



Telecom Order CRTC 2022-256

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File numbers: 1011-NOC2020-0178 and 4754-685

Determination of costs award with respect to the participation of the Deaf and Hard of Hearing Coalition in the proceeding initiated by Telecom Notice of Consultation 2020-178

Application

1. By letter dated 8 April 2022, the Deaf and Hard of Hearing Coalition (DHH Coalition), which is composed of the Deafness Advocacy Association Nova Scotia (DAANS), the Newfoundland and Labrador Association of the Deaf (NLAD), and the Ontario Association of the Deaf (OAD), applied for costs with respect to its participation in the proceeding initiated by Telecom Notice of Consultation 2020-178. In that proceeding, the Commission is examining a number of questions relating to the accessibility of mobile wireless services (wireless services). These include (i) how wireless service providers (WSPs) are complying with the Commission's existing regulatory framework and whether differences exist between primary and flanker brands; (ii) whether the plans currently offered and promoted are sufficient to meet the needs of Canadians with various disabilities; and (iii) whether additional regulatory measures are required and, if so, the nature of measures required to ensure that Canadians with various disabilities have access to plans that meet their needs and enable them to participate more fully in Canada's digital economy.
2. Rogers Communications Canada Inc. (RCCI) and TELUS Communications Inc. (TCI) filed interventions, dated 18 April 2022, in response to the DHH Coalition's application. The DHH Coalition did not file a reply.
3. The DHH Coalition submitted that its member DAANS had first participated in the Commission's review of wireless services, initiated by Telecom Notice of Consultation 2019-57 (the wireless services review), as part of DWCC [Deaf Wireless Canada Consultative Committee] et al.¹ By letter dated 4 December 2019, the Commission indicated that it would launch a separate proceeding (published as Telecom Notice of Consultation 2020-178) dedicated to consideration of accessibility-related wireless service issues. The Commission indicated that the interventions filed by DWCC et al. in the context of the wireless services review would be transferred to the record of the new proceeding. The DHH Coalition

¹ DWCC et al. was composed of the Canadian Association of the Deaf – Association des Sourds du Canada; the Canadian National Society of the Deaf-Blind, Inc.; DAANS; and the DWCC.

indicated that certain costs claimed in this application relate to the submissions initially made in the wireless services review.

4. The DHH Coalition 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, the DHH Coalition submitted that each of its member organizations represents the interests of Deaf Canadians. Specifically, DAANS works with the public, private, and non-profit sectors to remove barriers faced by Deaf, hard-of-hearing, deaf-blind, and late-deafened Nova Scotians. NLAD protects and promotes the rights of people who are Deaf or who communicate in American Sign Language in Newfoundland and Labrador. OAD promotes and protects the rights of Deaf Ontarians.
6. The DHH Coalition requested that the Commission fix its costs at \$28,976.46, consisting of both in-house and external consultant fees, and disbursements. The DHH Coalition filed a bill of costs with its application.
7. The DHH Coalition claimed \$18,095.00 for in-house consultant fees at the daily rate of \$470.00, \$9,900.00 for external junior consultant fees at the hourly rate of \$110.00, and \$211.46 in disbursements. Disbursements claimed included office expenses, the cost of a report on technology accessibility, and notarizing fees.
8. On 4 July 2022, the DHH Coalition filed an amended costs application to take into account costs incurred as a result of responding to a procedural request from DWCC that was filed after final costs applications were submitted. The DHH Coalition claimed \$770.00 for external junior consultant fees at the hourly rate of \$110.00.
9. The DHH Coalition submitted that the WSPs that participated in both the wireless services review and the proceeding initiated by Telecom Notice of Consultation 2020-178 (collectively, the proceedings) are the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents).

Answer

10. RCCI and TCI did not object to the DHH Coalition's eligibility for costs and took no positions regarding the amount of costs claimed. However, both companies requested that any costs awarded be allocated on the basis of wireless service revenues.

Commission's analysis

11. 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.
12. In Telecom Information Bulletin 2016-188, the Commission provided guidance regarding how an applicant may demonstrate that it satisfies the first criterion with respect to its representation of interested subscribers. In the present case, the DHH Coalition has demonstrated that it meets this requirement. For instance, it held focus groups with Deaf and hard-of-hearing Canadians to gauge their overall satisfaction with their current wireless service plans, which helped to inform their submissions in this case.
13. The DHH Coalition has also satisfied the remaining criteria through its participation in the proceedings. It made submissions regarding the barriers faced by Deaf sign language users who use wireless services and regarding potential solutions to better meet the needs of persons with disabilities. For instance, the DHH Coalition cited the *Accessible Canada Act* and the 2019 Policy Direction² as major developments that warranted a revised approach towards accessibility. While the DHH Coalition was not the only party to comment on these issues, its contribution was unique and valuable in assisting the Commission in developing a better understanding of the matters that were considered.
14. Accordingly, the Commission finds that the applicant meets the criteria for an award of costs under section 68 of the Rules of Procedure.
15. The rates claimed in respect of consultant fees are in accordance with the rates established in the *Guidelines for the Assessment of Costs* (the Guidelines), as set out in Telecom Regulatory Policy 2010-963. The Commission finds that the total amount claimed by the DHH Coalition was necessarily and reasonably incurred and should be allowed.

² Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives to Promote Competition, Affordability, Consumer Interests and Innovation, SOR/2019-227, 17 June 2019

16. 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.
17. 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 proceedings and participated actively in the proceedings: Bell Mobility Inc. (Bell Mobility);³ Brooke Telecom Co-operative Ltd.; Bruce Telecom Ontario Inc.; Bragg Communications Incorporated, carrying on business as Eastlink; Execulink Telecom Inc.; Freedom Mobile Inc. (Freedom); Hay Communications Co-operative Limited; Huron Telecommunications Co-operative Limited; Ice Wireless Inc.; Mornington Communications Co-operative Limited; Petro Canada Mobility; Quadro Communications Co-operative Inc.; RCCI; Saskatchewan Telecommunications; Sogetel Mobilité inc.; TBayTel; TCI; Tuckersmith Communications Co-operative Limited; Videotron Ltd.; Xplore Mobile Inc.; and Wightman Communications Ltd.
18. It is also the Commission's general practice to allocate the responsibility for the payment of costs among costs respondents based on their telecommunications operating revenues (TORs) as an indicator of the relative size and interest of the parties involved in the proceeding.⁴
19. However, allocating responsibility for the payment of costs based on TORs would not be appropriate in this case given that the proceedings related solely to wireless services. The Guidelines set out the key principles that the Commission seeks to implement through its costs regime. These include ensuring that the process has the flexibility to take into account particular circumstances where they are relevant and that the approach taken is fair, efficient, and effective. Accordingly, given that the focus of the proceedings was restricted to the wireless service industry, WSPs, and consumers of wireless services, it would be appropriate to allocate costs among the costs respondents based on wireless revenue market share. These shares are publicly available, compiled as part of the Commission's annual *Communications Monitoring Report*, and represent an appropriate indicator of the relative size and interest of the costs respondents in the circumstances.⁵
20. 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

³ Bell Mobility participated on its own behalf and on behalf of the following related companies or divisions: Bell Canada; Bell MTS, a division of Bell Canada; Lucky Mobile; Solo Mobile; and Virgin Plus.

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

⁵ In this order, the Commission has used the wireless revenue market share data of the costs respondents based on the 2020 [Communications Monitoring Report](#) and the underlying data supporting that report (under Data – Retail Mobile [Application] on [Open Data](#), see Tab MB-S1 of Supplementary Table 1 – Retail mobile revenue and subscriber market share by service provider, 2013-2020).

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 as follows:

Company	Proportion	Amount
RCCI	32.8%	\$9,504.28
Bell Mobility	32.4%	\$9,388.37
TCI	30.4%	\$8,808.85
Freedom	4.4%	\$1,274.96

2019 Policy Direction

22. The Governor in Council issued a policy direction in which it directed the Commission to consider how its decisions can promote competition, affordability, consumer interests, and innovation (the 2019 Policy Direction). The Commission considers that the awarding of costs in this instance is consistent with subparagraph 1(a)(iv) of the 2019 Policy Direction.
23. Specifically, by facilitating the participation of a group that represents consumer interests, this order contributes to enhancing and protecting the rights of consumers in their relationships with telecommunications service providers, including rights related to accessibility. Since consumer groups often require financial assistance to effectively participate in Commission proceedings, the Commission is of the view that its practice of awarding costs, as exercised in this instance, enables such groups to provide their perspectives on how consumer interests may be affected by the outcomes of the proceedings. In light of the above, the Commission considers that its determination to award costs to the DHH Coalition promotes consumer interests.

Directions regarding costs

24. The Commission **approves** the application by the DHH Coalition for costs with respect to its participation in the proceedings.
25. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to the DHH Coalition at \$28,976.46.
26. The Commission **directs** that the award of costs to the DHH Coalition be paid forthwith by RCCI, Bell Mobility, TCI, and Freedom, according to the proportions set out in paragraph 21.

Secretary General

Related documents

- *Call for comments – Accessibility – Mobile wireless service plans that meet the needs of Canadians with various disabilities*, Telecom Notice of Consultation CRTC 2020-178, 1 June 2020; as amended by Telecom Notices of Consultation CRTC 2020-178-1, 26 August 2020; 2020-178-2, 29 September 2020; 2020-178-3, 23 March 2021; 2020-178-4, 21 May 2021; 2020-178-5, 29 June 2021
- *Review of mobile wireless services*, Telecom Notice of Consultation CRTC 2019-57, 28 February 2019; as amended by Telecom Notices of Consultation CRTC 2019-57-1, 28 October 2019; 2019-57-2, 20 March 2020; and 2019-57-3, 23 June 2020
- *Guidance for costs award applicants regarding representation of a group or a class of subscribers*, Telecom Information Bulletin CRTC 2016-188, 17 May 2016
- *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