



## Telecom Order CRTC 2019-332

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Ottawa, 25 September 2019

*File numbers: 1011-NOC2018-0246 and 4754-613*

### **Determination of costs award with respect to the participation of the Consumers Council of Canada in the Telecom and Broadcasting Notice of Consultation 2018-246 proceeding**

#### **Application**

1. By letter dated 7 December 2018, the Consumers Council of Canada (CCC) applied for costs with respect to its participation in the proceeding initiated by Telecom and Broadcasting Notice of Consultation 2018-246 (the proceeding). In the proceeding, pursuant to Order in Council P.C. 2018-0685, 6 June 2018, the Commission sought comments from Canadians concerning their personal experiences with any misleading or aggressive retail sales practices of Canada's large telecommunications carriers and those carriers' practices in respect of service bundles that include both broadcasting and telecommunications services. The proceeding led to the Commission's [\*Report on Misleading or Aggressive Communications Retail Sales Practices\*](#).
2. The Commission did not receive any interventions in response to the application for costs.
3. The CCC 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. The CCC requested that the Commission fix its costs at \$10,062.53, consisting of \$9,225 for consultant fees plus the Ontario Harmonized Sales Tax (HST) on fees, less the rebate to which the CCC is entitled in connection with the HST. The CCC filed a bill of costs with its application.
5. The CCC submitted that all telecommunications service providers that participated in the proceeding are the appropriate parties to be required to pay any costs awarded by the Commission. The CCC did not comment on how the responsibility for costs should be allocated among those service carriers.

## **Request for information concerning section 68 costs criteria**

6. In a letter dated 21 February 2019, the Commission requested that the CCC elaborate on how it represented a group or class of subscribers that had an interest in the outcome of the proceeding, the extent to which it had assisted the Commission in developing a better understanding of the matters considered, and whether it had participated in the proceeding in a responsible way.
7. In its response, the CCC submitted that it represents the interests of Canadian consumers since it is a not-for-profit organization seeking an efficient, equitable, effective, and safe marketplace in which consumers can exercise their rights and responsibilities. The CCC noted that it queries more than 350 consumer opinion leaders and interested parties that make up its Public Interest Network, and that it has published research papers on topics related to sales practices.
8. The CCC submitted that it had assisted the Commission in developing a better understanding of the issues by providing insight on topics in which it has specialized expertise. The CCC highlighted the analysis it had provided concerning an IPSOS research survey that the CRTC had commissioned and included on the public record of the proceeding.
9. The CCC submitted that it had participated in the proceeding responsibly by complying with the Rules of Procedure and, among other things, thoughtfully responding to the submissions of the large telecommunications carriers.

## **Request for information concerning allocation between telecommunications and broadcasting**

10. In a second letter, dated 1 May 2019, the Commission noted that the proceeding related to both telecommunications and broadcasting issues, and that the Commission may award costs related only to telecommunications matters under the *Telecommunications Act* (the Act). The Commission also indicated that parties claiming costs for broadcasting matters were free to apply to the Broadcasting Participation Fund for the portion of their time in the proceeding that was dedicated to broadcasting matters.
11. In the letter, the Commission outlined that the overall division of issues in the proceeding does not necessarily translate into the amount of time that any specific costs applicant spends on either telecommunications or broadcasting matters. In particular, the Commission noted that the individual costs applicants had the best knowledge of the amount of time allocated to particular issues and whether these issues related to telecommunications or broadcasting matters.
12. Accordingly, the Commission requested that all costs applicants to the proceeding provide the percentage of time spent on telecommunications matters during the proceeding, including supporting information as to how they determined the time allocated to telecommunications as opposed to broadcasting matters.

13. In its response, dated 13 May 2019, the CCC submitted that 100% of its costs should be viewed as relating to telecommunications matters. The CCC noted that its survey was created to solicit comments on telecommunications matters, and that although some of the survey responses related to misleading and aggressive sales practices in the broadcasting context, these responses were in the minority. The CCC further noted that its submissions concerning the bundling of broadcasting services and telecommunications services had arisen in the context of how bundling impacts competitive telecommunications service agreements.

### **Commission's analysis and determinations**

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. In the present case, the CCC has demonstrated that it meets this requirement. Specifically, the Commission considers that the CCC sufficiently represented customers of telecommunications services by (i) its consultative approach with regard to its Public Interest Network and (ii) the survey it circulated.
16. The CCC has also satisfied the remaining criteria through its participation in the proceeding. In particular, the CCC's recommendation that customer service and sales calls recordings be made available to consumers assisted the Commission in developing a better understanding of the actions that might be appropriate for the Commission moving forward.
17. The rates claimed in respect of consultant fees are in accordance with the rates established in the *Guidelines for the Assessment of Costs*, as set out in Telecom Regulatory Policy 2010-963. The Commission finds that the amount claimed by the CCC was necessarily and reasonably incurred and should be allowed.

18. Upon review of the CCC's costs application, the Commission discovered a clerical error, in that the allowable HST rebate was miscalculated. Based on a claim of \$9,225 for consultant fees, the correct amount including HST, less the rebate to which the CCC is entitled, is \$9,588.47, rather than \$10,062.53. Accordingly, the Commission reduces the CCC's costs claim by \$474.06.
19. The Commission accepts the CCC's submissions as they relate to the allocation of costs between telecommunications and broadcasting matters, with the entirety of the CCC's costs relating to telecommunications matters that may, incidentally, touch on broadcasting matters.
20. 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.
21. 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, including all their subsidiaries, had a significant interest in the outcome of the proceeding and participated actively in the proceeding: Bell Canada, on its own behalf and on behalf of Bell Aliant, a division of Bell Canada; Bell Mobility Inc.; Bell MTS Inc.; Câblevision du Nord de Québec inc.; DMTS, a division of Bell Canada; KMTS, a division of Bell Canada; NorthernTel Limited Partnership; Ontera; and Télébec, Société en commandite (collectively, Bell Canada et al.); Bragg Communications Incorporated, carrying on business as Eastlink; Canadian Network Operators Consortium Inc.; Cogeco Communications Inc.; Northwestel Inc.; Quebecor Media Inc., on behalf of Videotron Ltd.; Rogers Communications Canada Inc. (RCCI); Saskatchewan Telecommunications; Shaw Communications Inc.; TBayTel; TekSavvy Solutions Inc.; TELUS Communications Inc. (TCI); and Xplornet Communications Inc.
22. 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>1</sup> 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. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated as follows:

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<sup>1</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.

Company	Proportion	Amount
Bell Canada et al.	43.57%	\$4,177.51
TCI	28.65%	\$2,747.36
RCCI	27.78%	\$2,663.60

23. Consistent with its general approach articulated in Telecom Costs Order 2002-4, the Commission makes Bell Canada responsible for payment on behalf of Bell Canada et al. The Commission leaves it to the members of Bell Canada et al. to determine the appropriate allocation of the costs among themselves.

### Directions regarding costs

24. The Commission **approves with changes** the application by the CCC for costs with respect to its participation in the proceeding.
25. Pursuant to subsection 56(1) of the Act, the Commission fixes the costs to be paid to the CCC at \$9,588.47.
26. The Commission **directs** that the award of costs to the CCC be paid forthwith by Bell Canada, TCI, and RCCI according to the proportions set out in paragraph 22.

Secretary General

### Related documents

- *Report regarding the retail sales practices of Canada's large telecommunications carriers*, Telecom and Broadcasting Notice of Consultation CRTC 2018-246, 16 July 2018; as amended by Telecom and Broadcasting Notice of Consultation CRTC 2018-246-1, 16 October 2018
- *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