



Telecom Order CRTC 2021-100

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Ottawa, 4 March 2021

File numbers: 1011-NOC2019-0309 and 4754-631

Determination of costs award with respect to the participation of the Coalition for Cheaper Wireless Service in the proceeding that led to Telecom Decision 2021-98

Application

1. By letter dated 28 November 2019, the Public Interest Advocacy Centre (PIAC) applied for costs on its own behalf and on behalf of the Association of Community Organizations for Reform Now Canada (ACORN), the Canadian Association of Retired Persons (CARP), and the National Pensioners Federation (NPF) [collectively, the Coalition for Cheaper Wireless Service (CCWS)]. The application was made with respect to the CCWS's participation in the proceeding that led to Telecom Decision 2021-98 (the proceeding). In the proceeding, the Commission considered (i) whether device financing plans currently offered by wireless service providers (WSPs), specifically plans with terms longer than 24 months, comply with the Wireless Code; and (ii) asked certain WSPs to show cause why they had not committed a violation by offering device financing plans that may be in contravention of the Wireless Code.
2. The Commission did not receive any interventions in response to the application for costs.
3. The CCWS 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. In particular, the CCWS submitted that it represents the interests of Canadians as a whole and through the CCWS's individual members, noting that
 - ACORN is an independent national organization of low and moderate income families with over 70,000 members in over 20 neighbourhood chapters across nine cities;
 - CARP is the largest seniors' advocacy group in Canada, with 300,000 members nationwide, and has a mandate to improve healthcare and financial security, and to support the human rights of Canadians as they age;

- NPF is a democratic, non-partisan, non-sectarian organization with a mission to stimulate public interest in the welfare of aging Canadians, and is composed of 350 seniors' chapters and clubs across Canada with a collective membership of one million Canadian seniors and retired workers; and
 - PIAC is a national non-profit organization and registered charity with a mandate to make representations to governing authorities on behalf of the public or public interest groups with respect to matters of public concern and interest. In carrying out this mandate, PIAC represents the interests of all consumers across Canada, with a particular focus on vulnerable consumers. The CCWS also noted that PIAC represents thousands of Canadians, when counting the membership of the various organizations that PIAC represents.¹
5. With respect to the specific methods by which the CCWS submitted that it represents this group of subscribers, the CCWS explained that it ascertained the interests of consumers through its members' research on financial services, such as research regarding high-costs credit, which revealed the effects of microfinancing arrangements on vulnerable consumers.
 6. The CCWS submitted that it participated responsibly in this proceeding given that it complied with the Rules of Procedure and respected the deadlines and processes set out in Commission procedural letters.
 7. The CCWS requested that the Commission fix its costs at \$4,966.27, consisting of \$2,381.27 for external legal fees, \$1,410.00 for in-house articling student fees, and \$1,175.00 for in-house analyst fees. The CCWS's claim included the Ontario Harmonized Sales Tax (HST) on fees less the rebate to which PIAC (the CCWS's legal counsel) is entitled to in connection with the HST. The CCWS filed a bill of costs with its application.
 8. The CCWS submitted that the appropriate costs respondents to its application are all the WSPs that participated in the proceeding. Further, the CCWS submitted that costs should be apportioned in proportion to the wireless service revenues of all the participating WSPs.

Commission's analysis and determinations

9. The criteria for an award of costs are set out in section 68 of the Rules of Procedure, which reads as follows:

¹ These organizations include the Ontario Society of Senior Citizens Organizations (160 seniors' groups representing 500,000 individual seniors in Ontario); the Alberta Council on Aging (4,500 individual members and 450 organizational members); Dying with Dignity Canada (2,000 members); the PEI Council of People with Disabilities (1,500 individual members); Rural Dignity of Canada (2,000 members); and the Federation of Metro Tenants' Association (which represents 92 tenants' associations).

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.
10. 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 CCWS has demonstrated that it meets this requirement. Its members include a variety of public interest organizations that represent a diverse group of Canadian consumers from across the country, and whose members have conducted research to ascertain the views of their constituents on the effects of microfinancing arrangements on vulnerable consumers.
11. The CCWS has also satisfied the remaining criteria through its participation in the proceeding. In particular, the CCWS's submissions analyzing whether 36-month financing plans meet the objectives of the Wireless Code, assessing the implications of device financing plans on the Wireless Code and consumers, and examining potential jurisdictional issues relating to wireless services and device financing plans assisted the Commission in developing a better understanding of the matters that were considered.
12. Accordingly, the Commission finds that the CCWS meets the criteria for an award of costs under section 68 of the Rules of Procedure.
13. The rates claimed in respect of legal, in-house articling student, and in-house analyst 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 CCWS was necessarily and reasonably incurred and should be allowed.
14. 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.
15. 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.

16. The Commission considers that all WSPs had a significant interest in the outcome of the proceeding and participated actively throughout the proceeding. Therefore, Bell Mobility Inc. (Bell Mobility); Bragg Communications Inc., carrying on business as Eastlink; Iristel Inc.; Quebecor Media Inc., on behalf of Videotron Ltd.; Rogers Communications Canada Inc. (RCCI); Saskatchewan Telecommunications; Shaw Communications Inc.; TBayTel; TELUS Communications Inc. (TCI); and Xplornet Communications Inc. are the appropriate costs respondents to the CCWS's application for costs.
17. It is also the Commission's general practice to allocate the responsibility for the payment of costs among costs respondents based on their telecommunications operating revenues (TORs).² In general, the Commission considers that TORs are indicators of the relative size and interest of the parties involved in proceedings.
18. However, allocating responsibility for the payment of costs based on TORs is not appropriate in this case given that the proceeding related solely to the Wireless Code, and more specifically to device financing plans. The Guidelines set out the key principles that the Commission seeks to implement through its costs regime. These include ensuring that the process has the flexibility to take account of particular circumstances where they are relevant and that the approach taken is fair, efficient, and effective. Accordingly, given that the focus of the proceeding was restricted to the wireless industry, WSPs, and consumers of wireless services, the Commission considers that a deviation from the use of TORs is justified, and that it would be appropriate to allocate costs among the costs respondents based on wireless revenue market share.
19. Additionally, 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.
20. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated as follows:³

Company	Proportion	Amount
RCCI	36.7%	\$1,822.62
Bell Mobility	32.6%	\$1,619.00
TCI	30.7%	\$1,524.65

² TORs consist of Canadian telecommunications revenues from local and access, long distance, data, private line, Internet, and wireless services.

³ 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 (under Data – Retail Mobile [Application] on [Open Data](#), see Tab MB-S1 of Supplementary Table 1 – “Retail mobile revenue and subscriber market share by service provider, 2013-2019”).

Directions regarding costs

21. The Commission **approves** the application by the CCWS for costs with respect to its participation in the proceeding.
22. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to the CCWS at \$4,966.27.
23. The Commission **directs** that the award of costs to the CCWS be paid forthwith by RCCI, Bell Mobility, and TCI according to the proportions set out in paragraph 20.

2019 Policy Direction

24. The Governor in Council issued a policy direction in which it directed the Commission to consider how its decisions can promote competition, affordability, consumer interests, and innovation (the 2019 Policy Direction).⁴ The Commission considers that the awarding of costs in this instance is consistent with subparagraph 1(a)(iv) of the 2019 Policy Direction.
25. By facilitating the participation of a group that represents consumer interests, this order contributes to enhancing and protecting the rights of consumers in their relationships with telecommunications service providers. Since consumer groups often require financial assistance to effectively participate in Commission proceedings, the Commission is of the view that its practice of awarding costs, as exercised in this instance, enables such groups to provide their perspectives on how consumer interests may be affected by the outcomes of the proceedings. In light of the above, the Commission considers that its determination to award costs to the CCWS promotes consumer interests.

Secretary General

Related documents

- *Wireless Code – Application to device financing plans*, Telecom Decision CRTC 2021-98, 4 March 2021
- *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

⁴ *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

- *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