



## Telecom Order CRTC 2022-253

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Ottawa, 21 September 2022

*File numbers: 1011-NOC2020-0178 and 4754-685*

### **Determination of costs award with respect to the participation of the Canada Deaf Grassroots Movement in the proceeding initiated by Telecom Notice of Consultation 2020-178**

#### **Application**

1. By letter dated 8 April 2022, the Canada Deaf Grassroots Movement (CDGM) applied for costs with respect to its participation in the proceeding initiated by Telecom Notice of Consultation 2020-178 (the proceeding). In the proceeding, the Commission is examining a number of questions relating to the accessibility of mobile wireless services (wireless services). These include (i) how wireless service providers (WSPs) are complying with the Commission's existing regulatory framework and whether differences exist between primary and flanker brands; (ii) whether the plans currently offered and promoted are sufficient to meet the needs of Canadians with various disabilities; and (iii) whether additional regulatory measures are required and, if so, the nature of measures required to ensure that Canadians with various disabilities have access to plans that meet their needs and enable them to participate more fully in Canada's digital economy.
2. Rogers Communications Canada Inc. (RCCI) and TELUS Communications Inc. (TCI) filed interventions, dated 18 April 2022, in response to the CDGM's application. The CDGM did not file a reply.
3. The CDGM 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 CDGM submitted that it represents a specific and distinct group of Canadian telecommunications consumers: the Deaf, deaf-blind, and hard-of-hearing (DDBHH) sign language users who use their wireless devices to efficiently communicate with their hearing peers. The CDGM also submitted that its contribution offered a distinct and unique point of view on the issues under consideration and did not duplicate that of other parties.

5. The CDGM requested that the Commission fix its costs at \$3,301.10, consisting of external consultant fees at a rate of \$110.00 per hour. The CDGM filed a bill of costs with its application.
6. The CDGM submitted that that the appropriate costs respondents to its application are WSPs.

### **Answer**

7. RCCI and TCI did not object to the CDGM's eligibility for costs and took no position regarding the amount of costs claimed. However, both companies requested that any costs awarded in this proceeding be allocated on the basis of wireless service revenues.

### **Commission's analysis**

8. 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.
9. 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 CDGM has demonstrated that it meets this requirement. It is an organization that advocates to remove barriers faced by DDBHH Canadians, who have unique needs in accessing wireless services. The CDGM performed community outreach to solicit feedback from the Deaf community on how or if the accessible plans they subscribe to met their wireless service needs.
10. The CDGM has also satisfied the remaining criteria through its participation in the proceeding. In particular, it commented on barriers faced by sign language users who subscribe to accessible plans and how such plans may better serve these subscribers, who are heavy users of video chat applications. While the CDGM was not the only party to comment on this issue, its contribution was unique and valuable in assisting

the Commission in developing a better understanding of the matters that were considered.

11. Accordingly, the Commission finds that the applicant meets the criteria for an award of costs under section 68 of the Rules of Procedure.
12. The rates claimed in respect of consultant 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 the CDGM was necessarily and reasonably incurred and should be allowed.
13. 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.
14. 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 had a significant interest in the outcome of the proceeding and participated actively in the proceeding: Bell Mobility Inc. (Bell Mobility);<sup>1</sup> Brooke Telecom Co-operative Ltd.; Bruce Telecom Ontario Inc.; Bragg Communications Incorporated, carrying on business as Eastlink; Execulink Telecom Inc.; Freedom Mobile Inc.; Hay Communications Co-operative Limited; Huron Telecommunications Co-operative Limited; Ice Wireless Inc.; Mornington Communications Co-operative Limited; Petro Canada Mobility; Quadro Communications Co-operative Inc.; RCCI; Saskatchewan Telecommunications; Sogetel Mobilité inc.; TBayTel; TCI; Tuckersmith Communications Co-operative Limited; Videotron Ltd.; Xplore Mobile Inc.; and Wightman Communications Ltd.
15. 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) as an indicator of the relative size and interest of the parties involved in the proceeding.<sup>2</sup>
16. However, allocating responsibility for the payment of costs based on TORs would not be appropriate in this case given that the proceeding related solely to wireless services. 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 into account 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 service industry, WSPs, and

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<sup>1</sup> Bell Mobility participated on its own behalf and on behalf of the following related companies or divisions: Bell Canada; Bell MTS, a division of Bell Canada; Solo Mobile; Lucky Mobile; and Virgin Plus.

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

consumers of wireless services, it would be appropriate to allocate costs among the costs respondents based on wireless revenue market share. These shares are publicly available, compiled as part of the Commission's annual *Communications Monitoring Report*, and represent an appropriate indicator of the relative size and interest of the costs respondents in the circumstances.<sup>3</sup>

17. 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.
18. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated as follows:

| Company       | Proportion | Amount     |
|---------------|------------|------------|
| RCCI          | 34.3%      | \$1,132.28 |
| Bell Mobility | 33.9%      | \$1,119.07 |
| TCI           | 31.8%      | \$1,049.75 |

### 2019 Policy Direction

19. 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>4</sup> The Commission considers that the awarding of costs in this instance is consistent with subparagraph 1(a)(iv) of the 2019 Policy Direction.
20. Specifically, 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, including rights related to accessibility. 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 CDGM promotes consumer interests.

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<sup>3</sup> In this order, the Commission has used the wireless revenue market share data of the costs respondents based on the 2020 [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, 2013-2020).

<sup>4</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

## Directions regarding costs

21. The Commission **approves** the application by the CDGM 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 CDGM at \$3,301.10.
23. The Commission **directs** that the award of costs to the CDGM be paid forthwith by RCCI, Bell Mobility, and TCI according to the proportions set out in paragraph 18.

Secretary General

## Related documents

- *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; 2020-178-4, 21 May 2021; 2020-178-5, 29 June 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