



Telecom Order CRTC 2019-163

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Determination of costs award with respect to the participation of the Canadian Association of the Deaf in the proceeding that led to Telecom Decision 2018-475

Application

1. By letter dated 9 November 2018, the Canadian Association of the Deaf (CAD) applied for costs with respect to its participation in the proceeding that led to Telecom Decision 2018-475 (the proceeding). In the proceeding, the Commission considered proposals by Bell Mobility Inc. (Bell Mobility), Rogers Communications Canada Inc. (RCCI), and TELUS Communications Inc. (TCI) [collectively, the national wireless carriers] for lower-cost data-only mobile wireless service plans (lower-cost data-only plans), which were filed pursuant to Telecom Notice of Consultation 2018-98.
2. Bell Canada, on behalf of Bell Mobility, and TCI filed interventions, dated 3 December 2018, in which they addressed general issues that were raised in the six costs applications filed with respect to the proceeding, including CAD's application.
3. Commission staff issued a request for information regarding CAD's application on 10 December 2018. CAD responded to this request on 17 December 2018.
4. CAD 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, CAD submitted that it is a charitable organization representing the interests of Deaf Canadians on a national basis. To this end, CAD submitted that it made concrete recommendations that would benefit its constituency.
6. CAD requested that the Commission fix its costs at \$4,950, consisting entirely of external consultant fees. Of this amount, \$3,300 was associated with the performance and analysis of a survey filed jointly with the Deaf Wireless Canada Consultative Committee (DWCC) and other accessibility groups. CAD filed a bill of costs with its application.

7. CAD submitted that the telecommunications companies that participated in the proceeding are the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents).

Answer

8. Bell Canada argued that all the telecommunications service providers that participated in the proceeding should be named costs respondents, with the responsibility for payment of costs allocated based on their telecommunications operating revenues (TORs).¹
9. Conversely, TCI argued that the costs respondents should be limited to the national wireless carriers, as well as Ice Wireless Inc. (Ice Wireless), Quebecor Media Inc. (QMI), and Shaw Communications Inc. (Shaw). TCI further argued that the responsibility for payment of costs should be apportioned based on mobile wireless service revenues only, rather than on TORs. TCI cited the costs awards issued (e.g. in Telecom Order 2017-362) in connection with the proceeding that led to Telecom Regulatory Policy 2017-200 as an example of the Commission making a similar determination in the past.

Request for information

10. On 10 December 2018, Commission staff issued a request for information in which it asked CAD to address its joint survey with the DWCC and, in particular, how the Commission's determinations in Telecom Orders 2018-437 and 2018-438, as well as in Telecom Decision 2018-439, might apply to the costs claimed by CAD.
11. In response, CAD submitted that Deaf Canadians generally find telecommunications services to be inaccessible, and that Deaf perspectives are needed to identify and remove accessibility barriers in these areas. It argued that its survey enabled the Commission to better understand these concerns as they related to the subject matter of the proceeding.

Commission's analysis and determinations

12. 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;

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

- (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.
13. 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, CAD's filings indicate that it is a charitable organization advocating on behalf of Deaf Canadians. It was clear from CAD's submissions in the proceeding that it understood and communicated views consistent with the interests of this group of subscribers. Accordingly, the Commission is satisfied that CAD represented Deaf telecommunications subscribers during the proceeding.
 14. CAD has also satisfied the remaining criteria through its participation in the proceeding. In particular, CAD's joint submissions with the DWCC regarding the attributes of lower-cost data-only plans that would be of interest to Deaf subscribers assisted the Commission in developing a better understanding of the matters that were considered.
 15. The rates claimed in respect of consultant fees 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.
 16. With respect to the portion of CAD's costs related to its joint survey, the Commission has recently indicated that surveys will not always be necessary for an applicant to demonstrate that it represents a group or class of subscribers, and that, in determining whether specific survey costs have been necessarily and reasonably incurred, the Commission may take into account the scope of the survey and the proceeding in question, the value of the survey, and any accessibility considerations, among other factors. The Commission may also refer to the costs claimed by other applicants in assessing survey costs, where appropriate, consistent with the Guidelines.²
 17. In CAD's case, while the scope of the survey was somewhat broader than the scope of the proceeding, much of the information filed on the record as a result of the survey was relevant and valuable in the context of the proceeding. Among other things, the survey communicated the views of Canadians with hearing disabilities on accessibility issues relating to wireless services and lower-cost data-only plans.

² On 28 November 2018, the Commission published Telecom Orders 2018-437 and 2018-438, as well as Telecom Decision 2018-439, in which it addressed these matters.

18. Further, while CAD's survey was the most expensive of all the surveys for which costs were claimed with respect to the proceeding, CAD claimed only a very modest portion of those costs. Further, it is clear that there were special accessibility considerations in this case that led directly to higher costs than in the cases of other applicants.
19. In the circumstances, the Commission is satisfied that the amount of \$3,300 was necessarily and reasonably incurred and should be allowed.
20. The Commission also finds that the remaining amount of \$1,650 claimed by CAD was 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.
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 the following parties had a significant interest in the outcome of the proceeding participated actively in the proceeding: the national wireless carriers, as well as Bragg Communications Incorporated, carrying on business as Eastlink (Eastlink); Cogeco Communications Inc. (Cogeco); Ice Wireless; QMI, on behalf of Videotron Ltd. (Videotron); Saskatchewan Telecommunications (SaskTel); Shaw; SSI Micro Ltd. (SSI Micro); and Xplornet Communications Inc. (Xplornet).
23. While Telecom Notice of Consultation 2018-98, which initiated the proceeding, was directed towards the national wireless carriers in particular, the submissions of the other companies in the proceeding made clear that they also had a significant interest in the outcome of the proceeding. Many argued strenuously against the Commission imposing any additional form of regulation because of their view that it would impact their own ability to compete in the market.
24. Therefore, the Commission finds that the following parties are the appropriate costs respondents to CAD's application for costs: Bell Mobility, Cogeco, Eastlink, Ice Wireless, RCCI, SaskTel, Shaw, SSI Micro, TCI, Videotron, and Xplornet.
25. 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 TORs as an indicator of the relative size and interest of the parties involved in the proceeding.³

³ In this order, the Commission has used the TORs of the costs respondents based on their most recent audited financial statements.

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

Company	Proportion	Amount
TCI	37.5%	\$1,856.25
RCCI	36.4%	\$1,801.80
Bell Mobility	26.1%	\$1,291.95

Directions regarding costs

28. The Commission **approves** the application by CAD 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 CAD at \$4,950.
30. The Commission **directs** that the award of costs to CAD be paid forthwith by TCI, RCCI, and Bell Mobility according to the proportions set out in paragraph 27.

Secretary General

Related documents

- *Lower-cost data-only plans for mobile wireless services*, Telecom Decision CRTC 2018-475, 17 December 2018
- *Deaf Wireless Canada Consultative Committee – Application to review and vary Telecom Order 2018-66*, Telecom Decision CRTC 2018-439, 28 November 2018
- *Determination of costs award with respect to the participation of the Canadian National Society of the Deaf-Blind, Inc. in the Telecom Notice of Consultation 2017-33 proceeding*, Telecom Order CRTC 2018-438, 28 November 2018
- *Determination of costs award with respect to the participation of the Deaf Wireless Canada Consultative Committee in the Telecom Notice of Consultation 2017-33 proceeding*, Telecom Order CRTC 2018-437, 28 November 2018

- *Lower-cost data-only plans for mobile wireless services*, Telecom Notice of Consultation CRTC 2018-98, 22 March 2018; as amended by Telecom Notice of Consultation CRTC 2018-98-1, 10 May 2018
- *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