



Telecom Order CRTC 2018-68

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

Application

1. By letter dated 28 February 2017, Media Access Canada (MAC), on behalf of the Access 2020 Coalition of Disabilities Stakeholders (the Coalition), applied for costs with respect to their 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. TELUS Communications Inc. (TCI)¹ filed an intervention, dated 7 March 2017, in response to MAC's application. MAC did not file a reply.
3. MAC 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, MAC submitted that, as a coordinating body for the Coalition,² it represented the interests of Canadians with a broad spectrum of disabilities and provided a fuller understanding of the unique impacts of the next-generation 9-1-1 system on persons with disabilities. MAC also submitted that it had participated responsibly in all stages of the proceeding, and that its contributions included practical and unique suggestions to protect or improve the 9-1-1 system for Canadians with disabilities.

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.

² MAC submitted that the Coalition was a collaboration of organizations of and for Canadians with disabilities that have an interest in telecommunications and broadcasting issues.

5. MAC requested that the Commission fix its costs at \$43,959.56, consisting of \$5,854.53 for legal fees, \$33,128.34 for consultant fees, and \$4,976.69 for disbursements. MAC's claim included the federal Goods and Services Tax (GST) and the Ontario Harmonized Sales Tax (HST) on fees less the rebate to which MAC is entitled in connection with the GST and HST. MAC filed a bill of costs with its application.
6. MAC claimed 31.4 hours at a rate of \$165 per hour for external legal fees, and 188.6 hours at rates ranging from \$110 to \$225 per hour for six external consultants.
7. MAC submitted that the telecommunications service providers that were parties to the proceeding, that had a significant interest in the outcome of the proceeding, and that actively participated in the proceeding are the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents).
8. MAC suggested that the responsibility for payment of costs should be divided among the costs respondents based on their gross revenues, consistent with Commission practice.

Answer

9. TCI argued that MAC's participation in the proceeding paled in comparison to that of the Public Interest Advocacy Centre (PIAC), which claimed two and a half times less in costs. In particular, TCI noted that PIAC's initial intervention was 27 pages long compared to MAC's 3.5 pages, and that MAC declined to prepare a reply.
10. TCI also argued that MAC engaged an unusually high number of consultants for its participation in the proceeding and claimed costs for the preparation of a reply that was not submitted, as well as for time spent preparing its costs application. TCI added that if a certain consultant is treated as an internal resource rather than as an external one in the context of MAC's application for costs with respect to its participation in the proceeding that led to Telecom Regulatory Policy 2016-496, this consultant should also be treated as an internal resource in the proceeding that led to Telecom Regulatory Policy 2017-182.

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, MAC has demonstrated that it meets this requirement. Specifically, the organizations that make up the Coalition represent a broad group of Canadians with various disabilities who have an interest in the operation and accessibility of the 9-1-1 system. Through MAC's extensive consultation with these organizations, as described on the record of this costs proceeding, MAC represented them effectively.
- 13. MAC has also satisfied the remaining criteria through its participation in the proceeding. In particular, MAC's submissions, representing a variety of distinct points of view from the disability groups that comprise and support the Coalition, assisted the Commission in developing a better understanding of the matters that were considered.
- 14. The rates claimed in respect of consultant and legal fees, as well as the costs claimed for 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.
- 15. In Telecom Order 2017-130, in which the Commission dealt with MAC's costs application regarding its participation in the proceeding that led to Telecom Regulatory Policy 2016-496 (the Commission's decision on its review of basic telecommunications services), the Commission found that it was appropriate for MAC to claim costs for the consultant in question in paragraph 10 above at the external rate based on, among other things, her provision of paid services to other clients. There is no compelling evidence on the record of this costs proceeding for the Commission to deviate from that finding.
- 16. With respect to the amount of costs claimed, the Commission considers that the consultants employed by MAC reflect the diverse viewpoints incorporated into its contributions in the proceeding. Accordingly, the number of consultants does not, in itself, represent an unreasonable expense. Regarding MAC's use of consultants for preparing reply comments, the detailed records that MAC submitted indicate that the time in question was spent preparing responses to undertakings; accordingly, this time was appropriately claimed, but it was incorrectly identified on Form III: Summary of Consultant and Analyst Fees that accompanied MAC's costs application.

17. The Commission has previously allowed costs applicants to claim costs incurred for the costs application process as part of their participation in a proceeding. In Taxation Order 98-9, the Commission noted that this had been done on numerous occasions. The Commission's current costs application Form I, which is used to summarize legal fees, explicitly provides space to account for the costs incurred in applying for costs.
18. However, given the nature and level of detail of MAC's submissions in the proceeding, some of the time claims made by its consultants appear excessive based on the evidence on the record of this costs proceeding. Of the four other costs applicants that claimed legal or consultant fees for their participation in the proceeding, three made more extensive and detailed submissions than MAC, and two of those three claimed less time for preparing their submissions.
19. Accordingly, the Commission finds that the total amount claimed by MAC was not necessarily and reasonably incurred, and should therefore be reduced. Taking into account MAC's submissions in the proceeding, and to bring MAC's costs claim more closely in line with those of the other costs applicants mentioned above, the 69 hours claimed for one consultant should be reduced to 35 hours, and MAC's remaining time claims for consultant work should be reduced by 30%.
20. In light of the above, the total amount of costs allowed for MAC, as revised by the above-mentioned determinations, is \$30,682.06, consisting of \$5,854.53 for legal fees, \$19,850.84 for consultant fees, and \$4,976.69 for disbursements.
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.
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.
23. 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 MAC'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.;³ Quebecor Media Inc., on behalf of Videotron Ltd. (Videotron);⁴ Rogers Communications Canada Inc. (RCCI); Saskatchewan Telecommunications; Shaw Telecom G.P.; TCI; and Zayo Canada Inc.

³ 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.

⁴ 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.

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.⁵
25. 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.
26. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated as follows:

Company	Percentage	Amount
Bell Canada	41.1%	\$12,622.74
TCI	28.2%	\$8,652.76
RCCI	25.7%	\$7,871.92
Videotron	5.0%	\$1,534.64

27. 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

28. The Commission **approves with changes** the application by MAC 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 MAC at \$30,682.06.
30. The Commission **directs** that the award of costs to MAC be paid forthwith by Bell Canada on behalf of the Bell companies, TCI, RCCI, and Videotron according to the proportions set out in paragraph 26.

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.

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
- *Determination of costs award with respect to the participation of Media Access Canada in the proceeding leading to Telecom Regulatory Policy 2016-496*, Telecom Order CRTC 2017-130, 3 May 2017
- *Modern telecommunications services – The path forward for Canada’s digital economy*, Telecom Regulatory Policy CRTC 2016-496, 21 December 2016
- *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
- *Taxation Order CRTC 98-9*, 11 June 1998