



Telecom Order CRTC 2015-240

PDF version

Ottawa, 4 June 2015

File numbers: 8665-D53-201406877 and 4754-468

Determination of costs award with respect to the participation of the DiversityCanada Foundation in the proceeding regarding TELUS Communications Company's Large Prepaid Balance Policy

1. By letter dated 17 October 2014, the DiversityCanada Foundation (DiversityCanada), on behalf of itself and the National Pensioners Federation, applied for costs with respect to its participation in the Part 1 proceeding that it initiated regarding prepaid wireless services offered by TELUS Communications Company (TCC), leading to Telecom Decision 2015-211 (the proceeding).
2. The Commission did not receive any interventions in response to this application.

Application

3. DiversityCanada 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, DiversityCanada submitted that it filed evidence and provided an analysis demonstrating that TCC subjected prepaid wireless consumers to duress and that TCC's Large Prepaid Balance Policy contravenes basic contract principles, as well as the *Telecommunications Act* (the Act).
5. DiversityCanada requested that the Commission fix its costs at \$26,515.46, for external legal fees and for an external consultant. DiversityCanada's claim included the Ontario Harmonized Sales Tax (HST) on fees less the rebate to which it is entitled in connection with the HST. DiversityCanada filed a bill of costs with its application.
6. DiversityCanada stated that as TCC was the sole respondent in the proceeding, it was unnecessary for it to make any submission as to apportionment of costs.

Commission's analysis and determinations

7. 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.
8. Many of the grounds for DiversityCanada's application were based on a lack of understanding of the relevant legal and regulatory framework, resulting in arguments that did not raise any genuine issue in the Commission's determination.
9. For instance, DiversityCanada's argument regarding TCC purporting to make unilateral changes to its prepaid customers' contracts ignores key determinations made in the proceeding leading to Telecom Regulatory Policy 2013-271 (the Wireless Code proceeding).
10. DiversityCanada's argument that TCC's policy is contrary to subsection 27(1) of the Act ignores the Commission's longstanding forbearance from regulation of rates for retail wireless services.
11. DiversityCanada's application relied heavily on the assumption that the balances in prepaid wireless accounts should be treated like cash deposits. The Commission notes that it considered the issue of prepaid wireless balances on two separate occasions in the Wireless Code proceeding and in the proceeding to review and vary the Wireless Code leading to Telecom Decision 2014-101.
12. DiversityCanada's assumption is completely at odds with the Commission's determinations in those proceedings. The Commission further notes that DiversityCanada has filed its Part 1 application even though it was well aware of these determinations, as DiversityCanada participated in the Wireless Code proceeding and initiated the review and vary proceeding. The Commission notes that these examples are broadly representative of the lack of substance to DiversityCanada's application.

13. Accordingly, the Commission finds that DiversityCanada did not assist the Commission in developing a better understanding of the matters that were considered in the proceeding as required pursuant to paragraph 68(b) of the Rules of Procedure. The Commission therefore finds that DiversityCanada has not fulfilled the criteria for an award of costs, and cannot be eligible for such an award. As a result, it is not necessary for the Commission to determine whether DiversityCanada participated in the proceeding in a responsible way.

Directions regarding costs

14. The Commission **denies** the application by DiversityCanada for costs with respect to their participation in the proceeding.
15. The Commission reminds DiversityCanada that, in Telecom Order 2015-132, it considered that “DiversityCanada’s initiation of multiple proceedings that essentially relate to the same issues has resulted in an unreasonable use of Commission resources.”¹ By submitting a third application on essentially the same issue, DiversityCanada has undermined its credibility and therefore impaired its ability to represent any group or class of subscribers.

Secretary General

Related documents

- *The DiversityCanada Foundation and the National Pensioners Federation – Application seeking relief for wireless customers affected by TELUS Communications Company’s Large Prepaid Balance Policy*, Telecom Decision CRTC 2015-211, 21 May 2015
- *Determination of costs award with respect to the participation of the DiversityCanada Foundation in the proceeding leading to Telecom Decision 2015-131*, Telecom Order CRTC 2015-132, 9 April 2015
- *Wireless Code – Request by DiversityCanada Foundation to review and vary Telecom Regulatory Policy 2013-271 regarding expiry of prepaid wireless service cards*, Telecom Decision CRTC 2014-101, 5 March 2014
- *The Wireless Code*, Telecom Regulatory Policy CRTC 2013-271, 3 June 2013

¹ See paragraph 25 of Telecom Order 2015-132.