



Telecom Order CRTC 2020-99

PDF version

Ottawa, 20 March 2020

File numbers: 8620-P8-201800756 and 4754-595

Determination of costs award with respect to the participation of l'Union des consommateurs in the proceeding that led to Telecom Decision 2020-91

Application

1. By letter dated 23 April 2018, l'Union des consommateurs (l'Union) applied for costs with respect to its participation in the proceeding that led to Telecom Decision 2020-91 (the proceeding). In the proceeding, the Commission considered a Part 1 application from the Public Interest Advocacy Centre (PIAC) and the National Pensioners Federation (NPF) [collectively, PIAC-NPF] in which they requested clarification and enforcement of the Wireless Code,¹ in particular, section J as it relates to certain wireless prepaid account balance policies of Rogers Communications Canada Inc. (RCCI) and of wireless service providers in general.
2. The Commission did not receive any interventions in response to the application for costs.
3. 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.
4. With respect to the first criterion, l'Union submitted that it is a not-for-profit umbrella organization of 13 consumer rights groups, the majority of which are in the province of Quebec.² Its mission is to represent and defend the rights and interests of consumers, in particular low-income consumers. L'Union submitted that its structure

¹ The Wireless Code was set out in Telecom Regulatory Policy 2013-271 and revised in Telecom Regulatory Policy 2017-200.² These groups are l'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 le Centre d'intervention budgétaire et sociale de la Mauricie.

² These groups are l'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 le Centre d'intervention budgétaire et sociale de la Mauricie.

enables it to maintain a broad vision of consumer issues while developing particular expertise in certain areas, notably through its research on new issues facing consumers. Its activities are informed by grassroots connections between its constituent member organizations and their communities. The proceeding was of interest to it because RCCI's policy could affect some consumers that it represents in Quebec.

5. L'Union did not elaborate on the specific methods by which it submitted that it represents this group or class as it relates to the proceeding. It relied on its statements regarding the mission and structure of the organization.
6. Regarding the second criterion, l'Union submitted that it had assisted the Commission in developing a better understanding of the matters that were considered in the proceeding. It submitted that it had supported PIAC-NPF's application and presented arguments on how RCCI's policy would not respect the Wireless Code or the Commission's directions regarding prepaid services. It provided legal analysis and adopted a point of view to defend consumers, and its position was clear, nuanced, and supported by research and past Commission decisions. L'Union further submitted that it had encouraged the Commission to hold consultations on the framework for prepaid services to address issues such as that raised in the proceeding in order to ensure that that the problem does not get perpetuated further, and to protect users of prepaid services who are vulnerable to accumulating large prepaid account balances.
7. Regarding the third criterion, l'Union submitted that it had participated responsibly in the proceeding and in accordance with the Rules of Procedure.
8. L'Union requested that the Commission fix its costs at \$2,797.50, consisting of \$800 for legal fees and \$1,997.50 for analyst fees. In particular, it claimed 1 day for senior in-house counsel at a rate of \$800 per day and 4.25 days for an in-house analyst at a rate of \$470 per day. 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).

Commission's analysis and determinations

10. 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.

11. 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. It identified the groups and classes of persons it represents, and the regions of Canada, in particular the province of Quebec, represented by its members. L'Union submitted that through its mission and structure, and its members' connections on the ground to consumers in communities, it has become aware of the concerns with and the impact of RCCI's policy, or policies like it, on consumers.
12. L'Union has satisfied the second criterion for an award of costs through its participation in the proceeding. L'Union provided insight into the practical effect of a provision of the Wireless Code on the persons the organization represents, a distinct point of view regarding certain terms and conditions of prepaid wireless services on the persons the organization represents, and an analysis of the Commission's decisions and authority. The analysis was structured and assisted the Commission in developing a better understanding of the matters that were considered.
13. Although l'Union did not elaborate on the third criterion in its application for costs, the record of the proceeding shows that throughout the proceeding, l'Union conformed to the Rules of Procedure. Further, the documentation attached to the application for costs demonstrates that l'Union relied primarily on cost-efficient resources (namely, an in-house analyst). Accordingly, l'Union has satisfied the third criterion.
14. Section 66 of the Rules of Procedure states that, in an application for final costs, the applicant must identify the respondents that should pay the costs. L'Union did not do so in its application. The Commission reminds l'Union that applications for costs should address all the associated requirements under the Rules of Procedure, including indicating the appropriate costs respondents.
15. The rates claimed in respect of analyst and legal 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. The Commission finds that the total amount claimed by l'Union was necessarily and reasonably incurred and should be allowed.
16. 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.
17. 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. In addition, the Commission's general practice is 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.³

18. Consistent with this approach, the Commission considers that all the wireless service providers that participated in the proceeding did so in a similar manner, in accordance with the Rules of Procedure, and had a similar interest in the outcome of the proceeding. The proceeding related uniquely to issues affecting wireless service providers, in particular, the interpretation and application of the Wireless Code. Accordingly, it would be appropriate in the circumstances of this case for costs to be allocated among all the wireless service providers that had a significant interest in the outcome of the proceeding and participated actively in the proceeding.
19. Therefore, in the present case, the Commission considers that the wireless service providers Bell Mobility Inc. (Bell Mobility), RCCI, and TELUS Communications Inc. (TCI) had a significant interest in the outcome of the proceeding and participated actively in the proceeding.
20. With regard to the allocation of costs, the Commission notes that it has broad discretion pursuant to subsection 56(2) of the *Telecommunications Act* (the Act), in determining the revenues on which to allocate costs. While the general approach is to allocate costs on the basis of TORs, the Commission has exercised its broad discretion to allocate costs on the basis of wireless revenue market share (WRS) in the past. Notably, this occurred in several orders⁴ related to participation in the Wireless Code review proceeding⁵ as well as in Telecom Decision 2020-33, which related to participation in a proceeding about the unlocking of mobile devices and the associated requirements set out in the Wireless Code.
21. In those previous cases, the Commission indicated that a deviation from the general practice for allocation was justified, considering that the Guidelines include the principles of ensuring that the costs award process has the flexibility to take into account particular circumstances of a proceeding or intervention, and that the approach taken is fair, efficient, and effective. In those cases, the Commission held that WRS were more suitable indicators than TORs to determine the appropriate allocation, since the proceedings focused on the wireless industry. Similarly, the proceeding to which l'Union's cost application applies related solely to the Wireless

³ TORs consist of Canadian telecommunications revenues from local and access, long distance, data, private line, Internet, and wireless services.

⁴ See Telecom Orders 2017-362, 2017-363, 2017-364, 2017-378, 2017-379, and 2017-380. In those orders, the Commission used the WRS set out in the Commission's 2015 *Communications Monitoring Report*.

⁵ That proceeding resulted in Telecom Regulatory Policy 2017-200.

Code, specifically section J. The focus was restricted to the wireless industry – wireless service providers and consumers of these services.

22. In light of the above, the Commission considers that in this instance, it would be appropriate to adopt the same approach and allocate costs among the costs respondents on the basis of WRS. This approach would reflect the particular circumstances of the proceeding and the interests of the parties that participated in the proceeding.
23. As set out in Telecom Order 2015-160, the Commission generally 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. In the present case, following that approach would mean that TCI would be responsible for paying less than \$1,000 based on its WRS, whereas not following that approach would mean that the costs for each participating wireless service provider would be approximately \$1,000 (the costs allocated to RCCI would be only slightly above \$1,000 and the costs allocated to Bell Mobility and TCI would be slightly below \$1,000). The Commission is of the view that Bell Mobility and TCI participated in the proceeding in a similar fashion and to the same extent (i.e. each filed a single intervention). The Commission considers that it would be appropriate in this case to depart from its general approach and not apply the \$1,000 minimum. This would ensure that a higher burden is not placed on Bell Mobility compared to TCI.
24. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated as follows:⁶

Company	Proportion	Amount
RCCI	36.7%	\$1,026.68
Bell Mobility	32.6%	\$911.99
TCI	30.7%	\$858.83

Directions regarding costs

25. The Commission **approves** the application by l'Union for costs with respect to its participation in the proceeding.
26. Pursuant to subsection 56(1) of the Act, the Commission fixes the costs to be paid to l'Union at \$2,797.50.

⁶ In this order, the Commission has used the wireless service revenues of the costs respondents based on the 2019 [Communications Monitoring Report](#) and the underlying data supporting that report (see Table T10.2 – “Retail mobile revenue market share by service provider” on [Open Data](#)).

27. The Commission **directs** that the award of costs to l'Union be paid forthwith by RCCI, Bell Mobility, and TCI according to the proportions set out in paragraph 24 above.
28. The Commission reminds l'Union that applications for costs should address all the requirements of a cost application under the Rules of Procedure, including indicating the appropriate costs respondents.

2019 Policy Direction

29. The 2019 Policy Direction⁷ applies to this order, since the record of the proceeding associated with l'Union's application for costs closed prior to 17 June 2018.⁸ The Commission considers that that in exercising its powers to approve l'Union's application for costs, it is promoting consumers' interests by ensuring appropriate access to Commission proceedings on matters of public interest. Accordingly, the Commission's determinations in this order are consistent with the 2019 Policy Direction.

Secretary General

Related documents

- *Wireless Code – Application by the Public Interest Advocacy Centre and the National Pensioners Federation seeking clarification and enforcement of rules regarding prepaid balances*, Telecom Decision CRTC 2020-91, 11 March 2020
- *TELUS Communications Inc. – Application to review and vary Telecom Orders 2019-170 and 2019-171*, Telecom Decision CRTC 2020-33, 29 January 2020
- *Determination of costs award with respect to the participation of the Deaf Wireless Canada Consultative Committee in the proceeding that led to Telecom Regulatory Policy 2017-200*, Telecom Order CRTC 2017-380, 25 October 2017
- *Determination of costs award with respect to the participation of Media Access Canada in the proceeding that led to Telecom Regulatory Policy 2017-200*, Telecom Order CRTC 2017-379, 25 October 2017

⁷ *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives to Promote Competition, Affordability, Consumer Interests and Innovation*, SOR/2019-227, 17 June 2019

⁸ The 2019 Policy Direction applies with respect to applications received on or after 17 June 2019, or to applications for which the record of the proceeding closed more than one year before the date that the 2019 Policy Direction took effect.

- *Determination of costs award with respect to the participation of the Consumers Council of Canada in the proceeding that led to Telecom Regulatory Policy 2017-200, Telecom Order CRTC 2017-378, 25 October 2017*
- *Determination of costs award with respect to the participation of the Coalition in the proceeding that led to Telecom Regulatory Policy 2017-200, Telecom Order CRTC 2017-364, 16 October 2017*
- *Determination of costs award with respect to the participation of l'Union des consommateurs in the proceeding that led to Telecom Regulatory Policy 2017-200, Telecom Order CRTC 2017-363, 16 October 2017*
- *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*
- *The Wireless Code, Telecom Regulatory Policy CRTC 2013-271, 3 June 2013*
- *Revision of CRTC costs award practices and procedures, Telecom Regulatory Policy CRTC 2010-963, 23 December 2010*
- *New procedure for Telecom cost awards, Telecom Public Notice CRTC 2002-5, 7 November 2002*