



Telecom Order CRTC 2018-347

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Determination of costs award with respect to the participation of the English Language Arts Network in the Telecom Notice of Consultation 2017-112 proceeding

Application

1. By letter received by the Commission on 17 February 2018, the English Language Arts Network (ELAN) applied for costs with respect to its participation in the proceeding initiated by Telecom Notice of Consultation 2017-112 (the proceeding). In the proceeding, the Commission examined matters related to the establishment of the broadband funding regime, including its governance, operating, and accountability frameworks, as well as eligibility and assessment criteria for proposed projects.
2. On 6 April 2018, Commission staff issued a letter seeking further information related to ELAN's application. ELAN replied to this letter on 16 April 2018.
3. TELUS Communications Inc. (TCI)¹ filed an answer to ELAN's application on 16 April 2018.
4. In its application, ELAN 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, ELAN submitted that it represents the interests of English-speakers in the province of Quebec. ELAN submitted that its contribution assisted the Commission in understanding the needs of these official language minority communities with respect to the subject matter of the proceeding.
6. With respect to the group or class of subscribers that ELAN has submitted it represents, ELAN explained that while this group or class comprises a large number

¹ In the proceeding, submissions were received from TELUS Communications Company (TCC). However, effective 1 October 2017, TCC's assets were legally transferred to TCI and TCC ceased to exist. For ease of reference, "TCI" is used in this order.

of English-speakers in the greater Montréal area, it also includes, significantly, smaller groups in rural and remote regions of Quebec. With respect to the specific methods by which ELAN has submitted that it represents this group or class, ELAN explained that, among other things, it commissioned research and consulted with regional representatives from these communities to understand the problems they face and to ensure that their needs were properly conveyed.

7. ELAN requested that the Commission fix its costs at \$10,423.26, consisting of \$9,888.63 for consultant and analyst fees and \$534.63 for disbursements. ELAN's claim included the federal Goods and Services Tax (GST) and Quebec Sales Tax (QST) on external consultant and analyst fees. ELAN filed a bill of costs with its application.
8. ELAN indicated in its application that it is entitled to a 50% rebate in connection with both the GST and the QST; however, this rebate was not fully reflected in its bill of costs. Commission staff identified this potential issue in its 6 April 2018 letter. In response, ELAN clarified that it was seeking only 50% of the GST and QST paid on external consultant and analyst fees and disbursements, consistent with the tax rebates to which it is entitled.
9. ELAN submitted that service providers in Quebec are the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents). ELAN suggested that the responsibility for payment of costs be divided among the costs respondents based on their market share of subscribers in Quebec.

Answer

10. TCI argued that ELAN claimed excessive time, given the limited extent of its participation and the scope of its intervention in the proceeding. TCI submitted that ELAN's application could have been only marginally helpful to the Commission in the circumstances. As a result, TCI argued that ELAN's costs should be reduced to no more than \$1,100, which would reflect an amount that could be considered necessarily and reasonably incurred.

Commission's analysis and determinations

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, ELAN has demonstrated that it meets this criterion, for instance, through its consultations with English-speaking communities in Quebec and its coordination with other advocacy groups.
13. ELAN has also satisfied the remaining criteria through its participation in the proceeding. In general, the Commission values the perspectives of official language minority communities in its proceedings. In this case, ELAN's submissions, which brought to light the circumstances of English-speaking communities in Quebec, especially those in rural and remote areas, with respect to broadband Internet access, assisted the Commission in developing a better understanding of the matters that were considered.
14. The rates claimed in respect of consultant fees are in accordance with the rates established in the *Guidelines for the Assessment of Costs*, as set out in Telecom Regulatory Policy 2010-963.
15. With respect to the issue of ELAN's tax rebates, ELAN itself confirmed that it was eligible for a 50% reduction in both the GST and QST. Accordingly, it would be consistent with ELAN's circumstances and with the Commission's general practice to reduce the amount claimed by ELAN to reflect such a reduction, applied against the GST and QST for external consultant and analyst fees and disbursements.
16. With respect to TCI's argument that the time claimed by ELAN must be significantly reduced to reflect an amount of costs that was necessarily and reasonably incurred, the Commission does not consider that any such reduction is required in the circumstances.
17. ELAN's intervention in the proceeding offered a unique perspective that was both focused and structured. ELAN made a relevant contribution to the record, especially regarding which types of geographic areas should be considered eligible for broadband funding.
18. While the extent of ELAN's participation in the proceeding may not have been as extensive as certain other public interest or consumer groups, the amount claimed by ELAN was also among the lowest of all costs applicants in the proceeding.

19. In light of the above, the Commission finds that the amount of \$9,785.16 was necessarily and reasonably incurred and should be allowed.
20. 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.
21. 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.
22. In this case, ELAN argued that only service providers in Quebec should be costs respondents. However, while ELAN purported to represent only official language minority communities in Quebec in the proceeding, the substance of its intervention could be considered relevant with respect to such communities across Canada. As a result, the Commission does not consider it necessary to depart from its general practice in this case.
23. The Commission considers that all the telecommunications service providers that participated in the proceeding had a significant interest in the outcome of the proceeding and participated actively throughout the proceeding.
24. The Commission considers that, consistent with its practice, it is appropriate to allocate the responsibility for 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.² 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 the administrative burden that small costs awards impose on both the applicant and costs respondents.
25. Accordingly, the Commission finds that the following parties are responsible for payment of costs: Bell Canada, on its own behalf and on behalf of Bell Mobility Inc., NorthernTel, Limited Partnership, Northwestel Inc., and Télébec, Limited Partnership (collectively, the Bell companies); Rogers Communications Canada Inc. (RCCI); and TCI. The Commission finds that the responsibility for the payment of costs should be allocated as follows:

Company	Percentage	Amount
Bell companies ³	44.1%	\$4,319.29

² TORs consist of Canadian telecommunications revenues from local and access, long distance, data, private line, Internet, and wireless services. In this order, the Commission has used the TORs of the costs respondents based on their most recent audited financial statements.

³ Bell Canada's TORs include those of MTS Inc. On 1 April 2017, Bell Canada amalgamated with MTS Inc., which is now operating as Bell MTS, a division of Bell Canada.

TCI	28.7%	\$2,809.54
RCCI	27.2%	\$2,656.33

26. Consistent with its general approach articulated in Telecom Costs Order 2002-4, the Commission makes Bell Canada responsible for payment on behalf of the Bell companies. The Commission leaves it to the members of the Bell companies to determine the appropriate allocation of the costs among themselves.

Directions regarding costs

27. The Commission **approves, with changes**, the application by ELAN for costs with respect to its participation in the proceeding.

28. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to ELAN at \$9,785.16.

29. The Commission **directs** that the award of costs to ELAN be paid forthwith by Bell Canada on behalf of the Bell companies, TCI, and RCCI according to the proportions set out in paragraph 25.

Secretary General

Related documents

- *Development of the Commission's broadband funding regime*, Telecom Notice of Consultation CRTC 2017-112, 25 April 2017; as amended by Telecom Notice of Consultation CRTC 2017-112-1, 24 July 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
- *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*