



Telecom Order CRTC 2013-521

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Ottawa, 27 September 2013

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

File numbers: 8665-C12-201212448 and 4754-415

1. By letter dated 8 April 2013, the Consumers Council of Canada (the Council) applied for costs with respect to its participation in the proceeding leading to Telecom Regulatory Policy 2013-271 (the proceeding).
2. On 18 and 19 April 2013 respectively, TELUS Communications Company (TCC) and Videotron G.P. (Videotron) filed interventions in response to the Council's application.

Application

3. The Council 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. The Council requested that the Commission fix its costs at \$62,582.74, consisting of \$61,698.54 for legal fees and \$884.20 for disbursements. The Council's claim included the Ontario Harmonized Sales Tax (HST) on fees less the rebate to which the Council is entitled in connection with the HST. The Council filed a bill of costs with its application.
5. The Council submitted that all corporate parties to the proceeding are the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents).

Answer

6. In response to the application, both TCC and Videotron noted that they did not object to the Council's eligibility for costs or to the amount claimed. However, they argued that the Commission's practice of allocating responsibility for the payment of costs on the basis of the costs respondents' respective telecommunications operating

revenues (TORs)¹ is inequitable to companies (such as TCC) with integrated corporate structures that include a range of telecommunications revenues, since such companies would thereby be assessed a disproportionately large proportion of costs.

7. TCC and Videotron submitted that, when costs are awarded, the Commission should allocate the costs award based on the parties involved in a proceeding and their specific revenues related to the issues discussed in that proceeding. Accordingly, TCC and Videotron submitted that any costs applications approved in this proceeding should be allocated according to wireless revenues, due to the proceeding's focus on developing a wireless code of conduct.

Commission's analysis and determinations

8. The Commission finds that the Council has satisfied the criteria for an award of costs set out in section 68 of the Rules of Procedure. Specifically, the Commission finds that the Council represented a group or class of subscribers that had an interest in the outcome of the proceeding, it assisted the Commission in developing a better understanding of the matters that were considered through its extensive and well-sourced submissions on a broad cross-section of issues related to the wireless market, and it participated in a responsible way.
9. The Commission notes that 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* (the Guidelines), as set out in Telecom Regulatory Policy 2010-963. The Commission finds that the total amount claimed by the Council was necessarily and reasonably incurred and should be allowed.
10. 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.
11. The Commission notes that it 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 notes that it made all wireless service providers parties to this proceeding, and that they all participated actively throughout the proceeding. The Commission therefore finds that the appropriate costs respondents to the Council's application for costs are 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);

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

Rogers Communications Partnership (RCP); Saskatchewan Telecommunications (SaskTel); TCC; and Videotron.

12. The Commission notes that it generally allocates the responsibility for payment of costs among costs respondents based on their TORs as an indicator of the relative size and interest of the parties involved in the proceeding. The Commission notes TCC's and Videotron's submissions in this regard. However, the Commission considers that to allocate costs in a proceeding solely on the basis of revenues related to the issues discussed in the proceeding would introduce significant inefficiencies into the costs award process. It is not always clear what classes of telecommunications revenue are related to which issues in a given proceeding, and creating new issues to litigate with each set of costs applications would unacceptably slow the costs award process. The Commission further considers that the allocation of costs by TORs does not base responsibility for costs solely on the relative interest of costs respondents in the outcome of a proceeding, but also on the relative size of costs respondents and their ability to absorb said costs.
13. The Commission therefore 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%

14. 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. 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

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

16. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to the Council at \$62,582.74.
17. The Commission directs that the award of costs to the Council 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 13.

Secretary General

Related documents

- *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
- *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