



## Telecom Circular CRTC 2007-16

Ottawa, 11 June 2007

### **A guide to the CRTC processes for telecommunications applications**

*In this Circular, the Commission provides an overview of the legislative requirements under which it operates, and of the processes it uses in disposing of applications and telecommunications issues before it.*

#### **The legislative requirements**

1. The legislative framework under which the Commission regulates the telecommunication industry is the *Telecommunications Act* (the Act), which came into force in October 1993. The mandate of the Commission is to implement the Canadian telecommunications policy objectives set out in the Act, which include, among other things, the following:
  - to facilitate the orderly development throughout Canada of a telecommunications system that serves to safeguard, enrich and strengthen the social and economic fabric of Canada and its regions;
  - to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada;
  - to foster increased reliance on market forces for the provision of telecommunications services and to ensure that regulation, where required, is efficient and effective;
  - to respond to the economic and social requirements of users of telecommunications services.
2. On 27 December 2006, the Governor in Council published *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, P.C. 2006-1534 (the Policy Direction), which came into force on 14 December 2006. The Policy Direction requires the Commission to, among other things, rely on market forces to the maximum extent feasible as the means of achieving the telecommunications policy objectives, and when relying on regulation, use measures that are efficient and proportionate to their purpose and that interfere with the operation of competitive market forces to the minimum extent necessary to meet the policy objectives.
3. The Act specifies that the Commission is to exercise its powers and duties to implement the Canadian telecommunications policy objectives, in accordance with any policy direction from the Governor in Council, and to ensure the following:
  - every rate charged by a Canadian carrier for a telecommunications service shall be just and reasonable; and

- no Canadian carrier shall, in relation to the provision of a telecommunications service or the charging of a rate for it, unjustly discriminate or give an undue or unreasonable preference toward any person, including itself, or subject any person to an undue or unreasonable disadvantage.
4. The Act also provides that no Canadian carrier shall provide a telecommunications service except in accordance with a tariff filed with and approved by the Commission that specifies the rate or the maximum or minimum rate, or both, to be charged for the service, except where the service is forborne from regulation. Intercarrier agreements require Commission approval, unless they are forborne from regulation. The Act states that the offering and provision of any telecommunications service by a Canadian carrier are subject to any conditions imposed by the Commission or included in a tariff approved by the Commission.
  5. In addition, the Act sets out certain situations in which the Commission must or may forbear from exercising certain of its powers and duties. Forbearance may be conditional or unconditional, at the discretion of the Commission.
  6. The Act also provides that the Commission may make rules respecting its practices and procedures. In this context, the Commission has established the *CRTC Telecommunications Rules of Procedure* (the Rules), which are set out in detail on the Commission's website.
  7. It should be noted that the Rules also contemplate that the Commission may vary or supplement them, where appropriate. The Commission's practice has been to do so in various situations, for example, to expedite its processes, or provide for an opportunity for parties to address written questions (interrogatories<sup>1</sup>) to each other.

#### **Types of applications, processes and service standards**

8. The following list identifies the typical telecommunications applications received by the Commission and the Commission's associated processes and procedures:

##### Applications contemplated by the Rules

- Parts II and IV – Applications by regulated companies for the approval of new or amended tariff pages and intercarrier agreements
- Part VI – Applications or complaints by a subscriber or a potential subscriber of a regulated company
- Part VII – Other applications

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<sup>1</sup> "Interrogatories" are written questions posed by Commission staff or by parties to a proceeding to the applicant and, in some instances, to other parties to the proceeding, in order to seek clarification or obtain further information. Further information obtained via interrogatories is often necessary to allow a thorough analysis of the application and may directly or indirectly provide support for the Commission's determination.

## Processes and procedures

- Public notices
- Licensing of international telecommunications service providers
- CRTC Interconnection Steering Committee (CISC)
- Alternative dispute resolution
- Costs awards

## **Parts II and IV – Applications by regulated companies for the approval of new or amended tariff pages and intercarrier agreements**

9. A tariff notice refers to any application by a regulated company proposing to introduce a new regulated service or proposing changes to rates, terms, or conditions of an existing regulated service, whether provided to a retail customer or to a competitor.
10. An intercarrier agreement application refers to any agreement between telecommunications service providers, at least one of which is a regulated company, related to the provision of telecommunications services or facilities. The agreement may, for example, be between a regulated telephone company and another telecommunications service provider and address network interconnection issues and the interchange of voice and/or data traffic.
11. The procedures specific to tariff notices filed by regulated companies that request the approval of new or amended tariff pages are found in Part II of the Rules. The procedures specific to applications that are filed by regulated companies for the approval of agreements and limitations of liability within agreements are found in Part IV of the Rules.
12. In *Review of regulatory framework*, Telecom Decision CRTC 94-19, 16 September 1994 (Decision 94-19), the Commission determined that there are circumstances in which tariff applications would not be placed on the public record prior to interim disposition (known as *ex parte* applications).
13. As a result, for some applications, the Commission's practice is to issue an *ex parte* decision on an interim basis quickly, without comments from interested parties, and then to place the application on the public file. After it is placed on the public file, parties may comment on the application before the Commission renders a decision on a final basis.
14. The Commission's process always provides for public participation so that the Commission may obtain the record necessary to make a decision. However, in determining the appropriate process to apply, the Commission must ensure transparency, fairness and predictability, while at the same time processing applications in the most efficient and timely manner.
15. The Commission disposes of applications dealing with tariff notices or intercarrier agreements by either the standard processing procedures, the streamlined processing procedures, or the procedures for the destandardization and/or withdrawal of tariffed services.

### **Tariff notices for competitor services**

16. The following standard processing procedures apply to tariff notices for competitor services, other than those proposing to destandardize and/or to withdraw a competitor service:
- i. The Rules provide for interventions from interested parties,<sup>2</sup> within 30 calendar days of the filing date of the application. The applicant may reply within 10 calendar days, filing a copy with the Commission and serving a copy on interveners.
  - ii. The Commission's objective is to ensure that within 45 business days from the date a complete tariff application is received, it will issue either a decision granting interim or final approval of the application.
  - iii. If the application cannot be disposed of within 45 business days, the Commission will issue a letter setting out the reasons why not, and specifying the period of time within which the Commission intends to dispose of the application, in accordance with section 26 of the Act (a 45-day letter).
  - iv. Should interrogatories be required, Commission staff will generally issue the interrogatories with an accompanying process letter that identifies deadlines for filing responses to the interrogatories, parties' comments, applicant's reply comments, and any other necessary matters.

### **Retail tariff notices and intercarrier agreements**

17. The following streamlined processing procedures apply to retail tariff notices,<sup>3</sup> other than those proposing to destandardize and/or to withdraw a retail service, and also to intercarrier agreements:<sup>4</sup>
- i. The Commission's objective is to ensure that within 10 business days from the date a completed retail tariff application or an intercarrier agreement is received, the Commission will issue either (a) an order granting interim approval of the application, (b) a letter setting out the reasons why interim approval was not granted and stating that it intends to dispose of the application within 45 business days of receipt of the application, (c) a letter either with interrogatories included or confirmation that interrogatories are to follow within 5 business days, and an indication that it still intends to dispose of the application within 45 business days, (d) a letter indicating that the file is being closed due to deficiencies in the application, identifying the specific deficiencies, or (e) an order denying the application.

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<sup>2</sup> An interested party is any person, company, association, Government agency, or other entity that may have an interest in the outcome of a Commission proceeding.

<sup>3</sup> In *Introduction of a streamlined process for retail tariff filings*, Telecom Circular CRTC 2005-6, 25 April 2005 (Circular 2005-6), and *Finalization of the streamlined process for retail tariff filings*, Telecom Circular CRTC 2005-9, 1 November 2005 (Circular 2005-9), the Commission put in place expedited processes for the disposition of retail tariff applications.

<sup>4</sup> In Circular 2006-11, the Commission introduced the same expedited processes for intercarrier agreements.

- ii. Interested parties are to provide comments within 25 calendar days of the filing date of an application, and the applicant is to file reply comments with the Commission, serving a copy on those who filed comments within 7 calendar days after the final date for interventions. Parties may request an extension of time, providing justification for their request.
- iii. The streamlined process requires applicants to respond quickly to any interrogatories, normally within 5 to 10 business days depending on the complexity of the information sought.
- iv. If a specific application cannot be disposed of within 45 business days, the Commission will issue a 45-day letter.

#### **Tariff notices for destandardization and/or withdrawal of tariffed services**

- 18. Tariff notices proposing to destandardize or to withdraw a retail service, or a competitor service, are processed according to the following expedited procedures:<sup>5</sup>
  - i. Each application for the destandardization and/or withdrawal of a tariffed service is assessed on a case-by-case basis using one common set of criteria, regardless of whether it is a retail or a competitor service. The Commission, in assessing such an application, examines whether the applicant has met the criteria set out in Circular 2005-7, including particularly whether: a) there is a reasonable substitute for the service being destandardized and/or withdrawn; b) there is a clear transition plan including sufficient time to allow customers to make plans to replace the service in question; and c) affected customers are given adequate notice to enable them to participate meaningfully in the Commission's process.
  - ii. Interested parties have 45 calendar days to comment on an applicant's destandardization and/or withdrawal application, filing a copy with the Commission and serving a copy on the applicant. The applicant has 10 business days to respond to parties' comments, filing a copy with the Commission and serving a copy on those who file comments.
  - iii. In cases where there are no customers for a particular service and the Commission is of the view that there are no significant issues, the Commission may grant interim approval within 10 business days of a complete application being filed, and may issue a final decision within 45 business days of the date of the application.
  - iv. If a specific application cannot be disposed of within 45 business days, the Commission will issue a 45-day letter.

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<sup>5</sup> These new procedures were announced in *New procedures for disposition of applications dealing with the destandardization and/or withdrawal of tariffed services*, Telecom Circular CRTC 2005-7, 30 May 2005 (Circular 2005-7).

## **Processing steps common to Parts II, IV, and VII applications**

19. Steps common to processing Parts II, IV, and VII applications include the following:
  - i. Epass: In order to assist the Commission in meeting its objective of responding expeditiously to tariff, intercarrier, and other applications, companies are requested to file all applications on an electronic basis, using Epass. Epass allows the companies to file at the same time, on a secure basis, both confidential and abridged public versions of the applications and any supporting documentation. The information necessary to file using Epass is available on the Commission's website at the following address: <http://www.crtc.gc.ca/eng/file.htm>.
  - ii. Reception: On receipt of an application, the Commission registers and posts the application on its website and in its internal tracking and control systems. Copies of the application, with supporting attachments, are forwarded to the appropriate Commission staff for review.
  - iii. Initial review and completeness: Commission staff review the application to determine its completeness. If the application is incomplete, Commission staff may request clarification and/or further information. Interrogatories may also be issued to the applicant and, in some instances, to other parties to the proceeding. In cases where the application is missing essential information, Commission staff may return the application. In such a case, the applicant may refile the application providing the required information.
  - iv. Record complete: The record of the proceeding is considered complete when the Commission is in receipt of: a) a complete application; b) comments from interested parties, if any; and c) reply comments from the applicant if comments were filed. In cases where the Commission has issued interrogatories and the time frames associated with that interrogatory process require an extension to standard processing timeframes, the close of record date is modified to the date when the Commission is in receipt of all such information from parties, interested parties' comments, and reply comments.
  - v. Decision making: Applications are presented to the Commissioners who rule on the application on the basis of the record, and with the assistance of Commission staff. After the determination of an application by the Commission, a Telecom Order or Decision is prepared.
  - vi. Orders and Decisions: Telecom Orders are generally issued to dispose of applications that introduce, modify, or withdraw a tariffed service. Telecom Decisions are generally issued to establish or modify a

regulatory framework. The length of time required to prepare an Order or Decision depends on the complexity of the application and the issues that it raises.

- vii. Publication process: After a Telecom Order or Decision (a decision) has been finalized, in both official languages, the documents are converted to HTML and PDF<sup>6</sup> formats and released on the Commission's website. Most decisions are released at 11 a.m. on the day of release and are routinely retrieved by many of the telecommunications service providers. For those parties that have participated in the proceeding, that have not identified to the Commission that they routinely retrieve releases, a copy of the decision will generally be sent by email, fax or mail.

#### **Service standard for Parts II and IV applications**

20. In *Service standards for the disposition of telecommunications applications*, Telecom Circular CRTC 2006-11, 7 December 2006 (Circular 2006-11), the Commission established the following standards for all tariff applications and intercarrier agreements:
  - 85 percent of determinations to be issued on an interim or final basis within two months of receipt of a complete application, and
  - 95 percent of determinations to be issued on an interim or final basis within four months of receipt of a complete application.
21. In Circular 2006-11, the Commission stated that the standard for destandardization and/or withdrawal of tariffed services would be that 95 percent of determinations on such tariff applications are to be issued on a final basis within 12 months of receipt of a completed application.
22. The service standards set out in paragraph 17.i also apply to retail tariff applications, other than applications for destandardization or withdrawal of a service, and also to intercarrier agreements.

#### **Part VI – Applications or complaints by a subscriber or a potential subscriber of a regulated company**

23. Part VI of the Rules allows for complaints by a subscriber or a potential subscriber of a regulated company. Complaints can be submitted to the Commission at its website by selecting Complaints and Inquiries, or by telephone, mail, fax, or hand delivery. Complaints generally relate to: (a) quality of service, (b) accessibility of service, (c) the application of one or more provisions of the company's tariffs to the subscriber, (d) disconnection or reconnection of service or facilities, or (e) any other matter respecting the relations between the company and the subscriber.

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<sup>6</sup> Hypertext Markup Language and Portable Document Format.

24. Where Commission staff considers that a complaint warrants investigation, it forwards a copy of the letter received or a summary thereof to the regulated company requesting comment, and the company is to reply within 20 days, or any period as the Commission may specify.
25. The Commission may deal with a complaint on the basis of the written documentation before it, or may require further information to be furnished by one or more of the parties. If so, the Commission issues directions on further procedure.
26. The Rules provide that where a complaint seeks relief on an emergency basis, such complaint may be made orally to the Commission. The Commission may, where an interim settlement cannot be reached with the regulated company, issue an interim order which would provide interim resolution to the complaint.

#### **Part VII – Other applications**

27. An application by any person that is not a tariff notice, an intercarrier agreement, or a subscriber complaint against a regulated company is considered to be a Part VII application. Part VII applications encompass a wide variety of requests and would include applications to establish or modify a regulatory rule or framework, to rule on whether there has been non-compliance with a tariff, a regulatory rule or framework, or to review and vary a Commission decision. The procedures specific to these applications are found in Part VII of the Rules. In practice:
  - i. A Part VII application must: (a) contain a clear and concise statement of the nature of the order or decision applied for, and the title and section of the statute under which it is made; (b) contain a clear and concise statement of the facts upon which the applicant relies, and any other information required to inform the Commission of the nature, purpose and extent of the application; (c) set out proposed directions on procedure where the applicant requests a particular form of proceeding or seeks to amend the usual process.
  - ii. Where a Part VII application is directed against a party adverse in interest to the applicant (the respondent), the applicant is to serve a copy of the application on each respondent. The applicant is to also serve a copy on other interested parties.
  - iii. Respondents are to file their answers within 30 calendar days from the date of service of the application.
  - iv. Interventions from interested parties, including individual members of the public, may be filed, serving a copy on the applicant, within 30 calendar days of the filing date of the application.
  - v. The applicant may file a reply within 10 calendar days of the receipt of the last answer or intervention, serving a copy on all other parties.



- vi. The Commission may amend this procedure taking into consideration the complexity of the issues raised by the application. For example, it may allow parties to ask interrogatories, and/or amend the dates by which parties must file their submissions. For applications that raise policy issues of broad public interest, the Commission generally issues a Public Notice.

#### **Service standards for Part VII applications**

28. The service standards for the disposition of Part VII applications,<sup>7</sup> other than those applications that are incorporated into a Commission-initiated proceeding as set out in Circular 2006-11 are as follows:
  - For Type 1 applications, 90 percent of determinations are to be issued on an interim or final basis within four months of the close of record.
  - For Type 2 applications, 85 percent of determinations are to be issued on an interim or final basis within eight months of the close of record.
29. In *Expedited procedure for resolving competitive issues*, Telecom Circular CRTC 2004-2, 10 February 2004, the Commission established the use of an expedited process to deal with certain Part VII applications. These applications generally deal with competitive matters involving no more than two parties, where the issues to be resolved involve the interpretation and application of tariffs, orders, or requirements set out in Commission determinations.
  - i. The expedited process provides for the establishment of Commission panels to conduct brief oral public hearings to deal with these applications on an accelerated basis.
  - ii. The Commission determines which matters should be referred to a panel. Given the importance that the Commission attaches to the timely resolution of competitive disputes, extensions of time for the filing of materials will generally not be granted.
  - iii. Each party is required to file with the Commission, and serve on every other party, a document consisting of a concise argument stating the facts and Commission requirements and regulatory decisions relied on by the party, generally at least 10 days before the oral hearing. Parties should also include in this document a concise statement of any relief sought and this document may be no longer than 10 pages in length.

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<sup>7</sup> As Part VII applications vary widely in scope and complexity, a single standard for all Part VII applications would not provide the most meaningful information to applicants and interested parties about expectations for a completion date. Accordingly, the Commission categorizes Part VII applications into two types: Type 1 applications generally do not involve multiple parties or raise significant policy issues, and Type 2 applications that do involve multiple parties and/or raise significant policy issues. The Commission informs applicants by letter, within 10 days of the end of the comment period for an application, whether the application is considered to be a Type 1 or Type 2 application along with the applicable service standard.

- iv. Parties are generally required to attend a brief oral hearing and are required to bring all relevant documentation and knowledgeable personnel.
- v. During the course of the oral hearing, parties may question each other and may be questioned by the Commission. Verbatim transcripts of the hearing are kept and posted on the Commission's website.
- vi. Shortly after the oral hearing, usually within 10 calendar days, the Commission issues a brief written decision with respect to each matter at issue.

### **Public Notices**

30. With respect to any application or on its own initiative, the Commission may initiate a proceeding to invite comments with respect to a Part VII application or a telecommunications policy issue of broad public interest.
31. Where the Commission determines that a Public Notice is necessary, the following steps are involved:
  - i. Generally, Public Notice processes are conducted through a paper process. Where an issue may have significant impact on an existing regulatory framework or may touch on wider considerations of public interest, a Public Notice process may include an oral public hearing.
  - ii. The Public Notice provides background information, identifies the specific issues to be addressed in the proceeding, and sets out the procedural steps and dates. The Public Notice identifies a time frame from the close of record within which the Commission expects to issue its determinations.
32. Public Notices will generally indicate that parties interested in participating in the proceeding must notify the Commission of their intention to participate.<sup>8</sup> Where specified in the Public Notice, registered parties may file evidence, ask interrogatories to other registered parties, and/or be asked to respond to interrogatories. Registered parties may file written comments and/or reply comments with the Commission regarding the questions and/or issues raised in the Public Notice, serving a copy on all other registered parties.
33. Public Notices also provide the opportunity for interested parties, including individual members of the public, to file comments by a date specified in the Public Notice.

### **Licensing of international telecommunications service providers**

34. In *Regulatory regime for the provision of international telecommunications services*, Telecom Decision CRTC 98-17, 1 October 1998 (Decision 98-17), the Commission determined, among other things, that it was appropriate to establish two classes of international licences for telecommunications service providers. Class A licensees are those service providers who operate telecommunications facilities, whether owned by them or leased from a separate facilities provider, used in transporting basic telecommunications service traffic between

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<sup>8</sup> A party may register with the Commission either by letter or by completing appropriate forms at the Commission website.

Canada and another country. Class B licensees are those service providers who do not operate telecommunications facilities owned by them or leased from a separate facilities provider used in transporting basic telecommunications service traffic between Canada and another country. Class B licensees include service providers who only resell the switched services of other service providers or who hand off all of their international traffic to another service provider in Canada for termination in another country.

35. In Decision 98-17, the Commission established the information that should be provided by licence applicants, including, among other things, basic contact information, information regarding the applicant's ownership, and information as to any affiliates the applicant may have that are involved in the provision of basic telecommunications services.
36. In *Basic international telecommunications services (BITS) licensing regime – Amendments*, Telecom Circular CRTC 2005-8, 23 June 2005, the Commission amended some of the conditions of licence of Class A and Class B BITS providers and also modified the application procedures.
37. In Circular 2006-11, the Commission stated that the service standard for international telecommunications services licenses would be that 90 percent of determinations of such applications are to be issued within one month of receipt of a complete application.

#### **CRTC Interconnection Steering Committee (CISC)**

38. CISC is an industry forum, established in 1995, which is comprised of Commission staff and any party with an interest in an issue before CISC. The current mandate of CISC is to deal with operational and administrative issues related to competition, number portability, emergency service access, and numbering plan area exhaust. A specific working group deals with each issue referred to CISC. The day-to-day running of CISC is governed by a steering committee that is chaired by Commission staff and includes the chairs of each of the active working groups.
39. CISC administrative guidelines are located at the Commission's website at CISC – Agreements, Guidelines, Manuals & Procedures.
40. CISC issues are generated in one of the following ways: a) the Commission can refer an issue to CISC through a decision; b) any member of the telecommunications industry can bring an issue to CISC for resolution; or c) CISC itself can decide to deal with an issue and propose a resolution.
41. If a consensus on an issue can be reached by the working group, a report is submitted to the Commission for final approval which then issues a decision. In cases where the working group is unable to reach an agreement, a non-consensus report is submitted to the Commission. After consideration of the issues, the Commission then issues a decision.

#### **Alternative dispute resolution**

42. In *Practices and procedures for resolving competitive and access disputes*, Public Notice CRTC 2000-65, 12 May 2000, the Commission developed an alternative dispute resolution (ADR) framework.

43. Parties are encouraged to pursue independent negotiations to resolve any competitive dispute through informal discussions whenever possible. In instances where the parties are unable to settle a dispute by mutual agreement, and where there is an expectation a dispute can be resolved through mediation, Commission staff are available to help resolve matters. The ADR Commission staff-facilitated process allows for the parties to choose among a variety of procedural options, whether involving mediation or some other alternative technique, for resolving disputes.
44. The Commission has successfully used ADR to settle many competitive disputes. ADR provides parties the opportunity to come to a mutually acceptable solution, often more quickly than if they had opted for the more traditional paper process.

#### **Costs awards**

45. The provision for awards of costs is set out in section 56 of the Act. Costs orders provide the Commission's determinations regarding applications by parties for reimbursement of costs associated with their participation in a proceeding. As stated in section 44 of the Rules, in any proceeding the Commission may award costs to be paid by the regulated company to any intervener who
  - i. has, or is representative of a group or class of subscribers that has, an interest in the outcome of the proceeding of such a nature that the intervener or group or class of subscribers will receive a benefit or suffer a detriment as a result of the decision resulting from the proceeding;
  - ii. has participated in a responsible way; and
  - iii. has contributed to a better understanding of the issues by the Commission.
46. An application for costs can be made by filing a written application with the Commission either separately or within the last pleading of the party, serving a copy on potentially affected parties. Costs are generally restricted to individual Canadians and to public interest groups representing consumers, including poor, elderly or disabled persons. The application must explain why costs should be awarded, addressing the three criteria for awards of costs identified above, having regard to the circumstances of the case. An applicant who wishes to avoid delays in the payment of costs must also provide a Bill of Costs and an affidavit of disbursements, at the same time it files its application for costs, to ensure that the costs may be fixed, thereby avoiding the need for a second proceeding.<sup>9</sup>

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<sup>9</sup> In *New procedure for Telecom costs awards*, Telecom Public Notice CRTC 2002-5, 7 November 2002, the Commission announced that it would generally proceed to fix the amount of costs as part of the cost awards. In *Review of the Rates set out in Appendix A of Guidelines for the Taxation of Costs Practice Note*, 24 April 2007, the Commission's legal directorate revised the rates for the following services: legal fees (outside and in-house counsel), expert witness, consultant and analyst fees, and disbursements.

47. Potentially affected parties may, within 10 calendar days from the date they were served with a copy of the application for costs, file an answer with the Commission serving a copy on the applicant for costs. An applicant for costs may, within 10 calendar days after service on it of an answer, file a reply with the Commission and serving a copy thereof on those who filed answers.

Secretary General

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