



## Telecom Order CRTC 2021-221

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Ottawa, 9 July 2021

*File numbers: 1011-NOC2020-0326 and 4754-657*

### **Determination of costs award with respect to the participation of the Ontario Association of the Deaf in the proceeding that led to Telecom Decision 2021-199**

#### **Application**

1. By letter dated 8 December 2020, the Ontario Association of the Deaf (OAD) applied for costs with respect to its participation in the proceeding that led to Telecom Decision 2021-199 (the proceeding). In that decision, the Commission established new deadlines for the implementation of next-generation 9-1-1 (NG9-1-1) to replace deadlines that were suspended due to the COVID-19 pandemic.
2. TELUS Communications Inc. (TCI) filed an answer, dated 16 December 2020, in response to the OAD's application and other costs applications, from other applicants, related to the proceeding. The OAD filed a joint reply to this intervention with the Deafness Advocacy Association Nova Scotia (DAANS) and the Newfoundland and Labrador Association of the Deaf (NLAD) on 18 January 2021.
3. The OAD 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 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 OAD submitted that it represents the interests of Deaf and hard-of-hearing Ontarians and provided a better understanding of accessibility-related issues in relation to the subject of the proceeding. The OAD also submitted that it advanced the interests of Deaf and hard-of-hearing Ontarians by offering a distinct and unique point of view.
5. The OAD requested that the Commission fix its costs at \$822.50, consisting of in-house consultant fees related to the preparation of intervention and reply comments.
6. The OAD claimed 1.75 days at a rate of \$470 per day for in-house consultant fees, which included a review of the file and the preparation of its intervention and reply comments. The total amount claimed is \$822.50.

7. The OAD submitted that telecommunications service providers (TSPs) that participated in the proceeding are the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents).
8. The OAD suggested that the responsibility for payment of costs should be divided among the costs respondents on the basis of their gross revenues or another similar factor.

### **Answer**

9. TCI opposed the OAD's application for costs, arguing that the OAD did not meet the criteria for a cost award. TCI argued that the OAD's submission regarding the necessity of access to teletypewriters did not provide the Commission with a better understanding of the issues or advance the interests of participants. TCI further argued that the OAD did not raise accessibility issues related to 9-1-1 in the proceeding initiated by Telecom Notice of Consultation 2020-178 when it would have been appropriate for it to do so.

### **Reply**

10. In their joint reply, DAANS, NLAD, and the OAD submitted that their submission related to backwards compatibility of NG9-1-1 was appropriate and not out of the scope of the proceeding. The associations further argued that their submission responsibly contributed to the Commission's understanding of NG9-1-1 milestone deadlines through a Deaf and hard-of-hearing accessibility/friendliness lens.

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

11. 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.
12. 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 OAD has demonstrated that it meets this requirement. The OAD represented Deaf and hard-of-hearing Ontarians.

13. The OAD has also satisfied the remaining criteria through its participation in the proceeding. Notably, the OAD's submission, in particular the content regarding accessibility concerns with milestones for the implementation of NG9-1-1, assisted the Commission in developing a better understanding of the matters that were considered.
14. The rates claimed in respect of 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 total amount claimed by the OAD was necessarily and reasonably incurred and should be allowed.
15. 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.
16. 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 that participated in the proceeding have 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 its affiliate Bell Mobility Inc. (collectively, the Bell companies); Bragg Communications Incorporated, carrying on business as Eastlink; Brooke Telecom Co-operative Ltd.; Bruce Telecom Ontario Inc.; Execulink Telecom Inc.; Hay Communications Co-operative Limited; Huron Telecommunications Co-operative Limited; Ice Wireless Inc.; Mornington Communications Co-operative Limited; Quadro Communications Co-operative Inc.; Quebecor Media Inc., on behalf of Videotron Ltd.; Rogers Communications Canada Inc.; Saskatchewan Telecommunications; Shaw Communications Inc.; Sogetel inc.; Tuckersmith Communications Co-operative Limited; TBayTel; TCI; Wightman Telecom Ltd.; Xplornet Communications Inc.; and Ztar Mobile Canada, Inc.
17. Accordingly, the appropriate costs respondents to the OAD's costs application are the TSPs that participated in the proceeding.
18. 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>1</sup>

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<sup>1</sup> TORs consist of Canadian telecommunications revenues from local and access, long distance, data, private line, Internet, and wireless services.

19. 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. In this instance, given that the costs sought by the OAD are less than \$1,000, the total amount the OAD requests should be apportioned to the TSP with the largest TOR. The Bell companies have the largest TOR.
20. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated as follows:<sup>2</sup>

Company	Proportion	Amount
Bell companies	100%	\$822.50

21. Consistent with its general approach articulated in Telecom Costs Order 2002-4, the Commission makes Bell Canada responsible for payment on behalf of the Bell companies. The Commission leaves it to the members of the Bell companies to determine the appropriate allocation of the costs among themselves.

### 2019 Policy Direction

22. 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).<sup>3</sup> The Commission considers that the awarding of costs in this instance is consistent with subparagraph 1(a)(iv) of the 2019 Policy Direction.
23. By facilitating the participation of a group that represents consumer interests, this order contributes to furthering the interests of consumers in their relationships with TSPs. 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 OAD promotes consumer interests.

### Directions regarding costs

24. The Commission **approves** the application by the OAD for costs with respect to its participation in the proceeding.

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<sup>2</sup> In this order, the Commission has used the TORs of the costs respondents based on their most recent audited financial statements.

<sup>3</sup> *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

25. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to the OAD at \$822.50.
26. The Commission **directs** that the award of costs to the OAD be paid forthwith by Bell Canada according to the proportions set out in paragraphs 19 and 20.

Secretary General

### **Related documents**

- *Establishment of new deadlines for Canada's transition to next-generation 9-1-1*, Telecom Decision CRTC 2021-199, 14 June 2021
- *Call for comments – Accessibility – Mobile wireless service plans that meet the needs of Canadians with various disabilities*, Telecom Notice of Consultation CRTC 2020-178, 1 June 2020; as amended by Telecom Notices of Consultation CRTC 2020-178-1, 26 August 2020; 2020-178-2, 29 September 2020; 2020-178-3, 23 March 2021; and 2020-178-4, 21 May 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
- *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