



Telecom Order CRTC 2019-333

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File numbers: 1011-NOC2018-0246 and 4754-617

Determination of costs award with respect to the participation of the Manitoba Coalition in the Telecom and Broadcasting Notice of Consultation 2018-246 proceeding

Application

1. By letter dated 10 December 2018, the Manitoba Branch of the Consumers' Association of Canada and Winnipeg Harvest (together, the Manitoba Coalition) applied for costs with respect to their 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. TELUS Communications Inc. (TCI) filed an intervention, dated 21 December 2018, in response to the Manitoba Coalition's application.
3. The Manitoba Coalition 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 Manitoba Coalition submitted that it represents a group or class of subscribers that had an interest in the outcome of the proceeding because the Manitoba Branch of the Consumers' Association of Canada is a volunteer, non-profit, independent organization that works to inform and empower consumers and to represent the consumer interest in Manitoba. The Manitoba Coalition further explained that Winnipeg Harvest is a non-profit, community-based organization that is committed to providing food to people who struggle to feed themselves and their families. Collectively, the Manitoba Coalition organized an online survey of 1,000 Manitobans (facilitated by a research company named Prairie Research Associates), engaged in consumer engagement sessions with vulnerable communities, and undertook a targeted survey of 55 Manitobans who represent persons with

disabilities, low-income households, and Indigenous persons. The Manitoba Coalition further noted that it held workshops with vulnerable groups to prepare for the hearing.

5. The Manitoba Coalition submitted that it assisted the Commission in developing a better understanding of the matters considered, since it filed evidence of its consumer engagement as well as focused and structured interventions consisting of various reports and legal recommendations. It also offered a distinct point of view reflecting those of consumers in Manitoba.
6. The Manitoba Coalition submitted that it participated in a responsible way, since it coordinated with other public interest interveners in order to minimize duplication at various stages during the proceeding.
7. The Manitoba Coalition requested that the Commission fix its costs at \$37,189.42, consisting of \$23,082 for legal fees, \$2,700 for consultant fees, and \$11,407.42 for disbursements. The Manitoba Coalition noted that it was eligible for a GST rebate and provided a GST registration number, but did not accordingly claim a rebate on its forms. The Manitoba Coalition filed a bill of costs with its application.
8. The Manitoba Coalition claimed 40.2 hours for senior external legal counsel at a rate of \$290 per hour (\$11,658 in total), 82.6 hours for external junior legal counsel at a rate of \$135 per hour (\$11,151 in total), and 7.8 hours for an external legal assistant at a rate of \$35 per hour (\$273 in total). A summer law student was also retained for the proceeding, but no costs were claimed for the student's work.
9. The Manitoba Coalition also claimed 11.25 days for an in-house consultant, Ms. Gloria Desorcy, at a rate of \$240 per day (\$2,700 in total).
10. The Manitoba Coalition submitted that the telecommunications service providers that actively participated in the proceeding are the appropriate parties to be required to pay any costs awarded by the Commission.
11. The Manitoba Coalition suggested that the responsibility for payment of costs should be divided among the costs respondents according to the Commission's *Guidelines for the Assessment of Costs* (the Guidelines), as set out in Telecom Regulatory Policy 2010-963.

Answer

12. TCI submitted that the Manitoba Coalition should not be eligible for the reimbursement of its legal fees, since the lawyers are employed by Legal Aid Manitoba through the Public Interest Law Centre (PILC), and the province of Manitoba should not be able to outsource the costs of its lawyers' work. In making this argument, TCI referred to and relied on its previous submissions in the proceeding initiated by Telecom Notice of Consultation 2018-98. In that proceeding, TCI submitted that the lawyers representing the Manitoba Coalition are provincial employees of Legal Aid Manitoba. Accordingly, the Manitoba government should

sufficiently fund its legal aid organization, should not rely on awards from regulatory tribunals, and should not be permitted to offload its costs through the Commission's costs awards. TCI reasoned that those awards are intended to enable the participation of individuals and groups who would not otherwise be able to participate; the awards are not intended to provide indemnification of a successful party by an unsuccessful party.

Request for information regarding certain disbursements and consultant fees

13. In a letter dated 1 March 2019, the Commission requested that the Manitoba Coalition provide additional information regarding its application for costs. Specifically, the Commission requested more information concerning the disbursements claimed by the Manitoba Coalition, including a claim for \$56.56 for a lunch meeting and an invoice for \$330 for the services of Ms. Samantha Neufeld. The Commission also requested a clarification regarding the rates charged for an in-house consultant and whether the rate charged was used in error. In particular, the Commission noted that the Manitoba Coalition claimed a daily rate of \$240 for Ms. Gloria Desorcy as an in-house consultant, whereas the Guidelines state that in-house consultant fees are \$470 per day.
14. In its response, dated 8 March 2019, the Manitoba Coalition noted with apologies that the \$56.56 cost for the lunch meeting was included in error and could be removed from its application.
15. Concerning the invoice for \$330 for the services of Ms. Samantha Neufeld, the Manitoba Coalition submitted that the cost relates to Ms. Neufeld's work as a consultant retained by the Manitoba Coalition's legal counsel to compile and analyze results from the targeted survey of 55 Manitobans representing persons with disabilities, low-income households, and Indigenous persons. The Manitoba Coalition submitted that Ms. Neufeld provided high-quality analysis, and that her rate was significantly lower than that offered by Prairie Research Associates, the company that facilitated the larger, online survey of 1,000 Manitobans. The Manitoba Coalition emphasized that the targeted survey of 55 Manitobans provided more depth with regard to the views of vulnerable consumer groups.
16. Concerning the in-house consultant fees, the Manitoba Coalition submitted that although the Commission's Guidelines allow a daily rate of \$470, this rate does not reflect the actual cost incurred for Ms. Desorcy's services, which is \$240, based on an eight-hour day at \$30 per hour.

Request for information regarding allocation between telecommunications and broadcasting

17. In a 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.

18. In the letter, the Commission outlined that the overall division of issues in the proceeding does not necessarily reflect 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 they allocated to particular issues and whether these issues related to telecommunications or broadcasting matters.
19. 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.
20. In its response, dated 13 May 2019, the Manitoba Coalition submitted that 90% of its application for costs should be viewed as relating to telecommunications matters, and that the remaining 10% reflects the Manitoba Coalition's work on matters relating to broadcasting. To come to this allocation, the Manitoba Coalition reviewed all the materials it submitted or presented in the proceeding, including its initial intervention, consumer engagement reports, reply to interventions, and presentation at the hearing, as well as its final submissions.

Request for information regarding tax rebates

21. In a letter dated 5 June 2019, the Commission noted that the Guidelines require that a costs application indicate whether or not the applicant is entitled to a rebate in connection with the federal Goods and Services Tax (GST), a provincial sales tax (PST), a harmonized sales tax (HST), or any other applicable tax, as well as the extent of the rebate and the basis of its eligibility. The Commission further noted that the Manitoba Coalition had claimed on its Form IV – Affidavit of Disbursements that it was entitled to a GST rebate on its disbursements. It had also provided a GST registration number. However, the calculation of the applicable rebate was not included on Exhibit A – Summary Statement of Disbursements or Form V – Summary of Fees and Disbursements. Accordingly, the letter requested that the Manitoba Coalition either clarify whether the tax rebate was appropriately deducted or resubmit its relevant forms to reflect the correct GST percentage and calculate the allowable tax rebate for its disbursements.
22. In its response, dated 17 June 2019, the Manitoba Coalition submitted that some of its members are entitled to GST rebates. Accordingly, it filed a revised Exhibit A – Summary Statement of Disbursements and a revised Form V – Summary of Fees and Disbursements. Through these revised filings, the Manitoba Coalition requested that the Commission fix its costs at \$36,776.72, reached by reducing its claim for

disbursements from \$11,407.42 in its original application to \$10,994.72 (including the \$56.56 removed in response to the Commission's letter of 1 March 2019).

Commission's analysis and determinations

23. 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.
24. 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 Manitoba Coalition has demonstrated that it meets this requirement. Specifically, the Manitoba Coalition represented the interests of subscribers in the province of Manitoba by surveying and directly engaging these groups.
25. The Manitoba Coalition has also satisfied the remaining criteria through its participation in the proceeding. In particular, the Manitoba Coalition's range of submissions, especially those made during the oral hearing, assisted the Commission in developing a better understanding of the matters that were considered. The Manitoba Coalition also participated in a responsible way by using more cost-efficient services, such as those provided by Ms. Neufeld, as well as by using a mix of junior and senior legal counsel.
26. Moreover, although the consultant fees are not in accordance with the rates established in the Guidelines, the Commission finds it reasonable that the Manitoba Coalition claimed the work of its in-house consultant at her real costs. This points to the Manitoba Coalition's responsible participation in the proceeding.
27. The rates claimed in respect of legal fees are in accordance with the rates established in the Guidelines, as set out in Telecom Regulatory Policy 2010-963. The Commission considers that it would not be appropriate to reduce or exclude the costs claimed by the Manitoba Coalition relating to legal work undertaken by its PILC lawyers. PILC is an entity that is separate from, does not represent, and cannot be

instructed by the Government of Manitoba. PILC's client in this case was a coalition of public interest groups, and there is no evidence that either PILC or its client received government funding in relation to the proceeding. Allowing a party to claim fees for PILC lawyers is consistent with past Commission practice, and TCI did not raise any arguments that would justify a deviation from such practice in the circumstances.

28. The revised rates claimed in respect of the disbursements are in accordance with the rates established in the Guidelines.
29. The Commission accepts the Manitoba Coalition's submissions as they relate to the allocation of costs between telecommunications and broadcasting matters. Accordingly, the Commission determines that the Manitoba Coalition's total costs claim should be reduced by 10% to account for the work that the Manitoba Coalition undertook in the proceeding that was related to broadcasting matters.
30. In light of the above, the Commission fixes the Manitoba Coalition's costs at \$33,099.05.
31. 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.
32. 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; the Canadian Network Operators Consortium Inc.; Cogeco Communications Inc.; Northwestel Inc.; Quebecor Media Inc., on behalf of Videotron Ltd. (Videotron); Rogers Communications Canada Inc. (RCCI); Saskatchewan Telecommunications; Shaw Communications Inc. (Shaw); TBayTel; TekSavvy Solutions Inc.; TCI; and Xplornet Communications Inc.
33. 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.¹ However, as set out in Telecom Order 2015-160, the Commission considers \$1,000 to be the minimum

¹ 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.

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:

| Company | Proportion | Amount |
|--------------------|-------------------|---------------|
| Bell Canada et al. | 39.72% | \$13,147.28 |
| TCI | 26.12% | \$8,646.37 |
| RCCI | 25.33% | \$8,382.78 |
| Videotron | 5.19% | \$1,716.50 |
| Shaw | 3.64% | \$1,206.12 |

34. 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

35. The Commission **approves with changes** the application by the Manitoba Coalition for costs with respect to its participation in the proceeding.
36. Pursuant to subsection 56(1) of the Act, the Commission fixes the costs to be paid to the Manitoba Coalition at \$33,099.05.
37. The Commission **directs** that the award of costs to the Manitoba Branch of the Consumers' Association of Canada on behalf of the Manitoba Coalition be paid forthwith by Bell Canada, TCI, RCCI, Videotron, and Shaw according to the proportions set out in paragraph 33.

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
- *Lower-cost data-only plans for mobile wireless services*, Telecom Notice of Consultation CRTC 2018-98, 22 March 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