



Telecom Decision CRTC 2019-398

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Deaf Wireless Canada Consultative Committee – Application to review and vary Telecom Order 2018-437

*The Commission **denies** an application by the Deaf Wireless Canada Consultative Committee (DWCC) to review and vary Telecom Order 2018-437, in which the Commission awarded the DWCC half of the costs it had claimed related to a survey it had undertaken. The Commission finds that there is no substantial doubt as to the correctness of its determinations in that order.*

Background

1. In Telecom Order 2018-437, the Commission awarded the Deaf Wireless Canada Consultative Committee (DWCC) a portion of the costs it had claimed related to its participation in the proceeding that led to Telecom Regulatory Policy 2018-466 (the substantive proceeding), in which the Commission reviewed the regulatory framework for text-based message relay services (MRS).
2. In particular, the Commission awarded the DWCC half of the costs it had claimed in connection with a survey it conducted in American Sign Language (ASL), English, French, and Langue des signes québécoise (LSQ). The survey focused on the views of Deaf, deaf-blind, and hard-of-hearing Canadians on issues related to MRS. While the Commission determined that the DWCC had assisted it in developing a better understanding of the experiences and perspectives of this community with respect to MRS, it did not find that the total costs claimed related to the survey were necessary or reasonable.
3. The Commission determined that the complexity of the substantive proceeding did not justify the total amount of time claimed by the DWCC with respect to the survey and associated report, noting that this time significantly exceeded any of the total times claimed and associated costs awarded to various participants arising out of similar proceedings, specifically those relating to video relay service (Telecom Regulatory Policies 2014-187 and 2014-659 [collectively, the VRS proceedings]). In addition, the Commission considered that some parts of the survey and report did not directly address issues within the scope of the substantive proceeding. Specifically, portions of the survey and associated report discussing teletypewriter (TTY)-to-TTY calls were outside the scope of the proceeding.

Application

4. The Commission received an application from the DWCC, dated 2 May 2019,¹ in which the DWCC requested that the Commission review and vary Telecom Order 2018-437 to award the DWCC the full amount of the costs it had claimed in relation to the survey. In the alternative, the DWCC submitted that the Commission should award it 98.4% of its survey-related costs.
5. In its application, the DWCC submitted that the questions in its survey that related to TTY-to-TTY calls used skip logic to verify that each respondent had a TTY device before asking questions related to TTY relay service. The DWCC argued that a reduction of 50% to its survey-related costs implied that half of the survey and associated report were devoted to nothing but TTY-to-TTY calls, which, it contended, was not supported by the facts before the Commission. The DWCC submitted that, if the Commission does not award it the full amount of the survey-related costs it had claimed, then the Commission should reduce those costs by 1.6% to reflect the percentage of its report devoted to TTY-to-TTY calls.
6. The DWCC also emphasized that if it were not for its survey and associated report, the Commission would not have benefited from the insights gleaned from the 437 respondents to the survey, and that the outcome of the substantive proceeding would most likely have been different without its work.
7. The Commission received interventions regarding the DWCC's application from Bell Canada, the Canadian Association of the Deaf (CAD), the Deafness Advocacy Association Nova Scotia (DAANS), and Maple Communications Group Inc. (Maple).

Review and vary criteria

8. Section 62 of the *Telecommunications Act* (the Act) states that the Commission may, on application or on its own motion, review and rescind or vary any decision made by it, or rehear a matter before rendering a decision.
9. In Telecom Information Bulletin 2011-214, the Commission outlined the criteria it would use to assess review and vary applications filed pursuant to section 62 of the Act. Specifically, the Commission stated that applicants must demonstrate that there is substantial doubt as to the correctness of the original decision, for example due to (i) an error in law or in fact, (ii) a fundamental change in circumstances or facts since the decision, (iii) a failure to consider a basic principle that had been raised in the original proceeding, or (iv) a new principle that has arisen as a result of the decision.

¹ By letter dated 14 March 2019, the DWCC requested an extension to the 15 March 2019 deadline to file its review and vary application, noting scheduling conflicts and the commitments of its key representatives on other matters. By letter dated 20 March 2019, Commission staff extended the deadline for the DWCC to submit its application, having regard for those reasons and the relatively short extension being requested.

Did the Commission err in law or in fact in Telecom Order 2018-437, such that there is substantial doubt as to the correctness of its determination to award the DWCC half the costs claimed related to the survey?

Positions of parties

10. In general, CAD, DAANS, and Maple supported the DWCC's argument that a reduction of 50% to its survey-related costs was disproportionate, considering that the DWCC's survey included a limited number of questions relating to TTY-to-TTY calls, and that the associated report included only a few paragraphs dealing with this issue.
11. DAANS further submitted that it was not the complexity of the issues covered by the substantive proceeding that resulted in the DWCC claiming 443.75 hours in its original application for costs. Rather, those hours were attributable to the necessity of conducting a quadrilingual survey in simple English/ASL and simple French/LSQ to obtain a full breadth of Deaf, deaf-blind, and hard-of-hearing Canadians' relevant perspectives to contribute to the record of the substantive proceeding.
12. Bell Canada submitted that the DWCC addressed only one of the reasons for which the Commission reduced the DWCC's costs award by 50%, namely that the portions of the survey and associated report discussing TTY-to-TTY calls were outside the scope of the proceeding. Bell Canada submitted that the Commission had also reduced the DWCC's costs award on the basis that the complexity of the substantive proceeding did not justify the total amount claimed, and that the total amount claimed was excessive in the circumstances. Bell Canada argued that since the DWCC did not address this reason in its application or justify the reasonableness of the time claimed in the context of the survey and the associated report, the DWCC had not demonstrated substantial doubt as to the correctness of the order.

Commission's analysis and determinations

Out-of-scope portions of the survey

13. The Commission indicated in Telecom Order 2018-437 that the DWCC had met the costs award criteria and that some parts of the survey assisted it in developing a better understanding of the matters that were considered. However, the Commission noted that care must be taken to ensure that the total amount of costs incurred is necessary and reasonable in the circumstances of the proceeding, as required by subsection 70(2) of the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (the Rules of Procedure).
14. In its assessment of whether or not the time expended by the DWCC was excessive, the Commission took into account some of the factors listed in the *Guidelines for the Assessment of Costs* (the Guidelines), as set out in Telecom Regulatory Policy 2010-963, including the complexity of the proceeding as compared to the amount of time claimed and associated costs awarded in other similar proceedings. In addition, the Commission determined that parts of the survey were outside the scope of the substantive proceeding.

15. While the Commission determined that portions of the survey did not address issues within the scope of the proceeding, this was not the only reason that the Commission outlined in its assessment for reducing the DWCC's survey-related costs. As a result, the DWCC's argument that a 50% reduction in its survey-related costs suggested that half of the survey and associated report related to nothing but TTY-to-TTY calls does not account for the additional analysis that the Commission undertook. Further, the proposed 1.6% reduction in its survey-related costs, which the DWCC submitted reflects the out-of-scope portions of the associated report, does not account for the fact that the reduction did not solely relate to this issue.
16. Therefore, the Commission considers that its assessment of the out-of-scope portions of the survey and associated report in the context of the overall reduction in the DWCC's costs does not constitute an error in fact that would raise substantial doubt as to the correctness of Telecom Order 2018-437.

Complexity of the proceeding and accessibility considerations

17. In assessing whether costs are necessarily and reasonably incurred, the Commission noted in Telecom Order 2018-437 that it takes into account every costs application in light of its own unique circumstances. The Commission also acknowledged that the DWCC in particular, as an organization that focuses on accessibility issues, might incur additional costs in its representation of interested subscribers. However, the Commission has emphasized both in the Guidelines and in the context of particular costs orders, including in the context of the order in question, that the amount claimed must still be necessarily and reasonably incurred in the context of the substantive proceeding, consistent with subsection 70(2) of the Rules of Procedure.
18. Regarding DAANS' argument that the number of hours claimed in relation to the survey costs were attributable to the necessity of conducting a quadrilingual survey rather than to the complexity of the proceeding, the Commission had taken the accessibility considerations and unique circumstances of the DWCC into account in its assessment of whether the costs claimed were necessary and reasonable. However, while these accessibility considerations were a relevant factor in the Commission's assessment of the costs claimed, they were not the only factor.
19. In this respect, the Commission referred to specific subparagraphs of the Guidelines that outline the considerations for evaluating whether or not the time expended by a claimant is excessive under the circumstances and the factors that can be taken into account, such as the amount of time claimed and associated costs awarded in similar proceedings. The Commission then went on to conclude that the costs claimed by the DWCC significantly exceeded any of the total times claimed and associated costs awards arising out of the VRS proceedings. The Commission considers that this comparison was appropriate given that the VRS proceedings also dealt with issues of particular relevance to accessibility groups and largely included costs applicants that were accessibility groups, many of which represented persons with hearing disabilities.

20. As noted above, the Commission also determined that portions of the survey and associated report were outside the scope of the substantive proceeding. Thus, the Commission exercised its discretion to reduce the survey-related costs claimed relative to the complexity of the substantive proceeding and those portions that were within the scope of the substantive proceeding.
21. Accordingly, the Commission determines that no error in law or in fact has been established with respect to its assessment of the relevant accessibility considerations that would raise substantial doubt as to the correctness of Telecom Order 2018-437.

Conclusion

22. The Commission values the contributions that accessibility groups like the DWCC are able to provide to its proceedings and determined in Telecom Order 2018-437 that portions of the DWCC's survey and associated report had assisted it in developing a better understanding of the matters under consideration in the substantive proceeding. The Commission considered the unique circumstances of the DWCC in its assessment of the costs claim and weighed all relevant considerations in the circumstances to exercise its discretion and award the DWCC half of its survey-related costs. Further, the Commission's determinations were consistent with the Guidelines and the Rules of Procedure.
23. In light of all the above, the Commission determines that it did not err in law or in fact such that there is substantial doubt as to the correctness of the determination to award the DWCC half of the costs claimed related to the survey. Accordingly, the Commission **denies** the DWCC's application to review and vary Telecom Order 2018-437.

Secretary General

Related documents

- *Review of the regulatory framework for text-based message relay services*, Telecom Regulatory Policy CRTC 2018-466, 14 December 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
- *Structure and mandate of the video relay service administrator*, Telecom Regulatory Policy CRTC 2014-659, 18 December 2014
- *Video relay service*, Telecom Regulatory Policy CRTC 2014-187, 22 April 2014
- *Revised guidelines for review and vary applications*, Telecom Information Bulletin CRTC 2011-214, 25 March 2011
- *Revision of CRTC costs award practices and procedures*, Telecom Regulatory Policy CRTC 2010-963, 23 December 2010