



Telecom Order CRTC 2017-378

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File numbers: 1011-NOC2016-0293 and 4754-557

Determination of costs award with respect to the participation of the Consumers Council of Canada in the proceeding that led to Telecom Regulatory Policy 2017-200

Application

1. By letter dated 23 March 2017, the Consumers Council of Canada (CCC) 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 6 April 2017, in response to the CCC's application. The CCC filed a reply dated 2 May 2017.
3. The CCC 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, the CCC submitted that it is a broad, national group that represents the interests of Canadian consumers, generally. The CCC also submitted that it participated fully and actively in the proceeding and that its submissions provided suggestions for potential solutions to common consumer issues with wireless services.
5. With respect to the group or class of subscribers that the CCC has submitted it represents, and the methods by which it represents them, the CCC explained that it has a base of experienced volunteers and subject-matter experts who are in regular contact with Canadian consumers regarding their concerns with the Canadian wireless market.
6. The CCC requested that the Commission fix its costs at \$32,969.31, consisting of \$32,519.43 for fees related to three consultants and \$449.88 for disbursements. The CCC's claim included the Ontario Harmonized Sales Tax (HST) on fees. The CCC filed a bill of costs with its application.

7. The CCC submitted that the telecommunications service providers that participated in the proceeding are the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents).
8. 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

9. TCC opposed the costs claimed in respect of two consultants, totalling \$3,386.62. TCC noted that the CCC had not produced dockets related to the work of the two consultants in question, and suggested that the CCC should refile its application with the missing information.
10. On the subject of allocation, TCC submitted that, if the Commission does determine that the CCC is eligible for an award of costs, the award 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*.
11. Videotron agreed with TCC. In its view, it would be unreasonable under the circumstances of this case to allocate costs on the basis of telecommunications revenues that did not stem from the provision of wireless services.
12. 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

13. The CCC provided the dockets for the two consultants identified by TCC.

Commission's analysis and determinations

Eligibility

14. The criteria for an award of costs are set out in section 68 of the Rules of Procedure, which reads as follows:

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

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.
15. 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, through its consultations with Canadian consumers, the CCC has demonstrated that it meets this requirement.
16. The CCC has also satisfied the remaining criteria through its participation in the proceeding. In particular, the CCC's submissions, especially regarding multi-user plans and the application of the Code caps on overages to such plans, assisted the Commission in developing a better understanding of the matters that were considered.

Rates and amounts

17. The rates claimed in respect of consultant fees and disbursements are in accordance with the rates established in the *Guidelines for the Assessment of Costs*, as set out in Telecom Regulatory Policy 2010-963. Further, the CCC ultimately provided dockets for all of its consultants that confirm their work on the file was relevant and the time claimed was proportionate.
18. The Commission finds that the total amount claimed by the CCC was necessarily and reasonably incurred and should be allowed.
19. 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.
20. 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.
21. 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 the CCC's application for costs.

22. 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.
23. However, in Telecom Order 2017-362, the Commission determined that a deviation from the Commission's general practice was justified on the issue of allocation.
24. In that order, 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 Commission's 2015 *Communications Monitoring Report* (the report).² The remaining 8% was to be allocated evenly between the other costs respondents in that case.
25. 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 Telecom Order 2017-362, and which gives rise to similar considerations.
26. 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.
27. Accordingly, the Commission finds that the modification applied in Telecom Order 2017-363 should also apply in the present case, and that the remaining 8% of the costs award should be redistributed proportionally between Bell Mobility, RCCI, and TCC. Accordingly, the ultimate responsibility for the payment of costs is to be allocated as follows:

Company	Percentage	Amount
RCCI	38%	\$12,528.34
Bell Mobility	31.5%	\$10,385.33
TCC	30.5%	\$10,055.64

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

Directions regarding costs

28. The Commission **approves** the application by the CCC for costs with respect to its participation in the proceeding.
29. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to the CCC at \$32,969.31.
30. The Commission **directs** that the award of costs to the CCC be paid forthwith by RCCI, Bell Mobility, and TCC according to the proportions set out in paragraph 27.

Secretary General

Related documents

- *Determination of costs award with respect to the participation of l'Union de consommateurs in the proceeding that led to Telecom Regulatory Policy 2017-200*, Telecom Order CRTC 2017-363, 16 October 2017
- *Determination of costs award with respect to the participation of the Forum for Research and Policy in Communications in the proceeding that led 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