



Telecom Order CRTC 2021-99

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Determination of costs award with respect to the participation of l'Union des consommateurs in the proceeding that led to Telecom Decision 2021-98

Application

1. By letter dated 25 November 2019, l'Union des consommateurs (l'Union) applied for costs with respect to its participation in the proceeding that led to Telecom Decision 2021-98 (the proceeding). In the proceeding, the Commission considered (i) whether the 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. 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. In particular, l'Union submitted that it represents the interests and rights of consumers, with a particular focus on households with modest incomes. L'Union indicated that the consumers it represents have a particular interest in the outcome of the proceeding given that they are likely to subscribe to a device financing plan when purchasing new devices.
5. With respect to the group of subscribers it represents, l'Union indicated that it is composed of 13 consumer advocacy groups, the majority of which are in Quebec.¹ L'Union submitted that its structure enables it to maintain a broad vision of

¹ These groups include l'Association coopérative d'économie familiale in 10 regions, l'Association des consommateurs pour la qualité dans la construction, the EBO Financial Education Centre, and le Centre d'intervention budgétaire et sociale de la Mauricie.

consumer issues while developing particular expertise in certain areas, notably through its research on new issues faced by consumers. In particular, l'Union indicated that its representation of consumer interests is shaped by its work on the ground and the establishment of member associations in its communities.

6. L'Union requested that the Commission fix its costs at \$7,477.50, consisting of \$3,600.00 for legal fees and \$3,877.50 for analyst fees. L'Union filed a bill of costs with its application.
7. L'Union made no submission as to the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents).

Procedural letter

8. Commission staff sent a procedural letter, dated 3 February 2020, to l'Union requesting that it indicate who it considered to be the appropriate costs respondents to its costs application. Commission staff also requested that l'Union provide comments regarding the use of wireless operating revenues to allocate the responsibility for the payment of costs among costs respondents in this proceeding.
9. In its response, dated 6 February 2020, l'Union submitted that it considered all WSPs that participated in the proceeding to be the appropriate costs respondents to its costs application. L'Union also submitted that the use of wireless operating revenues would be appropriate for allocating the responsibility for the payment of costs among costs respondents in this proceeding.
10. Bell Canada replied that since the proceeding related to the Wireless Code the costs should be apportioned based on wireless revenues, given that the Commission had done so in similar circumstances in the past.

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, l'Union has demonstrated that it meets this requirement. L'Union indicated that it represents the interests of consumers, particularly households with modest incomes, and identified its member organizations. Further, l'Union described how it determined that the positions it put forward to the Commission reflect the interests of the members it claimed to represent. Lastly, l'Union submitted that its structure enables it to maintain a broad vision of consumer issues while developing particular expertise in certain areas, notably through its research on new issues faced by consumers.
13. L'Union has also satisfied the remaining criteria through its participation in the proceeding. In particular, its contribution was well structured and well focused, and it put forward its points of view on consumer mobility, on whether device financing plans with 36-month terms were consistent with the Wireless Code, and on the Commission's regulatory approach to eliminating consumers' barriers to switching WSPs, all of which assisted the Commission in developing a better understanding of the matters that were considered. L'Union also participated in the proceeding in a responsible way.
14. Accordingly, the Commission finds that the applicant meets the criteria for an award of costs under section 68 of the Rules of Procedure.
15. The rates claimed in respect of legal and 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 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 notes that l'Union did not identify in its application the respondents that should be responsible for the payment of its costs. In this regard, the Commission reminds l'Union that, pursuant to paragraph 66(1)(b) of the Rules of Procedure, an applicant must identify in its application the respondents that should pay the costs.
18. 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.
19. 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 l’Union’s application for costs.

20. 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.
21. 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.
22. 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.
23. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated as follows:³

Company	Proportion	Amount
RCCI	36.7%	\$2,744.24
Bell Mobility	32.6%	\$2,437.67
TCI	30.7%	\$2,295.59

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

24. The Commission **approves** the application by l'Union for costs with respect to its participation in the proceeding.
25. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to l'Union at \$7,477.50.
26. 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 23.

2019 Policy Direction

27. 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.
28. 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 l'Union 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