



Telecom Order CRTC 2018-42

PDF version

Ottawa, 2 February 2018

File numbers: 1011-NOC2016-0116 and 4754-552

Determination of costs award with respect to the participation of CNIB in the proceeding that led to Telecom Regulatory Policy 2017-182

Application

1. The Commission received, on 1 March 2017, an application for costs from CNIB (the Canadian National Institute for the Blind) with respect to its participation in the proceeding that led to Telecom Regulatory Policy 2017-182 (the proceeding). In the proceeding, the Commission set out determinations on the implementation and provision of new, enhanced, and innovative 9-1-1 services and networks in Canada with Internet Protocol (IP)-based capabilities, referred to as next-generation 9-1-1.
2. The Commission did not receive any interventions in response to the application for costs.
3. CNIB 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, CNIB submitted that it represents the interests of Canadians who are deaf-blind and that it provided the Commission with a fuller understanding of how next-generation 9-1-1 services could improve the issues faced by persons who are deaf-blind attempting to access emergency services. CNIB also submitted that it participated in the proceeding responsibly, as evidenced by its judicious use of resources in preparing its intervention.
5. With respect to the group or class of subscribers that CNIB has submitted it represents, CNIB explained that the group or class mainly consisted of Ontarians who are deaf-blind, and that CNIB's front-line staff have worked for generations with Canadians who are deaf-blind. With respect to the specific methods by which CNIB represented this group or class, CNIB noted that it gained a first-hand understanding of the challenges faced by deaf-blind Canadians through its roles as an intervener, an advocate, and a provider of services for these individuals.

6. CNIB requested that the Commission fix its costs at \$15,905.99, consisting of \$5,654.35 for expert witness fees, \$5,875.00 for internal analyst fees, and \$4,376.64 for disbursements. Specifically, CNIB claimed 64 hours at a rate of \$85 per hour for expert witness fees (consisting of two expert witnesses claiming 32 hours each), and 12.5 days at a rate of \$470 per day for internal analyst fees. CNIB's claim for expert witness fees included the Ontario Harmonized Sales Tax (HST) on fees less the rebate to which CNIB is entitled in connection with the HST. CNIB filed a bill of costs with its application.
7. CNIB made no submission as to the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents). By letter dated 23 June 2017, Commission staff requested that CNIB make submissions on the appropriate costs respondents and notify all parties to the proceeding of CNIB's costs claim.
8. On 30 June 2017, CNIB responded that the appropriate costs respondents should be the eight local government organizations responsible for current and next-generation 9-1-1 services that intervened in the proceeding.
9. In reply, the Alberta E9-1-1 Advisory Board, the City of Calgary, E-Comm 9-1-1,¹ and la Coalition pour le service 9-1-1 au Québec argued that the Commission should disregard CNIB's submission on the appropriate costs respondents and apply the standard procedure for costs awards.

Commission's analysis and determinations

10. 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.

¹ E-Comm 9-1-1 is a multi-municipality agency that provides emergency communications operations for most of British Columbia.

11. 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, CNIB has demonstrated that it meets this requirement. CNIB indicated that it represents Canadians who are deaf-blind and that it based the positions it put forward in the proceeding on its support work and its history of advocacy on behalf of deaf-blind Canadians.
12. CNIB has also satisfied the remaining criteria through its participation in the proceeding. In particular, CNIB's submissions regarding the challenges faced by deaf-blind Canadians using 9-1-1 services assisted the Commission in developing a better understanding of the matters that were considered.
13. The rates claimed in respect of internal analyst and expert witness fees and disbursements 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 hourly rate CNIB claimed for expert witness fees is below the maximum rate allowed in the Guidelines. The Commission finds that the total amount claimed was necessarily and reasonably incurred and should be allowed.
14. However, CNIB neglected to file Form V – Summary of Fees and Disbursements, as prescribed by paragraph 8 of the Guidelines. While the documents provided by CNIB enabled the Commission to assess CNIB's application for costs, the Commission reminds CNIB to submit all required documentation with its costs applications.
15. 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.
16. 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.
17. The Commission denies CNIB's proposal to name the eight local government organizations that intervened in the proceeding as costs respondents. Although these organizations had a significant interest in the outcome of the proceeding and participated actively throughout, since a broad pool of telecommunications service providers could be potential costs respondents, it would be inappropriate for the Commission to name public sector organizations as costs respondents.
18. The Commission considers that all the telecommunications service providers that intervened in the proceeding had a significant interest in its outcome and participated actively throughout. As such, the following parties are the appropriate costs respondents to CNIB's application for costs: Bell Canada, on its own behalf and on behalf of Bell Mobility Inc., Bell Aliant Regional Communications, Limited Partnership, DMTS, KMTS, NorthernTel, Limited Partnership, Northwestel Inc., Ontera, and Télébec, Limited Partnership; Bragg Communications Incorporated,

operating as Eastlink; Freedom Mobile Inc.; MTS Inc.;² Quebecor Media Inc., on behalf of Videotron Ltd.;³ Rogers Communications Canada Inc. (RCCI); Saskatchewan Telecommunications; Shaw Telecom G.P.; TELUS Communications Inc. (TCI);⁴ and Zayo Canada Inc.

19. 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.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 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	Percentage	Amount
Bell Canada	43.3%	\$6,887.29
TCI	29.7%	\$4,724.08
RCCI	27.0%	\$4,294.62

22. 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

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

² In February 2017, Bell Canada received approval by federal regulators to purchase MTS Inc. However, Bell Canada and MTS Inc. participated throughout the proceeding as separate entities.

³ In the proceeding, submissions were received from Videotron G.P. However, effective 29 December 2017, all of Videotron G.P.'s assets and operations were transferred to its affiliate, Videotron Ltd., and Videotron G.P. was subsequently dissolved. For ease of reference, "Videotron Ltd." is used in this order.

⁴ 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.

⁵ 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.

24. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to CNIB at \$15,905.99.
25. The Commission **directs** that the award of costs to CNIB be paid forthwith by Bell Canada on behalf of the Bell companies, TCI, and RCCI according to the proportions set out in paragraph 21.

Secretary General

Related documents

- *Next-generation 9-1-1 – Modernizing 9-1-1 networks to meet the public safety needs of Canadians*, Telecom Regulatory Policy CRTC 2017-182, 1 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
- *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