



## Telecom Order CRTC 2018-66

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Ottawa, 16 February 2018

*File numbers: 1011-NOC2016-0116 and 4754-553*

### **Determination of costs award with respect to the participation of the Deaf Wireless Canada Committee in the proceeding that led to Telecom Regulatory Policy 2017-182**

#### **Application**

1. By letter dated 2 March 2016, the Deaf Wireless Canada Committee (DWCC) applied for costs 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 received an intervention from TELUS Communications Inc. (TCI)<sup>1</sup> dated 17 March 2017. The DWCC filed a reply dated 22 March 2017.
3. The DWCC 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 DWCC submitted that it had advanced the interests of Deaf Canadians regarding issues that were discussed during the proceeding, such as confusion about the Text with 9-1-1 service. The DWCC noted that it had (i) conducted a national survey to support the evidence it submitted in the proceeding, (ii) presented evidence regarding wireless service issues for the Deaf community, and (iii) made recommendations to the Commission.
5. With respect to the group or class of subscribers the DWCC submitted that it represents, the DWCC explained that it is an ad hoc committee within the Canadian Association of the Deaf established to advocate for fair wireless service packages and consumer rights on behalf of Deaf, hard-of-hearing, and deaf-blind Canadians.

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<sup>1</sup> In this 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.

6. The DWCC requested that the Commission fix its costs at \$73,629.99, consisting of \$65,670.00 for consultant and analyst fees, and \$7,959.99 for disbursements. The DWCC filed a bill of costs with its application.
7. With respect to its consultant and analyst fees, the DWCC claimed 346 hours at the external rate of \$165 per hour (\$57,090 in total) for intermediate consultants and analysts, and 78 hours at the external rate of \$110 per hour (\$8,580 in total) for junior analysts.
8. Almost all of the DWCC's disbursement costs related to the national survey it undertook to support its submissions, as well as its participation in the oral phase of the proceeding.
9. The DWCC 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).

### **Answer**

10. TCI did not oppose the DWCC's entitlement to a costs award. However, the company submitted that the costs claimed by the DWCC related to developing and conducting the survey and creating an associated report are ineligible for reimbursement because the report was not part of the record of the proceeding.
11. TCI argued that the DWCC's survey report was not filed with the Commission at the intervention or reply stages of the proceeding, when evidence from parties was supposed to be submitted. Rather, the DWCC sought leave to enter the survey report as evidence in the oral phase of the proceeding. However, the Commission did not grant the leave. As a result, interested parties did not comment on the survey report. TCI submitted that because the survey report was not part of the record of the proceeding, the Commission could not have considered it; therefore, the report could not have assisted the Commission in developing a better understanding of the matters that were considered.
12. TCI argued that as a result, the costs that the DWCC claimed related to the survey and the associated report should be denied.

### **Reply**

13. The DWCC argued that it had requested leave to introduce the survey report as evidence during the oral phase of the proceeding, and the fact that the survey report was posted on the Commission's website is proof that the Commission accepted the leave request.

## 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:

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. The DWCC's members are Deaf, hard-of-hearing, and deaf-blind community members across Canada. Through the DWCC's interaction with these communities, the DWCC ensured that they were represented in the positions it advanced in the proceeding. Accordingly, the DWCC has demonstrated that it meets the first criterion.

16. The DWCC has also satisfied the remaining criteria through its participation in the proceeding. In particular, the DWCC contributed to assisting the Commission in developing a better understanding of the matters that were considered through its valuable and unique perspective on how the issues under consideration could affect Deaf, hard-of-hearing, and deaf-blind Canadians who require accessible telecommunications services.

17. The rates claimed in respect of consultant and analyst fees, as well as the costs claimed for disbursements, are in accordance with the *Guidelines for the Assessment of Costs*, as set out in Telecom Regulatory Policy 2010-963.

18. Regarding the eligibility of the costs claimed by the DWCC for conducting the survey and producing the associated report, the Commission confirms that the survey report was added to the record of the proceeding and that parties had the opportunity to comment on the report in their final submissions.

19. However, while the Commission appreciates the use of the survey to gather and report on the views of Deaf, hard-of-hearing, and deaf-blind communities, care must be taken to ensure that the amount claimed for such activity is proportionate to what is reasonable in the circumstances. In the present case, the costs claimed by the DWCC solely for developing and conducting the survey and producing an associated report were greater than the total costs claimed by any other costs applicant in the proceeding. While the survey and the associated report did assist the Commission in developing a better understanding of the matters that were considered, the level of assistance provided to the Commission is not proportionate to the amount of time and costs spent by the DWCC. Accordingly, the Commission reduces by half the DWCC's costs associated with the survey.
20. In light of the above, the Commission finds that costs in the amount of \$45,105.52 were necessarily and reasonably incurred and should be allowed.
21. 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**

22. 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. 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 the DWCC's application for costs: Bell Canada, on its own behalf and on behalf of Bell Aliant Regional Communications, Limited Partnership, Bell Mobility Inc., DMTS, KMTS, NorthernTel, Limited Partnership, Northwestel Inc., Ontera, and Télébec, Limited Partnership; Bragg Communications Incorporated, operating as Eastlink; Freedom Mobile Inc.; MTS Inc. (MTS);<sup>2</sup> Quebecor Media Inc., on behalf of Videotron Ltd. (Videotron);<sup>3</sup> Rogers Communications Canada Inc. (RCCI); Saskatchewan Telecommunications (SaskTel); Shaw Telecom G.P.; TCI; and Zayo Canada Inc.

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<sup>2</sup> 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.

<sup>3</sup> 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.

23. 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.<sup>4</sup>
24. 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 responsibility for payment of costs should be allocated as follows:

Company	Percentage	Amount
Bell Canada	38.6%	\$17,410.73
TCI	26.5%	\$11,952.96
RCCI	24.1%	\$10,870.43
Videotron	4.7%	\$2,119.96
MTS	3.5%	\$1,578.69
SaskTel	2.6%	\$1,172.74

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 the DWCC 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 the DWCC at \$45,105.52.
29. The Commission **directs** that the award of costs to the DWCC be paid forthwith by the cost respondents and according to the proportions set out in paragraph 25.

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<sup>4</sup> 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.

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