



## Telecom Order CRTC 2019-334

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*File numbers: 1011-NOC2018-0246 and 4754-612*

### **Determination of costs award with respect to the participation of l'Union des consommateurs in the Telecom and Broadcasting Notice of Consultation 2018-246 proceeding**

#### **Application**

1. By letter dated 12 December 2018, l'Union des consommateurs (l'Union) 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. In its application, l'Union notes that it inadvertently submitted the application for award of costs two days late because of an unusually heavy workload resulting from the need to prepare observations for another proceeding in the Commission. L'Union submitted that the delay in no way affects compliance with the other costs order eligibility criteria and does not create any prejudice towards the other parties involved in the case. L'Union requested authorization for this late filing and noted that other applicants had also requested additional time to complete their application for an award of costs in respect to the same proceeding.
3. The Commission did not receive any interventions in response to the application for costs.
4. L'Union 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. More specifically, l'Union stated that it represented the interests of consumers, primarily those from modest-income households. L'Union noted that the focus of its interventions were values such as solidarity, equity, and social justice, as well as

improving consumers' economic, social, political, and environmental living conditions.

6. L'Union indicated that it is made up of 13 consumer rights groups, the majority of which are from Quebec.<sup>1</sup> L'Union indicated that its structure allows it to maintain a broad vision of consumer issues, while developing cutting-edge expertise in certain areas through its research on emerging issues facing consumers. Specifically, l'Union indicated that the outcome of the proceeding is of interest primarily to consumers whose interests it defends, including Canadian consumers of communication services who have been victims of misleading and aggressive sales practices in recent years.
7. Regarding how it claims to represent this group or class, l'Union explained that it had gained expertise in misleading or aggressive sales practices faced by consumers through the research conducted by its consumer protection and telecommunications analysts and by providing recommendations to its members who interact with consumers facing problems.
8. L'Union requested that the Commission fix its costs at \$21,778.59, consisting of \$10,200 for legal fees, \$10,692.50 for analyst fees, and \$886.09 for disbursements. Specifically, l'Union claimed 12.75 days at a rate of \$800 per day for senior in-house legal fees; 22.75 days at a rate of \$470 per day for in-house analyst fees; and \$886.09 for disbursements, for two people, for travel between cities or within a city, accommodations, and meals for individuals attending a hearing taking place more than 50 kilometres from their usual place of work. L'Union filed a bill of costs with its application.
9. L'Union made no submission as to the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents).

### **Request for information**

10. 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.
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

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<sup>1</sup> These groups include the Association coopérative d'économie familiale in 10 regions, l'Association des consommateurs pour la qualité dans la construction, the EBO Financial Education Centre (formerly Entraide budgétaire Ottawa) and the Centre d'intervention budgétaire et sociale de la Mauricie.

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, l'Union submitted that for the proceeding, the percentage of time spent on telecommunication issues was 90%, and that spent on broadcasting issues was 10%. L'Union submitted that this conclusion was based on the following considerations:
  - providers use misleading or aggressive sales practices, especially when selling bundled services, and generally promote these services with a focus on Internet access or wireless services;
  - l'Union addressed three misleading and/or aggressive practices that are prevalent in the Internet access and wireless services markets, namely (i) selling services that are unavailable, (ii) selling services that do not meet needs, and (iii) using the phrases “no contract required” or “no contract”; and
  - l'Union frequently referenced the Wireless Code of Conduct and the Television Service Provider Code in their comments on the state of existing protections.

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

14. L'Union's application was filed after the deadline set out in the Rules of Procedure. Nonetheless, the Commission considers that the delay did not prejudice any party to the proceeding because the parties were informed of the application and had the opportunity to intervene. As a result, in the circumstances, it is appropriate to examine l'Union's costs application.
15. 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.

16. 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, l'Union has demonstrated that it meets this requirement. L'Union stated that it represents the interests of consumers, in particular those of low-income households, especially Canadian consumers of communication services who have been victims of misleading and aggressive sales practices in recent years, and identified its member organizations. L'Union also described how the positions it put forward reflected the interests of the members it claimed to represent.
17. L'Union has also satisfied the remaining criteria through its participation in the proceeding. In particular, because its analysis of service providers' sales and representation practices was presented in a clear and structured manner, l'Union assisted the Commission in developing a better understanding of the matters that were considered. In addition, l'Union participated in the proceeding in a responsible way.
18. Accordingly, the Commission finds that l'Union has met the criteria for an award of costs as stipulated in section 68 of the Rules of Procedure.
19. The rates claimed in respect of in-house legal and 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 l'Union was necessarily and reasonably incurred and should be allowed.
20. The Commission accepts l'Union's submission that during the proceeding, the percentage of time spent on telecommunication issues was 90% and that spent on broadcasting issues was 10%. As a result, the total amount is adjusted from \$21,778.59 to \$19,600.73.
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 notes that l'Union did not identify the respondents. In this regard, the Commission reminds l'Union that, pursuant to sub-paragraph 66(1)(b) of the Rules of Procedure, the applicant must identify in its application which respondents should bear the costs.
23. 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.; TBayTel; TekSavvy Solutions Inc.; TELUS Communications Inc. (TCI); and Xplornet Communications Inc.

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.<sup>2</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:

| Company            | Proportion | Amount     |
|--------------------|------------|------------|
| Bell Canada et al. | 41.2%      | \$8,075.50 |
| RCCI               | 26.3%      | \$5,154.99 |
| TCI                | 27.1%      | \$5,311.80 |
| Videotron          | 5.4%       | \$1,058.44 |

25. 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**

26. The Commission **approves with changes** the application by l'Union for costs with respect to its participation in the proceeding.
27. Pursuant to subsection 56(1) of the Act, the Commission fixes the costs to be paid to l'Union at \$19,600.73.

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<sup>2</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.

28. The Commission **directs** that the award of costs be paid forthwith by Bell Canada, RCCI, TCI, and Videotron according to the proportions set out in paragraph 24.

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