



Telecom Order CRTC 2017-131

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Ottawa, 3 May 2017

File numbers: 8663-C12-201503186 and 4754-535

Determination of costs award with respect to the participation of the Canadian Hearing Society in the proceeding leading to Telecom Regulatory Policy 2016-496

Application

1. By letter dated 3 May 2016, the Canadian Hearing Society (CHS) applied for costs with respect to its participation in the proceeding leading to Telecom Regulatory Policy 2016-496, in which the Commission reviewed its policies regarding basic telecommunications services in Canada (the proceeding).
2. Bell Canada¹ filed an answer, dated 29 July 2016, and the CHS filed a reply, dated 5 August 2016. Bell Canada submitted further comments, dated 15 August 2016, and the CHS filed a subsequent reply, dated 16 August 2016.
3. The CHS requested that the Commission fix its costs at \$5,475.81, consisting of \$3,984.75 for two consultants and \$1,491.06 for disbursements. The CHS's claim included the Ontario Harmonized Sales Tax (HST) on fees less the rebate to which the CHS is entitled in connection with the HST. The CHS filed a bill of costs with its application.
4. The CHS claimed 11 hours at the external rate of \$225 per hour for one consultant, and 6 hours at the external rate of \$165 per hour for another.
5. The CHS submitted that telephone and wireless service providers are the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents).

Answer

6. Bell Canada did not object to the CHS's application for costs, but submitted that the rates claimed for the services provided were inconsistent with the Commission's *Guidelines for the Assessment of Costs* (the Guidelines). Bell Canada argued that

¹ Although Bell Canada filed an answer solely on its own behalf, it participated in the basic telecommunications services proceeding on its own behalf, and on behalf of its affiliates Bell Aliant Regional Communications, Limited Partnership (which, effective 1 July 2015, is operated as a division of Bell Canada); Bell Mobility Inc.; Câblevision du Nord du Québec inc.; DMTS; KMTS; NorthernTel, Limited Partnership; Northwestel Inc.; Ontera; and Télébec, Limited Partnership.

the CHS should have claimed costs for its consultant at the in-house daily rate of \$470 and not at the external hourly rate. According to Bell Canada, the costs claimed for consultant fees should therefore be reduced to \$2,380.56.²

7. Bell Canada submitted that the responsibility for payment of costs should be allocated among costs respondents in accordance with the Commission's standard practice, as set out in the Guidelines.

Reply

8. The CHS agreed that it had incorrectly claimed costs using the external hourly rate and submitted revised costs using the in-house daily rate of \$470 per day for both consultants.
9. The CHS therefore revised its total costs claim to \$8,541.06, consisting of \$7,050.00 for two in-house consultants³ and \$1,491.06 for disbursements.
10. The CHS also agreed that the responsibility for payment of its costs should be allocated among costs respondents in accordance with the Commission's standard practice.

Subsequent answer

11. Bell Canada argued that the CHS had made significant modifications that increased the costs claimed (i.e. the CHS had originally claimed a total of 17 hours, and the revised claim consisted of a total of 108.5 hours).
12. Bell Canada submitted that certain portions of the costs claimed should be disallowed because they were either excessive or incurred for work that did not assist the Commission in developing a better understanding of the matters that were considered.
13. Specifically, Bell Canada claimed that certain issues raised by the CHS were outside the scope of the proceeding, including those related to video relay service, 9-1-1 service, and the employment prospects faced by persons with disabilities. Bell Canada submitted that since the revised costs covered time spent on those topics, the CHS's costs claim for consultant fees should be reduced by 30%.
14. Bell Canada also argued that the time claimed by the CHS was excessive because it was represented twice in the proceeding, once by Media Access Canada (MAC) and again in its own right. Bell Canada submitted that the CHS should not receive costs

² Bell Canada took the total hours the CHS claimed in the application and converted them to days, for a total of 1.25 days for one consultant and 0.75 days for the other. Tax was not included since these were in-house services.

³ Specifically, the CHS's revised claim consisted of \$4,700 for 10 days of work by one consultant and \$2,350 for 5 days of work by another.

for time spent on areas that were duplicated by both organizations, specifically broadband and data plan affordability, and the need for a Commission disability rights office. As such, Bell Canada requested that the costs claimed for consultant fees be reduced by an additional 20%.

Subsequent reply

15. The CHS submitted that its initial costs claim had failed to reflect the actual number of hours the consultants spent on the proceeding and that its revised bill of costs set out the accurate amount of time based on their work records. Further, the CHS stated that it revised its claim from an hourly rate to a daily rate.
16. The CHS also submitted that it did not collaborate with MAC and that the two entities worked individually to develop their separate submissions. The CHS argued that therefore, each organization should be entitled to make a separate costs claim.

Subsequent process

17. Commission staff sent a letter, dated 1 September 2016, in which it requested that the CHS resubmit its bill of costs and additional forms to reflect the correct HST percentage, to confirm whether it paid HST for in-house services, and to calculate the allowable tax rebate for its fees and disbursements.
18. Commission staff also requested that the CHS address the criteria for a final 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). In addition, Commission staff requested that consistent with Telecom Information Bulletin 2016-188, the CHS identify and describe the persons that it purports to represent.
19. The CHS responded on 9 September 2016. It submitted a revised bill of costs in which it claimed \$8,492.78, consisting of \$7,050.00 for two in-house consultants⁴ and \$1,442.78 for disbursements. The CHS confirmed that it did not pay HST for its in-house consultants but that its claim for disbursements included the Ontario HST on fees less the rebate to which the CHS is entitled in connection with the HST.
20. With respect to the criteria for an award of costs set out in section 68 of the Rules of Procedure, the CHS submitted that it had met these criteria 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 its revised bill of costs, the CHS claimed 15 days at a rate of \$470 per day for in-house consultant fees, consisting of 10 days for one consultant and 5 days for the other.

21. In particular, the CHS submitted that it assisted the Commission in developing a better understanding of a number of issues that were considered, including those related to the following topics: teletypewriters, message relay services, Internet Protocol relay services, captioned telephone services, broadband and data plan affordability, the need for a Commission disability rights office, and the establishment of a telecommunications service accessibility fund.
22. With respect to the group or class of subscribers the CHS submitted that it represents, the CHS explained that this group includes culturally Deaf, oral deaf, deafened, and hard-of-hearing Canadians. The CHS submitted that it works to remove the barriers this group faces in accessing telecommunications services when accommodations for their needs are not met, and to promote equity for this group. The CHS added that it aims to advance hearing health.

Commission's analysis and determinations

Eligibility

23. 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.

24. 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 CHS clearly identified the group of subscribers that it represents as culturally Deaf, oral deaf, deafened, and hard-of-hearing Canadians. Accordingly, the CHS has satisfied this criterion, consistent with the Commission's guidance. Further, the CHS enhanced the record of the proceeding by gathering and providing the perspective of the group or class of subscribers it represents.

25. The CHS has also satisfied the remaining criteria through its participation in the proceeding. Specifically, the CHS's submissions assisted the Commission in developing a better understanding of the matters that were considered, since the CHS provided constructive insight on the accessibility challenges and potential accommodations for Canadians who are culturally Deaf, oral deaf, deafened, and hard of hearing.

Consultant fees

26. The Commission is satisfied that the CHS's revised bill of costs accurately reflects the daily rate for in-house consultants. The Commission is not persuaded by Bell Canada's submission that the time claimed by the CHS should be reduced by 50%. Specifically, the Commission has applied the criteria set out in the Guidelines⁵ and finds that there was no material duplication between the submissions of the CHS and MAC in relation to broadband and data plan affordability, and the need for a Commission disability rights office. Further, the CHS's claim of 15 days is consistent with the degree of complexity of the issues and the significance of the proceeding.
27. Therefore, it is appropriate to award the total amount claimed by the CHS in its revised bill of costs (\$7,050.00).

Disbursements

28. After reviewing the application, including supporting documentation such as receipts, the Commission fixes the costs related to the CHS's disbursements at \$1,320.96. This reflects the amount that the CHS has demonstrated represents actual out-of-pocket expenses that were necessarily and reasonably incurred, less the rebate to which the CHS is entitled in connection with the HST it paid.⁶

Costs respondents and allocation

29. 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.
30. 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 the scope of the proceeding, a large number of parties both had a significant interest in the outcome of the proceeding and participated actively in the proceeding.
31. The Commission considers that, consistent with its practice, it is appropriate to allocate the responsibility for payment of costs among costs respondents based on

⁵ The Guidelines are set out in Telecom Regulatory Policy 2010-963. As set out in paragraph 18 of the Guidelines, when considering whether or not the time expended by a claimant is excessive, the Commission will generally take into account a number of considerations, such as the extent of the applicant's participation, the degree of complexity of the issues to which that participation related, the duplication of substantive submissions among claimants, and the time claimed and awarded in the proceeding or in other similar proceedings.

⁶ See the Appendix to this order for a full breakdown of the disbursement amounts that the Commission has allowed.

their telecommunications operating revenues (TORs)⁷ as an indicator of the relative size and interest of the parties involved in the proceeding. 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.

32. Accordingly, Bell Canada, Rogers Communications Canada Inc. (RCCI),⁸ and TELUS Communications Company (TCC) are the appropriate costs respondents in the circumstances. The Commission finds that the responsibility for payment of costs should be allocated as follows:

Company	Percentage	Amount
Bell Canada	43.3%	\$3,624.63
TCC	29.7%	\$2,486.17
RCCI	27.0%	\$2,260.16

33. 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

34. The Commission **approves** the application by the CHS for costs with respect to its participation in the proceeding.
35. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to the CHS at \$8,370.96.
36. The Commission **directs** that the award of costs to the CHS be paid forthwith by Bell Canada, TCC, and RCCI according to the proportions set out in paragraph 32.

Secretary General

⁷ TORs consist of Canadian telecommunications revenues from local and access, long distance, data, private line, Internet, and wireless services. In this order, the Commission has used the TORs of the costs respondents based on their most recent audited financial statements.

⁸ In the proceeding, submissions were received from Rogers Communications Partnership (RCP). However, on 1 January 2016, RCP ceased to exist. All of RCP's business activities, including its assets and liabilities, are now held by RCCI.

Related documents

- *Modern telecommunications services – The path forward for Canada’s digital economy*, Telecom Regulatory Policy CRTC 2016-496, 21 December 2016
- *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

Appendix to Telecom Order CRTC 2017-131

Disbursements

Nature of disbursement	Amount allowed
Photocopies	\$103
Air travel	\$736.56
Intra-city taxis	\$184.27
Hotel accommodations	(Hotel accommodation total: \$217.60)
• Gary Malkowski	\$108.80
• Melanie Baine	\$108.80
Subtotal (excluding meals)	\$1,241.43
Less the HST rebate	- \$112.47
	\$1,128.96
Meals	(Meals total: \$192)
• Gary Malkowski	\$96
• Melanie Baine	\$96
Total	\$1,320.96