



Telecom Order CRTC 2019-164

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Determination of costs award with respect to the participation of the Deaf Wireless Canada Consultative Committee in the proceeding that led to Telecom Decision 2018-475

Application

1. By letter dated 9 November 2018, the Deaf Wireless Canada Consultative Committee (DWCC) 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 the DWCC's application.
3. Commission staff issued a request for information regarding the DWCC's application on 10 December 2018. The DWCC responded to this request on 17 December 2018. TCI commented on the DWCC's response on 20 December 2018. The DWCC filed a final reply on 17 January 2019.
4. 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.
5. In particular, the DWCC submitted that it represents Deaf consumers of mobile wireless services. It submitted that it was closely involved in the organization, performance, and analysis of the fully accessible survey of Deaf, deaf-blind, and hard-of-hearing Canadians filed jointly with other accessibility groups, including the Canadian Association of the Deaf (CAD). The DWCC added that it produced a report on the survey results and made recommendations to the Commission, which assisted the Commission in understanding what lower-cost data-only plans mean to Deaf Canadians.

6. The DWCC requested that the Commission fix its costs at \$67,784.80, consisting of \$47,280.00 for external consultant fees and \$20,504.80 for disbursements. Of these amounts, \$59,551.32 related to the survey filed jointly with CAD. The DWCC filed a bill of costs with its application.
7. The DWCC submitted that all the telecommunications companies that provide wireless services 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 telecommunications service providers that participated in the proceeding should be named costs respondents, with 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 the DWCC to address its joint survey with CAD 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 the DWCC. Further, Commission staff asked the DWCC to clarify the nature of a disbursement, "administrative accounting fees," for which it had claimed \$6,778.48.
11. Regarding its survey, the DWCC responded that the Commission must take into account the distinct considerations related to the survey's accessibility. These entail various outreach methods used by the DWCC to solicit participation in the survey among individuals with disabilities, as well as the significant additional time and resources required to prepare, collate, and analyze the survey responses. The DWCC also argued that its survey had a concrete impact on the result of the proceeding.
12. With respect to its administrative accounting fees disbursement, the DWCC submitted that it is a standing committee of CAD, and does not have any staff. It submitted that the administrative accounting fee is an amount charged by CAD to handle the DWCC's finances. CAD charges the DWCC a fee of 10% of all costs

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

awarded to the DWCC, and this fee is intended to defray a number of specific expenses incurred by CAD, including activities related to accounting, auditing, and banking, as well as expenses related to office supplies and the work of administrative assistants.

13. TCI commented that this disbursement should be disallowed since its nature is that of a general overhead expense unrelated to the proceeding.
14. The DWCC filed a final reply to TCI's objections. The reply was filed one week beyond the prescribed deadline.
15. The DWCC argued that even if overhead expenses are generally disallowed, this specific disbursement should be allowed, given the unique circumstances. In particular, the DWCC submitted that its status as a committee precludes it from directly receiving or distributing any costs it may be awarded. Accordingly, it pays CAD for these and other forms of administrative help. The DWCC argued that the disbursement is directly related to the proceeding, because the amount would not have been charged had the DWCC not participated.

Commission's analysis and determinations

16. As a preliminary matter, despite the late filing, the Commission accepts the DWCC's final reply. There is no evidence of any party being prejudiced by the late filing in these circumstances.
17. 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.
18. 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, the DWCC has demonstrated that it meets this requirement. The DWCC is a standing committee of CAD, which has been awarded costs in the proceeding as a charitable organization

advocating on behalf of Deaf Canadians.² Further, the DWCC canvassed the views of a range of Deaf, deaf-blind, and hard-of-hearing Canadians with respect to the subject matter of the proceeding.

19. The DWCC has also satisfied the remaining criteria through its participation in the proceeding. In particular, its joint submissions with CAD 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.
20. 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.
21. With respect to the portion of the DWCC'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, it 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.³
22. In the DWCC'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.
23. Further, the concerns identified by the DWCC were helpful to the Commission's inquiries into accessibility issues related to lower-cost data-only plans, and two of the national wireless carriers went on to introduce specific accessibility measures into their revised proposals for such plans.
24. While the survey was the most expensive of all the surveys for which costs were claimed with respect to the proceeding, the applicants generally substantiated the special accessibility considerations that would lead to higher costs than other applicants, including the time and resources required to develop a survey using sign language, issues in reaching potential survey respondents, and the time required to compile and analyze responses.

² See Telecom Order 2019-163.

³ 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.

25. In the circumstances, the Commission considers that the DWCC's survey costs were necessarily and reasonably incurred, and that the amount of \$59,551.32 claimed in this regard should be allowed.
26. With respect to the disbursement for an administrative accounting fee, the DWCC has not demonstrated that this expense was necessarily and reasonably incurred in the circumstances of the proceeding.
27. This disbursement, as described by the DWCC, is directed toward general overhead and administrative expenses. As set out in the Guidelines, administrative and support staff expenses are generally not eligible for reimbursement through costs awards, even when they are specifically connected to a proceeding. The DWCC's status as an unincorporated committee within CAD is not a sufficient reason to depart from this general approach.
28. Accordingly, the Commission finds that the amount of \$6,778.48 claimed by the DWCC for an administrative accounting fee should not be allowed.
29. In light of the above, the Commission finds that the total amount of \$61,006.32 for external consultant and disbursement fees related to the survey, as well as for external consultant fees unrelated to the survey, were necessarily and reasonably incurred and should be allowed. Accordingly, the Commission fixes the DWCC's costs for its participation in the proceeding at \$61,006.32.
30. 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.
31. 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 and 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).
32. 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.
33. Therefore, the Commission finds that the following parties are the appropriate costs respondents to the DWCC's application for costs: Bell Mobility, Cogeco, Eastlink, Ice Wireless, RCCI, SaskTel, Shaw, SSI Micro, TCI, Videotron, and Xplornet.

34. 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.⁴
35. 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.
36. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated as follows:

Company	Proportion	Amount
TCI	31.5%	\$19,216.99
RCCI	30.5%	\$18,606.92
Bell Mobility	21.9%	\$13,360.38
Videotron	6.3%	\$3,843.40
Shaw	4.4%	\$2,684.28
SaskTel	3.1%	\$1,891.20
Cogeco	2.3%	\$1,403.15

Directions regarding costs

37. The Commission **approves, with changes**, the application by the DWCC for costs with respect to its participation in the proceeding.
38. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to the DWCC at \$61,006.32.
39. The Commission **directs** that the award of costs to the DWCC be paid forthwith by TCI, RCCI, Bell Mobility, Videotron, Shaw, SaskTel, and Cogeco according to the proportions set out in paragraph 36.

Secretary General

⁴ In this order, the Commission has used the TORs of the costs respondents based on their most recent audited financial statements.

Related documents

- *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*, Telecom Order CRTC 2019-163, 21 May 2019
- *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