



Telecom Order CRTC 2017-363

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Determination of costs award with respect to the participation of l'Union des consommateurs in the proceeding that led to Telecom Regulatory Policy 2017-200

Application

1. By letter dated 5 April 2017, l'Union des consommateurs (l'Union) applied for costs with respect to its participation in the proceeding that led to Telecom Regulatory Policy 2017-200 (the proceeding). In the proceeding, the Commission undertook a review of the Wireless Code (the Code).
2. TELUS Communications Company (TCC) filed an intervention, dated 17 April 2017 in response to l'Union's application. L'Union filed a reply dated 20 April 2017.
3. L'Union 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, l'Union submitted that it represented the interests of wireless subscribers, with a focus on those with low incomes. L'Union also submitted that its contributions to the proceeding provided a fuller understanding of the key issues, especially with respect to prepaid services, overage fees, and device unlocking.
5. With respect to the group or class of subscribers that l'Union has submitted it represents, l'Union explained that it is comprised of a number of smaller, regional, consumer-focused organizations, principally located in the province of Quebec. With respect to the specific methods by which l'Union has submitted that it represents this group or class, l'Union explained that wireless services are one of its key areas of advocacy, and that it has gathered a range of views on this subject both through consultation with its constituent organizations as well as from subscribers directly. L'Union further explained that its positions in the proceeding were also informed by detailed research of the state of wireless service offerings in Canada.
6. L'Union requested that the Commission fix its costs at \$26,290.87, consisting of \$11,600.00 for in-house legal fees, \$14,355.00 for in-house analyst fees, and \$355.87 for disbursements. L'Union filed a bill of costs with its application.

7. In response to a Commission staff letter to potential costs respondents seeking comment on how any costs awarded in this case should be allocated, Bell Mobility Inc. (Bell Mobility); Quebecor Media Inc., on behalf of Videotron G.P. (Videotron); and TCC provided additional comments.

Answer

8. TCC argued that l'Union had provided an insufficient level of detail in its application to substantiate the amount of costs it had claimed. TCC suggested that the provision of hourly records in respect of l'Union's legal counsel and analyst could provide assistance in this regard. TCC proposed that l'Union's costs claim be rejected.
9. On the subject of allocation, TCC submitted that any amount awarded should be allocated among cost respondents on the basis of wireless revenues rather than telecommunications operating revenues (TORs),¹ given that the subject matter of the proceeding focused exclusively on wireless services. It noted that certain information regarding wireless revenues appears in the Commission's annual *Communications Monitoring Report*.
10. Videotron agreed with TCC. In its view, it would be unreasonable under the circumstances of this proceeding to allocate costs on the basis of telecommunications revenues that did not stem from the provision of wireless services.
11. Bell Mobility argued that there was no reason to deviate from the Commission's general practice of allocating costs on the basis of TORs. It submitted that potential costs respondents are free to structure their affairs such that separate entities report telecommunications revenues to the Commission for wireless and wireline business segments respectively.

Reply

12. L'Union submitted that, since it is claiming in-house counsel and analyst fees, it is not required to provide hourly dockets for its claimants. It argued that doing so would unduly increase the administrative burden associated with costs applications. L'Union submitted that its application, as submitted, contains a sufficient basis on which to determine the appropriateness of its claim, in accordance with the *Guidelines for the Assessment of Costs* (the Guidelines), as set out in Telecom Regulatory Policy 2010-963.

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

Commission's analysis and determinations

Eligibility

13. 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.

14. 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, l'Union has demonstrated that it meets this requirement by conducting research regarding the wireless market and how it affects consumers, and consulting with member organizations and receiving comments from individual subscribers directly.

15. L'Union has also satisfied the remaining criteria through its participation in the proceeding. In particular, l'Union's submissions, especially regarding how a preamble to the Code could assist parties to wireless contracts and the Commissioner for Complaints for Telecommunications Services Inc. in interpreting the Code, assisted the Commission in developing a better understanding of the matters that were considered.

Rates and amounts

16. As for the amount of its claim, l'Union did not provide hourly dockets for the work of its legal counsel or analyst. However, the Guidelines only require applicants to keep such records when they are claiming fees at the external rate. Further, such records are only required to be provided upon the Commission's request.

17. In the circumstances, the Commission agrees with l'Union that there is sufficient information on the record to establish whether the total amount claimed by l'Union was necessarily and reasonably incurred.

18. First of all, the rates claimed in respect of legal fees, analyst fees, and disbursements are in accordance with the rates established in the Guidelines, which is an indication that the total amount is appropriate, though not the sole determining factor.

19. Further, the Guidelines set out several criteria by which the Commission will generally determine whether an applicant has claimed excessive time in respect of legal or analyst fees, including the extent of the applicant's participation in the proceeding, the experience and expertise of the claimants, and time awarded in the same or similar proceedings.
20. In this case, l'Union made extensive submissions to the Commission that were relied on in numerous respects in the revised Code. The vast majority of time claimed by l'Union was claimed in respect of individuals with substantial experience participating in Commission proceedings, who have been awarded costs for such proceedings on numerous occasions. Further, the amounts claimed are relatively low compared to other consumer groups that participated in the proceeding.
21. Accordingly, the amounts claimed by l'Union are not excessive, and the Commission determines that the total amount claimed by l'Union was necessarily and reasonably incurred and should be allowed in full.
22. 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.

Costs respondents and allocation

23. 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.
24. The Commission considers that Bell Mobility; Bragg Communications Incorporated, operating as Eastlink; Freedom Mobile Inc.; Rogers Communications Canada Inc. (RCCI); Saskatchewan Telecommunications; TCC; and Videotron had a significant interest in the outcome of the proceeding and participated actively throughout the proceeding. Therefore, these parties are the appropriate costs respondents to l'Union's application for costs.
25. It is the Commission's general practice to allocate the responsibility for the payment of costs among costs respondents based on their TORs. In general, the Commission considers that TORs are indicators of the relative size and interest of the parties involved in proceedings.
26. However, TCC and Videotron argued that it would be inappropriate, in the circumstances, to allocate costs on the basis of revenues derived from the provision of all telecommunications services. Rather, they advocated for costs to be allocated on the basis of wireless revenues.
27. In the particular circumstances, the Commission agrees that there are more suitable indicators than TORs of the appropriate basis on which to allocate costs. On the record of the costs proceeding, Commission staff sought comments on whether revenue figures contained in section 5.5 of the Commission's 2015 *Communications*

Monitoring Report (the report)² would constitute an appropriate basis for the allocation of costs. Bell Mobility opposed the proposal on the grounds that TORs remain the appropriate basis for allocation.

28. 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 account of particular circumstances where they are relevant and that the approach taken is fair, efficient, and effective.
29. In Telecom Order 2017-362, the Commission determined that it would be appropriate to allocate 92% of the applicants' costs in that case between Bell Mobility, RCCI, and TCC, drawing upon the allocation of wireless revenue market share from the most recent time period detailed in the report. The remaining 8% was to be allocated evenly between the other costs respondents in that case.
30. In general terms, the Commission considers that a similar approach is appropriate in the present case as well, which flows from the same proceeding as that order, and which gives rise to similar considerations.
31. However, this approach must be modified somewhat in the present case. If it were applied strictly and the remaining 8% of the costs award were allocated among the remaining four costs respondents, each one of those four would be responsible for the payment of less than \$1,000 of the award. The Commission considers such an amount, as set out in Telecom Order 2015-160, to be the minimum 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.
32. Accordingly, in the present case, the remaining 8% of the award should be redistributed proportionally between Bell Mobility, RCCI, and TCC, and ultimate responsibility for the payment of costs is to be allocated as follows:

Company	Percentage	Amount
RCCI	38%	\$9,990.53
Bell Mobility	31.5%	\$8,281.62
TCC	30.5%	\$8,018.72

Directions regarding costs

33. The Commission **approves** the application by l'Union for costs with respect to its participation in the proceeding.

² As of the initiation of the proceeding, this was the most current volume of the report.

34. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to l'Union at \$26,290.87.
35. The Commission **directs** that the award of costs to l'Union be paid forthwith by RCCI, Bell Mobility, and TCC according to the proportions set out in paragraph 32.

Secretary General

Related documents

- *Determination of costs award with respect to the participation of the Forum for Research and Policy in Communications in the proceeding leading to Telecom Regulatory Policy 2017-200*, Telecom Order CRTC 2017-362, 16 October 2017
- *Review of the Wireless Code*, Telecom Regulatory Policy CRTC 2017-200, 15 June 2017
- *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