist it in its consideration of the costs award eligibility criterion applicable to costs applicants who submit that they represent a group or a class of subscribers that has an interest in the outcome of a proceeding.

Introduction

1. Section 56 of the *Telecommunications Act* grants the Commission the power to award both interim and final costs to parties who participate in telecommunications proceedings before it. The Commission may order by whom and to whom costs are to be paid and may fix the amount of costs or direct that costs be taxed.¹
2. The procedures governing applications for costs awards are set out in sections 60 to 70 of the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (the Rules of Procedure).
3. In particular, the criteria for an award of interim costs are set out in section 63 of the Rules of Procedure, while the criteria for an award of final costs are set out in section 68 of the Rules of Procedure. These criteria are used both to determine whether an applicant is eligible for an award of costs, and, if eligible, to determine the amount that is to be awarded to the applicant.
4. The Commission has also published *Guidelines for the Assessment of Costs*, as set out in Telecom Regulatory Policy [2010-963](#) (the Guidelines). The Guidelines provide guidance regarding the procedures to be followed when filing costs applications and the considerations that the Commission will generally take into account in exercising its discretion to award costs. Past costs orders also provide guidance on how the Commission interprets the costs awards criteria.

¹ In Telecom Public Notice 2002-5, the Commission established a streamlined procedure whereby it generally proceeds to fix the costs to be paid as part of the costs award process, thereby dispensing with the need for a follow-up taxation process. While it will generally only do so in exceptional circumstances, the Commission retains the discretion to proceed with taxation where appropriate.

Representation of a group or a class of subscribers that has an interest in the outcome of the proceeding

5. Section 63 of the Rules of Procedure sets out the four criteria for an award of interim costs. The first criterion in this section reads as follows:

63. The Commission must determine whether to award interim costs and the amount that is to be awarded on the basis of the following criteria:

(a) whether the applicant has, or is the representative of a group or a class of subscribers that has, an interest in the outcome of the proceeding; [...] ²

6. Section 68 of the Rules of Procedure sets out the three criteria for an award of final costs. The first criterion in this section 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; [...] ³

7. The Guidelines do not currently provide any specific guidance with respect to the first criterion, set out in paragraphs 63(a) and 68(a) of the Rules of Procedure for interim and final costs, respectively. The Commission considers that no such guidance is necessary at this time with respect to whether a costs applicant has a personal interest in a proceeding.
8. However, most parties who claim costs in respect of their participation in Commission proceedings submit that they participate as representatives of a group or a class of subscribers. The Commission considers that it would be appropriate to provide guidance regarding how a costs applicant is to demonstrate that it represents a group or a class of subscribers that has an interest in a proceeding.
9. Blanket statements that a costs applicant represents a group or a class of subscribers, without further elaboration, will generally not be sufficient for the Commission to conclude that a costs applicant satisfies this criterion.

² The remaining criteria are (b) the extent to which the applicant can assist the Commission in developing a better understanding of the matters to be considered; (c) whether the applicant has sufficient financial resources to participate effectively in the proceeding; and (d) whether the applicant undertook to participate in the proceeding in a responsible way.

³ The remaining criteria are (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.

10. In its costs application, a costs applicant should make submissions that clearly and specifically identify and describe the group or class of subscribers it purports to represent. This description could involve identifying the specific demographic or socio-economic features of the members of the group or class of subscribers. For example, a costs applicant that represents seniors and/or low-income consumers should clearly identify this in its costs application.
11. Describing the group or class of subscribers could also involve providing information on the region or regions of Canada in which the group or class members are located. For example, a costs applicant that represents subscribers from a particular province should identify this.
12. 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.
13. A costs application could also include details, if available, of the number of individuals making up the group or class of subscribers being represented.
14. 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 other words, a costs applicant should describe how it determined that the positions it put forward in the substantive proceeding for which costs are being claimed reflected the interests of the group or class of subscribers it claims to represent.⁴
15. This could be through direct consultation with its members or otherwise. For instance, the costs applicant may have conducted a formal or informal poll of the subscribers who are its members, constituents, or stakeholders, or may have solicited feedback on a matter, for instance, through its website, through social media or other forms of digital communications, via telephone, or through in-person or online meetings.
16. In the event that a costs applicant did not canvass or consult members of the group or class of subscribers it purports to represent, the costs applicant should nonetheless address and explain how its positions reflect the interests of that group or class of subscribers. For instance, the costs applicant may provide evidence of research it has conducted or commissioned.
17. Including the information described above in costs applications will assist the Commission in its consideration of whether a costs applicant satisfies the eligibility criteria. If an applicant for interim or final costs does not provide sufficient explanation of the group or class of subscribers it represents, and of how the interests of this group or class of subscribers will be or were represented, the Commission

⁴ Alternatively, in the case of an application for interim costs, the applicant should describe how it intends to determine that the positions it will put forward reflect the interests of the group or class of subscribers it represents.

may not be able to conclude that the criterion set out in paragraph 63(a) or 68(a), respectively, of the Rules of Procedure, has been satisfied.

Conclusion

18. The Commission considers each application for costs on its own merits and with respect to the particular circumstances of the file. The Commission intends to consider applications for costs awards filed after today's date in light of the general guidance set out in this information bulletin, while retaining the discretion to take alternate approaches where doing so would be appropriate in the circumstances.

Secretary General

Related documents

- *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