



Telecom Order CRTC 2018-437

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Determination of costs award with respect to the participation of the Deaf Wireless Canada Consultative Committee in the Telecom Notice of Consultation 2017-33 proceeding

Application

1. By letter dated 7 December 2017, the Deaf Wireless Canada Consultative Committee (DWCC) applied for costs with respect to its participation in the proceeding initiated by Telecom Notice of Consultation 2017-33 (the proceeding). In the proceeding, the Commission examined the regulatory framework for message relay services (MRS).¹
2. TELUS Communications Inc. (TCI)² filed an intervention, dated 8 January 2018, in response to DWCC's application.
3. The DWCC 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 DWCC submitted that it represents the interests of Deaf, hard-of-hearing, and deaf-blind Canadians, and that it provided a fuller understanding of their experiences with text-based MRS. The DWCC noted that it conducted a national survey and produced an associated report to support the evidence it submitted in the proceeding. It also submitted that its contribution was focused, structured, and offered a distinct point of view for the Commission.
5. The DWCC requested that the Commission fix its costs at \$127,901.23, consisting of \$105,446.25 for consultant fees, \$14,657.50 for analyst fees, and \$7,797.48 for disbursements. The DWCC filed a bill of costs with its application.

¹ MRS are text-to-voice services that enable people with a hearing or speech disability to make and receive telephone calls.

² In the proceeding, submissions were received from TELUS Communications Company (TCC). However, effective 1 October 2017, TCC's assets were legally transferred to TCI and TCC ceased to exist. For ease of reference, "TCI" is used in this order.

6. For one of its consultants (Lisa Anderson-Kellett), the DWCC claimed 401 hours at the senior consultant rate of \$225 per hour for consulting fees (\$90,225.00), of which 265.25 hours related to the above-noted survey. The DWCC also claimed 92.25 hours at a rate of \$165 per hour for another consultant's fees (\$15,221.25), of which 73.25 hours related to the survey; and 133.25 hours for analyst fees (\$14,657.50), of which 105.25 hours related to the survey.
7. The disbursements claimed by the DWCC, such as those related to travel and accommodations, also related to the survey.
8. The DWCC submitted that the telecommunications service providers that participated in the proceeding are the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents).

Answer

9. TCI submitted that the Commission should ensure that the DWCC meets the criteria for a costs award. TCI further submitted that given the amount of the costs claim, any costs awarded should be allocated among all telecommunications service providers listed in Appendix 2 of Telecom Notice of Consultation 2017-33, based on their telecommunications operating revenues (TORs).³

Subsequent process

10. By letter dated 26 February 2018, Commission staff requested additional information regarding the amount of costs claimed by the DWCC for time that appeared to relate to assisting the Canadian National Society of the Deaf-Blind, Inc. (CNSDB) with its submissions in the proceeding. Specifically, the DWCC was requested to indicate whether certain hours were claimed in error or to explain how the DWCC was billed for the time claimed in relation to work that appeared to be conducted for the CNSDB.
11. In addition, the DWCC was requested to confirm the date on which Ms. Anderson-Kellett began offering services and acting as a consultant in order to resolve conflicting dates in the costs application.
12. In response, the DWCC submitted that a total of 27 hours were claimed in error in its application, as follows:
 - 16 hours claimed for Ms. Anderson-Kellett,
 - 5 hours claimed for Jeffrey Beatty, and
 - 6 hours claimed for Michael J. Stewart.

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

13. The DWCC also submitted that Ms. Anderson-Kellett began offering services as a consultant with respect to telecommunications and accessibility issues on 12 June 2008. The DWCC provided supporting statements for this date from two co-founders of the British Columbia Video Relay Service Committee.

Commission's analysis and determinations

Eligibility

14. 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.
15. 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. The DWCC's members are Deaf, hard-of-hearing, and deaf-blind community members across Canada. Through the DWCC's interaction with these communities, as well as its internal expertise and experience as a result of its previous participation in Commission proceedings, the DWCC ensured that these communities were represented in the positions it advanced in the proceeding. Accordingly, the DWCC has demonstrated that it meets the first criterion.
 16. The DWCC has also satisfied the remaining criteria through its participation in the proceeding. In particular, the DWCC's responses to the questions posed in Telecom Notice of Consultation 2017-33 provided the Commission with a better understanding of the experiences and perspectives of Deaf, hard-of-hearing, and deaf-blind community members with respect to MRS. Therefore, the DWCC assisted the Commission in developing a better understanding of the matters that were considered.

Rates and amounts

17. With regard to the 27 hours claimed by the DWCC for work that its consultants and analyst conducted for another organization, the Commission accepts the DWCC's submission that these hours were claimed in error. Therefore, the Commission considers it appropriate to modify the hours claimed for the DWCC's consultants and analyst as follows:
 - reduce the claim for Ms. Anderson-Kellett by 16 hours,
 - reduce the claim for Mr. Beatty by 5 hours, and
 - reduce the claim for Mr. Stewart by 6 hours.⁴
18. While the DWCC provided conflicting dates in its costs application as to when Ms. Anderson-Kellett first began offering services as a consultant, the Commission considers that the DWCC's response to the request for information and the supporting statements from two members of the British Columbia Video Relay Service Committee are reliable indicators of when Ms. Anderson-Kellett began offering services as a consultant. Accordingly, the Commission finds that Ms. Anderson-Kellett first began acting as a consultant in June 2008.
19. Paragraph 26 of the *Guidelines for the Assessment of Costs* (the Guidelines), as set out in Telecom Regulatory Policy 2010-963, states that the hourly rate applicable to a particular consultant is based on the number of completed years that person has been acting as a consultant. It further states that years shall be calculated as at the date of the commencement of the proceeding. The proceeding initiated by Telecom Notice of Consultation 2017-33 commenced on 2 February 2017. As at the date of commencement of the proceeding, Ms. Anderson-Kellett, given that she began acting as a consultant in June 2008, would have had eight years of experience acting as a consultant. Ms. Anderson-Kellett is therefore eligible to claim costs at a rate of \$165 per hour. Accordingly, her rate claimed is reduced from \$225 per hour to \$165 per hour.
20. Regarding the eligibility of the costs claimed by the DWCC for conducting the survey and producing the associated report, it is generally open to the DWCC, as well as other parties, to choose the manner in which they (i) demonstrate that they represent a group or class of subscribers that has an interest in a proceeding; and (ii) wish to make submissions to assist the Commission in developing a better understanding of the matters under consideration.
21. The Commission appreciates the use of the survey to gather and report on the views of Deaf, hard-of-hearing, and deaf-blind community members. As noted above, in Telecom Information Bulletin 2016-188, the Commission provided non-binding guidance regarding how an applicant may demonstrate that it represents members of

⁴ These hours are properly attributed to the CNSDB in its costs application in the proceeding and addressed in Telecom Order 2018-438.

the group or class of subscribers. The DWCC followed this guidance and provided evidence to support the fact that it represents interested subscribers through the survey that it commissioned. However, Telecom Information Bulletin 2016-188 does not require that a costs applicant canvass or consult its members in a survey to demonstrate that it represents the views of the group or class of subscribers that it purports to represent. A costs applicant can address and explain how its positions reflect the interests of that group or class of subscribers, for instance, through evidence of research it has conducted or commissioned.

22. Care must be taken to ensure that the total amount of costs incurred is necessary and reasonable in the circumstances of the proceeding, as required by subsection 70(2) of the Rules of Procedure. In assessing whether costs are necessarily and reasonably incurred, the Commission takes into account every costs applications in light of its own unique circumstances. The DWCC, as an organization that focuses on accessibility issues, might incur some additional costs in its representation of interested subscribers; however, the amount must still be necessary and reasonable.
23. With regard to this requirement, the Guidelines (i) outline considerations for evaluating whether or not the time expended by a claimant is excessive under the circumstances, and (ii) provides a list of non-exhaustive factors the Commission generally takes into account, including examining the amount of time claimed and associated costs awarded in other similar proceedings. In this case, the DWCC was an important intervener in the proceeding through its contribution on accessibility-related issues. However, the complexity of the proceeding did not justify the total amount of time claimed by the DWCC with respect to the survey and associated report, i.e. 443.75 hours. The time claimed by the DWCC with respect to the survey and associated report alone significantly exceeded any of the total time claims and associated costs awards arising out of similar proceedings, specifically the proceedings related to video relay service (Telecom Regulatory Policies 2014-187 and 2014-659).⁵ Further, although surveys are one method of providing evidence to the Commission, there is nothing inherent in a survey that would make the time claimed by the DWCC with respect to the survey incomparable with the time claimed by a similar applicant for work associated with other types of submissions. Therefore, the Commission considers that the significant difference between the time claimed in the proceeding and that in other similar proceedings is an indicator that the time claimed by the DWCC is excessive in the circumstances.
24. In addition, while parts of the survey and the associated report assisted the Commission in developing a better understanding of the matters that were considered, some parts did not directly address issues within the scope of the proceeding. Specifically, portions of the survey and report discussing TTY-to-TTY calls were outside the scope of the proceeding. Therefore, portions of the survey and

⁵ See Telecom Orders 2014-242, 2014-243, 2014-244, 2014-245, 2014-246, 2014-247, 2014-248, and 2015-160.

report did not assist the Commission in developing a better understanding of the matters that were considered.

25. Given the above, the Commission reduces the DWCC's costs associated with the survey and report by 50%.
26. The Commission therefore fixes the DWCC's total costs for its participation in the proceeding at \$62,102.49.
27. 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.
28. 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. Given that the total costs claim has been reduced, the Commission does not consider it necessary to allocate costs to all the parties identified in Appendix 2 of Telecom Notice of Consultation 2017-33, as suggested by TCI.
29. Instead, the Commission's general approach to determining the appropriate costs respondents remains appropriate. In that regard, the Commission considers that the following parties had a significant interest in the outcome of the proceeding and participated actively in the proceeding: Bell Canada, Bell Mobility Inc., Bell MTS, Northwestel Inc., and Télébec, Limited Partnership (collectively, the Bell companies); Cogeco Communications Inc.; Bragg Communications Incorporated, carrying on business as Eastlink; Freedom Mobile Inc.; Quebecor Media Inc., on behalf of Videotron Ltd. (Videotron); Rogers Communications Canada Inc. (RCCI); Saskatchewan Telecommunications (SaskTel); Shaw Telecom G.P. (Shaw); and TCI.
30. Consistent with its practice, it is appropriate to allocate the responsibility for payment of costs among costs respondents based on their TORs as an indicator of the relative size and interest of the parties involved in the proceeding.⁶
31. 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. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated as follows:

⁶ In this order, the Commission has used the TORs of the costs respondents based on their most recent audited financial statements.

Company	Percentage	Amount
Bell companies	38.6%	\$23,971.56
TCI	25.1%	\$15,587.73
RCCI	23.8%	\$14,780.39
Videotron	4.8%	\$2,980.92
Shaw	3.3%	\$2,049.38
SaskTel	2.5%	\$1,552.56
Cogeco	1.9%	\$1,179.95

32. 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.

Directions regarding costs

33. The Commission **approves, with changes**, the application by the DWCC for costs with respect to its participation in the proceeding.
34. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to the DWCC at \$62,102.49.
35. The Commission **directs** that the award of costs to the DWCC be paid forthwith by Bell Canada, on behalf of the Bell companies; TCI; RCCI; Videotron; Shaw; SaskTel; and Cogeco according to the proportions set out in paragraph 31.

Secretary General

Related documents

- *Determination of costs award with respect to the participation of the Canadian National Society for the Deaf-Blind, Inc. in the Telecom Notice of Consultation 2017-33 proceeding*, Telecom Order CRTC 2018-438, 28 November 2018
- *Review of the regulatory framework for text-based message relay services*, Telecom Notice of Consultation CRTC 2017-33, 2 February 2017; as amended by Telecom Notice of Consultation CRTC 2017-33-1, 1 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*
- *Structure and mandate of the video relay service operator, Telecom Regulatory Policy CRTC 2014-659, 18 December 2014*
- *Determination of costs award with respect to the participation of the Canadian Association of the Deaf in the proceeding initiated by Telecom Notice of Consultation 2013-155, Telecom Order CRTC 2014-248, 20 May 2014*
- *Determination of costs award with respect to the participation of the Toronto Association of the Deaf in the proceeding initiated by Telecom Notice of Consultation 2013-155, Telecom Order CRTC 2014-247, 20 May 2014*
- *Determination of costs award with respect to the participation of the Canadian Hearing Society in the proceeding initiated by Telecom Notice of Consultation 2013-155, Telecom Order CRTC 2014-246, 20 May 2014*
- *Determination of costs award with respect to the participation of the British Columbia Video Relay Services Committee in the proceeding initiated by Telecom Notice of Consultation 2013-155, Telecom Order CRTC 2014-245, 20 May 2014*
- *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 2013-155, Telecom Order CRTC 2014-244, 20 May 2014*
- *Determination of costs award with respect to the participation of Sonny Access Consulting in the proceeding initiated by Telecom Notice of Consultation 2013-155, Telecom Order CRTC 2014-243, 20 May 2014*
- *Determination of costs award with respect to the participation of McLaughlin Educational Consulting Services in the proceeding initiated by Telecom Notice of Consultation 2013-155, Telecom Order CRTC 2014-242, 20 May 2014*
- *Video relay service, Telecom Regulatory Policy CRTC 2014-187, 22 April 2014*
- *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*