



Telecom Regulatory Policy CRTC 2010-963

PDF version

Route reference: Telecom Notice of Consultation CRTC 2009-716

Ottawa, 23 December 2010

Revision of CRTC costs award practices and procedures

File numbers: 8657-C12-200915770 and 8657-B55-200913138

In this decision, the Commission revises its telecommunications costs award practices and procedures. For greater transparency, the Commission is adopting a new cost allocation methodology. For greater clarity, the Commission is updating its Guidelines for the Assessment of Costs, which are attached to this decision. The updated Guidelines will be applied to all costs applications submitted to the Commission on or after 23 December 2010.

Introduction

1. The Commission received an application from Barrett Xplore Inc.; Bell Aliant Regional Communications, Limited Partnership; Bell Canada; Cogeco Cable Inc.; Northwestel Inc.; Rogers Communications Inc.; Saskatchewan Telecommunications; Shaw Communications Inc.; Télébec, Limited Partnership; and TELUS Communications Company (collectively, the Applicants), dated 25 September 2009, requesting that the Commission initiate a review of its costs award practices and procedures.
2. In Telecom Notice of Consultation 2009-716, the Commission invited interested parties to comment on the changes, if any, that should be made to its current costs award practices and procedures.
3. The Commission received comments from the Applicants, MTS Allstream Inc. (MTS Allstream), Open Source Solutions (OSS), and TekSavvy Solutions Inc. (TekSavvy); as well as from the Canadian Association of the Deaf (CAD), the Canadian Internet Policy and Public Interest Clinic (CIPPIC), the Neil Squire Society (NSS), the Public Interest Advocacy Centre (PIAC) on its own behalf and on behalf of the Consumers' Association of Canada and the National Anti-Poverty Organization,¹ and l'Union des consommateurs (collectively, the consumer advocacy groups).

¹ The National Anti-Poverty Organization is now known as Canada Without Poverty.

4. The public record of this proceeding, which closed on 12 February 2010, is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings" or by using the file numbers provided above.
5. Section 56 of the *Telecommunications Act* (the Act) authorizes the Commission to award costs associated with telecommunications proceedings, as well as to determine by whom and to whom costs are to be paid, and in what amounts. The Commission's costs award procedures are set out in sections 44-45 of the *CRTC Telecommunications Rules of Procedure* (the Telecommunications Rules) and sections 60-71 of the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (the Rules of Procedure),² the *Guidelines for the Assessment of Costs* (the Guidelines),³ and precedents established by previous Commission costs awards determinations.
6. The Commission has identified the following issues to be addressed in this decision:
 - I. Should the Commission modify its eligibility criteria for costs awards?
 - II. Should the Commission adopt a pre-approved budget process for costs awards?
 - III. Should the Commission modify its claim review criteria for costs awards?
 - IV. Should the Commission modify how it allocates payment of costs among potential costs respondents?
 - V. Is a review of the rates set out in the Guidelines necessary at this time?

² As indicated in Broadcasting and Telecom Regulatory Policy 2010-958, the Commission has made the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (SOR/2010-277) (the Rules of Procedure), which were published in the Canada Gazette, Part II, on 8 December 2010. The Rules of Procedure come into force on 1 April 2011 and will apply to all proceedings before the Commission on that date, on a going-forward basis. As of that date, the Telecommunications Rules will be repealed. The provisions of the Telecommunications Rules and the Rules of Procedure related to the awarding of costs are substantially the same.

³ An updated version of the Guidelines (renamed the *Guidelines for the Assessment of Costs*) has been adopted by the Commission and is attached to this decision. In addition to the modifications detailed in the body of this decision, the updated Guidelines clarify that: the Commission generally fixes costs as opposed to proceeding with the taxation process; individual applicants participating on their own behalf are generally only entitled to out-of-pocket disbursements; and claims for accommodation in a private residence will be allowed at a fixed rate of \$20 per day. The updated Guidelines shall apply to all costs applications submitted to the Commission on or after 23 December 2010.

I. Should the Commission modify its eligibility criteria for costs awards?

7. The Commission's criteria for determining who is eligible for an award of costs are set out in paragraph 44(1)(a) of the Telecommunications Rules and paragraph 68(a) of the Rules of Procedure.⁴ Parties raised concerns in two areas: first, who should be eligible for costs awards and, second, when eligibility determinations should be made.
8. The Applicants sought to tighten the eligibility criteria, submitting that only costs applicants who could demonstrate "significant financial hardship" should be eligible for costs awards. They submitted that costs applicants should be required to (a) declare their sources of funding; and (b) attest to the fact that without a costs award, their participation in the proceeding would cause them to suffer significant financial hardship. The consumer advocacy groups generally submitted that the latter requirement would place an undue burden on their limited resources, thereby limiting the effective representation of public interest. PIAC submitted that the current eligibility criteria are appropriate and should not be altered.
9. OSS sought an expansion of the eligibility criteria, submitting that the Commission should move away from its position of denying costs for non-profit industry organizations on the basis that those groups should recover costs through membership fees. The Applicants and PIAC opposed this proposal, stating that it would be inappropriate to require costs respondents to fund competitors and that the goal of awarding costs is to ensure public interest representation, versus industry representation.
10. PIAC submitted that the Commission should run a separate eligibility application process at the beginning of a proceeding, arguing that this would inform costs applicants of the participation of other consumer groups and facilitate the coordination of submissions. The Applicants, PIAC, and OSS also submitted that this would facilitate participation among consumer groups and provide certainty to costs applicants before expenses are incurred.

Commission's analysis and determinations

11. The Commission notes that the Guidelines require costs applicants to attest in their affidavit of disbursements as to whether or not they have received, or will receive, financial assistance in connection with their participation in Commission proceedings.

⁴ Paragraph 44(1)(a) of the Telecommunications Rules provides that the Commission may award costs to any intervener who 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 order or decision resulting from the proceeding. Paragraph 68(a) of the Rules of Procedure provides that in assessing costs applications, the Commission considers whether a costs applicant had, or was the representative of a group or a class of subscribers that had, an interest in the outcome of the proceeding. The Telecommunications Rules and Rules of Procedure impose similar criteria for the awarding of interim costs.

The Commission considers that while costs applicants may have other sources of general funding, it is appropriate to continue to require them to declare only those sources of funding received in connection with their participation in Commission proceedings and to attest to the fact that they have declared all such sources. The Commission considers that such an attestation is sufficient and that it would not be appropriate to adopt an attestation of significant financial hardship.

12. The Commission considers that costs awards are intended to encourage the participation of individuals and groups who represent subscriber interests, rather than private interests. The Commission has consistently denied applications for costs awards from non-profit industry organizations on this basis and notes that these organizations have sufficient incentives to participate in proceedings.⁵ Therefore, the Commission does not consider it appropriate to expand its eligibility criteria to include non-profit industry organizations.
13. The Commission considers that while making determinations regarding eligibility at the beginning of a proceeding would increase predictability for costs applicants, this benefit must be balanced against the resulting procedural delays. The Commission notes that section 28 of the Telecommunications Rules and section 7 of the Rules of Procedure provide the Commission with the authority to dispense with or vary its procedural rules where considerations of public interest or fairness permit. As such, it is open to the Commission to consider determinations on eligibility at the beginning of a proceeding when a party makes such a request. The Commission considers that it should make these determinations only upon receipt of a request, in order to limit procedural delays and ensure the efficiency of the costs awards process. The Commission has therefore revised the Guidelines to clarify that it is open to requests from costs applicants for determinations on eligibility to be made at the beginning of a proceeding.

II. Should the Commission adopt a pre-approved budget process for costs awards?

14. The Applicants submitted that recent claims for costs have been excessive in nature. Furthermore, they submitted that those excessive claims had resulted from a lack of incentive for costs applicants to control their costs. They proposed that in order to avoid duplication of effort and reduce costs, costs applicants should be required to submit a budget of estimated costs for a proceeding for the Commission to pre-approve when costs are expected to be \$10,000 or greater.
15. MTS Allstream supported the proposal to submit a budget over a certain threshold, but cautioned that the efforts to prepare this budget might not be commensurate with those expended in the course of a proceeding. The consumer advocacy groups

⁵ For example, see Telecom Costs Orders 2008-1, 98-18, 96-29, 91-3, and 83-4.

generally opposed a pre-approved budget process, arguing that costs claims had not been excessive. PIAC and CIPPIC submitted that if the Commission were to impose such a process, it should only be required when costs are expected to exceed \$100,000. L'Union des consommateurs and CAD argued that any pre-approved budget process would be unduly onerous, since potential costs applicants do not have sufficient information on which to base a reasonable estimate of costs.

Commission's analysis and determinations

16. To assess whether a pre-approved budget process is necessary, the Commission has considered the extent to which excessive costs have proven to be a problem. The Commission has reviewed all costs claims from 2005 to 2010, paying particular attention to those claims for which costs respondents opposed costs because they considered them excessive and those for which the Commission decided to reduce or deny the costs claimed. The Commission notes that this evidence illustrated that there have been relatively few instances in which excessive costs were alleged by costs respondents and, further, few instances in which the Commission has reduced or denied costs because the costs claimed were excessive.
17. The Commission notes that there is very little information on record at the beginning of a proceeding on which to base a reasonable estimate of costs; therefore, the value of a pre-approved budget process would be limited. As such, the Commission considers that a pre-approved budget process would not be an effective way to prevent excessive costs from being incurred. Finally, the Commission considers that a pre-approved budget process would impose an additional administrative burden on all parties, particularly costs applicants, and would introduce procedural delays.
18. Accordingly, the Commission concludes that a pre-approved budget process would be of limited value and that such a regulatory measure would be neither efficient nor proportionate to its purpose.

III. Should the Commission modify its claim review criteria for costs awards?

19. Pursuant to paragraphs 44(1)(b) and 44(1)(c) of the Telecommunications Rules and paragraphs 68(b) and 68(c) of the Rules of Procedure, when assessing costs applications, the Commission considers whether a costs applicant has participated in the proceeding in a responsible way and contributed to a better understanding of the matters considered by the Commission. Furthermore, paragraph 44(6)(b) of the Telecommunications Rules and subsection 70(2) of the Rules of Procedure provide that the amount of the costs awarded shall not exceed the amount of the costs that were necessarily and reasonably incurred.

20. The Applicants proposed that the Commission provide more guidance on the factors it considers when evaluating whether a claimant's⁶ contribution to the proceeding is useful and whether costs claimed were necessary and reasonable.⁷ The consumer advocacy groups argued that the current criteria are sufficient and that the Applicants' proposal did not add any value to these criteria.
21. The Applicants further proposed that the Commission reduce costs awards when a costs applicant has coordinated its submissions in a proceeding with an industry participant and deny costs awards when (a) costs applicants fail to meet prescribed filing deadlines or format submissions in the prescribed manner, or (b) a claim is made in relation to an unsuccessful application brought forward by a costs applicant under Part VII of the Telecommunications Rules or Part 1 of the Rules of Procedure. In response, the consumer advocacy groups noted that the Commission has the authority to reduce costs awards for failure to participate in a responsible way and, as such, may reduce or deny costs awards for failure to meet filing requirements, as appropriate. They also argued that the Applicants' proposal to deny costs awards when claims are made in relation to unsuccessful applications made under Part VII of the Telecommunications Rules or Part 1 of the Rules of Procedure would deter consumer groups from making applications that might advance the public interest.

Commission's analysis and determinations

22. The Commission notes that since they were adopted, the Guidelines have provided direction regarding the factors that the Commission may consider in determining whether the time a claimant spends preparing for and participating in a proceeding is excessive under the circumstances. The Commission also notes that past costs orders also provide guidance on the Commission's claim review criteria.

⁶ A claimant is defined in the Guidelines as a legal counsel, an articling student, a legal assistant, an expert witness, a consultant or an analyst who provided services to a costs applicant, and in respect of whom a costs applicant is claiming recovery of fees. The definition also includes an applicant who is an individual who has applied for an award of costs.

⁷ The Applicants proposed that in determining whether the costs incurred by the claimant, or on its behalf, were necessary and reasonable, the Commission should consider the following factors, among others: (a) the importance of the case and its implications; (b) the amount of documentation involved; (c) the complexity of the issues addressed by the claimant; (d) the experience and expertise of the claimant or claimant's staff; (e) duplication of tasks between parties and whether the claimant took steps to reduce such duplication; (f) the claimant's budget; and (g) the total budget for the claimant's costs for the proceeding or other similar proceedings.

The Applicants further proposed that in assessing the usefulness of a claimant's contribution, the Commission should consider the following factors, among others: (a) whether the claimant had filed evidence that was used in the Commission's deliberations; (b) whether the claimant's contribution had shed light on the issues under consideration; (c) whether the contribution was active, focused, and structured; (d) whether the contribution was to the point, without straying from the issues at hand; (e) whether the contribution had served a purpose other than developing the claimant's expertise; (f) whether the contribution had served a purpose beyond the claimant's personal interest; (g) whether the claimant had met the deadlines; (h) whether the contribution was relevant to the claimant's interest, the topics the claimant addressed, and the issues the Commission had decided to examine in the case; and (i) whether the contribution offered a distinct point of view on the issues under consideration and did not duplicate that of other parties.

However, the Commission considers that providing additional guidance on the criteria it will use to assess costs claims would increase clarity and predictability for all parties. In light of this, the Commission has updated the Guidelines to include a list of additional factors it may consider when assessing costs claims.

23. Specifically, in evaluating whether or not the time expended by a claimant is excessive, the Commission may consider (a) the extent of the applicant's participation, the degree of complexity of the issues to which that participation related, and the amount of documentation involved in the proceeding; (b) the degree of responsibility assumed by the claimant; (c) the duplication of substantive submissions among claimants; (d) the experience and expertise of the claimant; and (e) the time claimed and awarded in the proceeding or in other similar proceedings. This list is not exhaustive or binding and the Commission will consider all factors relevant to a specific proceeding.
24. In evaluating whether a costs applicant has contributed to a better understanding of the issues, the Commission may consider (a) whether the applicant filed evidence; (b) whether the contribution was focused and structured; and (c) whether the contribution offered a distinct point of view. This list is not exhaustive or binding and the Commission will consider all factors relevant to a specific proceeding.
25. The Commission recognizes that compliance with procedural requirements is important for ensuring administrative fairness for all parties. However, the Commission considers that the Applicants' proposal to deny costs outright in instances of procedural non-compliance is inflexible. When assessing costs claims, the Commission considers whether costs applicants have participated in a responsible way and it has the discretion to reduce or deny costs, as appropriate. The Commission therefore considers that its current approach of addressing procedural non-compliance remains appropriate.
26. The Commission considers that automatically denying costs when a costs applicant's application under Part VII of the Telecommunications Rules or Part 1 of the Rules of Procedure has not been successful could have a chilling effect on those who wish to raise issues of public interest. The Commission finds that its current approach of assessing each costs application on its merits remains appropriate.
27. The Commission recognizes that when a costs applicant has coordinated its submissions in a proceeding with a commercial entity or industry group, a costs respondent could end up funding the participation of a competitor who has made submissions jointly with the costs applicant. Therefore, the Commission has amended the Guidelines to require costs applicants to declare whether they have coordinated their submissions in a proceeding with a commercial entity or industry group. If coordination with such groups has occurred, the Commission will generally reduce allowable costs accordingly.

IV. Should the Commission modify how it allocates payment of costs among potential costs respondents?

28. The Applicants submitted that for greater transparency, the Commission should specify which revenues it uses when it allocates costs among costs respondents. The Applicants also submitted that when costs are allocated in proportion to telecommunications operating revenues (TORs), the Commission should identify which revenue segments are included in the calculation of TORs.⁸
29. While the Applicants did not object to the Commission's practice of limiting costs respondents in order to reduce the administrative burden on costs applicants, they submitted that the Commission should clarify its method of limiting the number of costs respondents and suggested the adoption of the following scale:

Amount Awarded	Number of Respondents
≤ \$1,000	Maximum 3 respondents
\$1,001 to \$10,000	Maximum 6 respondents
\$10,001 to \$20,000	Maximum 10 respondents
≥ \$20,001	1 extra respondent for each additional \$5,000 awarded

30. MTS Allstream and CAD supported a more precise specification of the Commission's costs allocation methods; MTS Allstream and PIAC supported modifications to the method the Commission uses to limit costs respondents. CIPPIC, l'Union des consommateurs, and TekSavvy submitted that the current allocation method is appropriate.

Commission's analysis and determinations

31. The Commission considers that costs respondents are entitled to know the basis on which they are ordered to pay costs; therefore, the Commission will continue its practice of indicating in a costs order whether costs have been apportioned according to TORs or in some other manner. Furthermore, when the Commission determines that it is appropriate to apportion costs according to each costs respondent's TORs, it will calculate TORs based on the following revenue segments: Canadian telecommunications revenues from local and access, long distance, data, private line, Internet, and wireless services based on the most recent data provided to the Commission by the telecommunications service providers.

⁸ The Applicants submitted that TORs should include the following: revenues from local and access, long distance, data, private line, Internet, and wireless services, as well as other operating revenues other than video/broadcasting revenues.

32. The Commission also adopts, in modified form, the Applicants' proposed scale as a means of limiting costs respondents. When a costs award exceeds \$20,000, the Commission will generally award no more than one extra costs respondent for each additional \$5,000 awarded. The Commission notes that in order to avoid unnecessary administrative burden, the Commission will generally exclude any potential costs respondent who, according to the apportionment of costs in relation to other costs respondents, would have been responsible for paying less than \$100 of a total costs award.

V. Is a review of the rates set out in the Guidelines necessary at this time?

33. Parties generally agreed that a review of the rates listed in the Guidelines is not necessary at this time because the rates were reviewed in 2007. However, PIAC, CIPPIC, and l'Union des consommateurs argued that the rates for subject matter experts are too low to attract the experts who can best inform the Commission. The Applicants counter-argued that the rates are comparable to those used by other administrative tribunals.
34. The Applicants also raised two issues related to the rates claimed for legal expenses. First, they submitted that the Commission should provide clear guidance on the criteria it uses to categorize lawyers as in-house or outside counsel. Second, they submitted that the Commission should cap the allowable rate for certain tasks in order to discourage the allocation of these tasks to senior counsel when they could reasonably be completed by counsel with less experience. PIAC submitted that there was no need to review the first issue and objected to the second one, submitting that it might lessen the quality of representation available to costs applicants.

Commission's analysis and determinations

35. The Commission has found no compelling evidence on the record indicating that the rates listed in the Guidelines are out of step with market rates. The Commission notes that the Guidelines allow it to exercise discretion when a rate exceeds the maximum value listed and the costs applicant can justify that rate. The Commission considers that a piecemeal review of the rates would not be efficient. Therefore, the Commission determines that a full-scale review of the rates should be done at a later date, as necessary. Further, the Commission formally establishes the rates set out in the Guidelines as a Scale of Costs, pursuant to its authority to do so under subsection 56(2) of the Act.
36. In light of the serious repercussions that follow misrepresenting oneself before a law society, the Commission considers that requiring a claimant practising law to attest to the manner in which the claimant reports his or her employment status to any law society of which he or she is a member is a reliable manner of assessing whether counsel may claim an outside-counsel rate. Accordingly, a requirement to provide such an attestation has been added to the Guidelines. The Commission considers that the Applicants' proposal to cap allowable rates for certain tasks is unduly restrictive and that it could unduly limit the ability of costs applicants to ensure adequate

representation. However, the Commission concurs that costs applicants should rely on articling students or junior counsel to the greatest extent possible to avoid incurring excessive costs. The Commission has added an encouragement to this effect to the Guidelines. The Commission considers this to be a proportionate approach that strikes the appropriate balance between the need to safeguard public interest representation and the need to avoid excessive costs claims.

Secretary General

Related documents

- *Implementation of new rules of practice and procedure*, Broadcasting and Telecom Regulatory Policy CRTC 2010-958, 23 December 2010
- *Call for comments – Review of CRTC costs award practices and procedures*, Telecom Notice of Consultation CRTC 2009-716, 23 November 2009
- *Determination of costs award with respect to the Canadian Jewish Congress’ Participation in the Telecom Public Notice 2007-15 proceeding*, Telecom Costs Order CRTC 2008-1, 28 March 2008
- *In re: Telesat Canada – Application to Review and Vary Telecom Decision CRTC 97-17, Application for Costs by Canadian Satellite Communications Inc.*, Telecom Costs Order CRTC 98-18, 9 October 1998
- *In re: TELUS Communications Inc. – General Rate Increase Application, 1996-1997, Application for costs by BR Telecom*, Telecom Costs Order CRTC 96-29, 27 November 1996
- *In re: Maritime Telegraph and Telephone Company Limited – Revenue Requirement for 1990 and 1991, Application for costs by Novix Inc., Atlantic Paging Services Inc., and Novix Communications Inc.*, Telecom Costs Order CRTC 91-3, 11 February 1991
- *In re: British Columbia Telephone Company, General Increase in Rates*, Telecom Costs Order CRTC 83-4, 22 June 1983



Guidelines for the Assessment of Costs

Revised as of 23 December 2010

I. Introduction

1. These Guidelines, originally adopted by the Commission's Legal Directorate, have now been adopted by the Commission and will continue to be employed in the assessment of costs applications pursuant to section 56 of the *Telecommunications Act* (the Act), sections 44-45 of the *CRTC Telecommunications Rules of Procedure* (the Telecommunications Rules) and sections 60-71 of the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (the Rules of Procedure). The Guidelines do not detract from or limit the general discretion of the Commission or a taxation officer appointed thereby. These Guidelines shall apply to all costs applications submitted to the Commission on or after 23 December 2010.
2. 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 costs to be paid as part of the costs award process, thereby dispensing with the follow-up taxation process. While in most instances the Commission fixes costs, it retains the discretion to proceed with the taxation process in exceptional circumstances. As such, any reference to a costs assessment process in this document applies equally in respect of a process in which the Commission fixes or taxes costs.

Interpretation

3. In these Guidelines, as well as in Appendix A and the related Forms, the following words or expressions have the following meanings:
 - (a) "Applicant" means a person who has applied to the Commission for an award of costs;
 - (b) "Respondent" means a person against whom costs may be awarded by the Commission;
 - (c) "Legal assistant" means a qualified law clerk or paralegal;
 - (d) "Consultant" or "analyst" means a person who participated in a proceeding, but who was not a person who acted as legal counsel or an expert witness;
 - (e) "Expert witness" means a person who provides an independent professional opinion or judgment on a matter in a proceeding by filing evidence in his or her name, or by testifying as an expert witness, and who is not an in-house analyst/consultant or in-house legal counsel of the applicant; and
 - (f) "Claimant" means a legal counsel, an articling student, a legal assistant, an expert witness, a consultant or an analyst who provided services to the applicant, and in respect of whom the applicant is claiming recovery of fees. It also includes an applicant who is an individual who has applied for an award of costs.

4. These Guidelines are intended to implement the following principles:
 - (a) costs awarded shall not exceed those necessarily and reasonably incurred by the applicant in connection with its participation in the proceeding (see paragraph 44(6)(b) of the Telecommunications Rules and subsection 70(2) of the Rules of Procedure);
 - (b) the costs assessment process should be fair to all parties concerned;
 - (c) the costs assessment process should be efficient and effective for the parties and for the Commission;
 - (d) to the extent possible and advisable, the costs assessment process should provide the parties with certainty of result;
 - (e) the costs assessment process must maintain the flexibility necessary to ensure that costs are awarded in light of the particular circumstances of a proceeding or intervention; and
 - (f) the costs assessment process must take into account financial assistance received from government or other sources for the purpose of participating in Commission proceedings under the Act (see subsection 44(7) of the Telecommunications Rules, subsection 70(1) of the Rules of Procedure, and *Bell Canada v. Consumers' Association of Canada*, [1986] 1 S.C.R. 190).

Determinations on Eligibility

5. The Commission notes that applicants who wish to apply to the Commission at the beginning of a proceeding for a determination as to whether they meet the requirement in paragraph 44(1)(a) of the Telecommunications Rules or paragraph 68(a) of the Rules of Procedure may do so in writing, serving the request on all other parties to the proceeding. All other parties to the proceeding may file reply comments in relation to any such application made.

Contribution to a Better Understanding

6. In evaluating whether an applicant has contributed to a better understanding of the issues, the considerations that the Commission will generally take into account include:
 - (a) whether the applicant filed evidence;
 - (b) whether the contribution was focused and structured; and
 - (c) whether the contribution offered a distinct point of view.
7. The above list of considerations is not exhaustive and the factors considered are entirely within the discretion of the Commission, depending on the circumstances of each case.

General Principles and Verification

8. The applicant shall file, as part of its costs application, detailed and accurate accounts of the costs claimed, recorded on the Summary Sheets, in Form I (for legal counsel, articling students and legal assistants), Form II (for expert witnesses) and Form III (for consultants and analysts), together with invoices and receipts necessary to support those costs where such invoices and receipts are required (as outlined below under section 41). The applicant shall file an affidavit of disbursements in Form IV, including a summary statement of disbursements as Exhibit A. The applicant shall also file a summary of the total fees and disbursements claimed as prescribed in Form V. Costs applications will generally not be processed unless and until these forms, completed in full, have been filed with the Commission. The filing of these forms and accompanying submissions shall fulfill the requirement to file a bill of costs and affidavit of disbursements contained in subsection 44(8) of the Telecommunications Rules and the requirement under subsection 66(2) of the Rules of Procedure to attach the forms provided on the Commission's website (www.crtc.gc.ca).
9. All documents filed with the Commission must also be served upon all the respondents. Parties are to file electronic versions of their documents in accordance with the requirements of *Obligation related to the electronic filing of applications and use of Commission forms*, Broadcasting and Telecom Information Bulletin CRTC 2010-453, 5 July 2010, as amended from time to time. Filings should be made to the attention of the Secretary General.
10. Subject to the respondent's right to comment thereon, and provided the applicant's claim is within these Guidelines, it will normally be accepted as presented. Where, however, there appears to have been a departure from these Guidelines or from their intent, the Commission may reduce the claim to a level that it deems appropriate.
11. In the event that an applicant believes that exceptional circumstances exist warranting a departure from these Guidelines, then a brief written submission showing cause why the Guidelines should be departed from and the specific nature of the departure requested must be filed with that party's application for costs. If such a submission is not so filed by the applicant then the Commission may disallow a departure from these Guidelines without receiving further submissions.
12. The Commission may request further documentation or submissions to substantiate a disputed or questionable claim. In the event that the documentation or submissions are not filed with the Commission in accordance with the request, the applicant's claim in respect of those costs will generally be disallowed in its entirety.

II. Fees

General

13. Consistent with past practice, an applicant who is an individual who has participated in a Commission proceeding on his or her own behalf will generally only be compensated for out-of-pocket disbursements and will generally not be compensated for time spent preparing for or appearing at a hearing.
14. Consistent with past practice, costs generally will not be awarded for time spent by the applicant's support staff, administrative staff, officers and directors, acting as such, in connection with its participation in the proceeding.
15. Fees as billed to the applicant for the services provided by claimants will normally be allowed, provided they are based on (a) the current allowable daily or hourly rates which are set out in Appendix A; and (b) time which is not excessive under the circumstances.
16. If the applicant is claiming costs which are to be calculated on an hourly basis, all persons for whom work is being so claimed must keep hourly records which may be requested by the Commission. Hourly records must contain at least the following information: the date on which the work was done, the amount of time spent on the work and a brief description of that work. In the event that the Commission requests such records and they are not available, the applicant's claim in respect of that work will generally be disallowed in its entirety.
17. When an applicant has coordinated with a commercial entity or industry group in making submissions before the Commission, the applicant shall declare the extent to which coordination of submissions was made, and allowable costs may be reduced accordingly.

Excessive Time

18. In evaluating whether or not the time expended by a claimant is excessive under the circumstances, the considerations that the Commission will generally take into account include:
 - (a) the extent of the applicant's participation, the degree of complexity of the issues to which that participation related, and the amount of documentation involved in the proceeding;
 - (b) the degree of responsibility assumed by the claimant;
 - (c) the duplication of substantive submissions among claimants;
 - (d) the experience and expertise of the claimant; and
 - (e) the time claimed and awarded in the proceeding or in other similar proceedings.

19. The above list of considerations is not exhaustive and the factors considered are entirely within the discretion of the Commission, depending on the circumstances of each case.

In-house Services

20. An applicant who employs an in-house salaried legal counsel, articling student, legal assistant, or analyst/consultant will be permitted to recover costs, at the daily rate set out in Appendix A, for that person's work which is necessarily and reasonably undertaken in connection with the proceeding.

Legal Counsel Fees

21. The hourly rate applicable to a particular counsel, other than in-house counsel, will be based on that legal counsel's completed years as a practising lawyer. Years as a practising lawyer shall be calculated as at the date of the commencement of the proceeding.
22. In Form I, claimants must attest to the manner in which the claimant reports his or her employment status to any law society of which he or she is a member. For example, a claimant practising in Ontario must attest that he or she reports to the Law Society of Upper Canada as "In Private Practice" in order to claim compensation at an outside-counsel rate.
23. Applicants are encouraged to rely on junior counsel and articling students to the greatest extent possible. When senior counsel are relied on, applicants may be asked to demonstrate with supporting rationale why this reliance was necessary.

Expert Witnesses

24. Expert witnesses may claim the hourly rate set out in Appendix A for all services other than attendance at an oral hearing in order to testify. The daily rate set out in Appendix A may be claimed for attendance at an oral hearing in order to testify.
25. In judging whether the time claimed by an expert witness is excessive, in addition to the circumstances set out in section 18 of these Guidelines, the Commission will also consider any overlap between the evidence prepared by the expert witness for the proceeding at issue and for earlier proceedings before the Commission in which expert witnesses may have provided evidence.

Consultants and Analysts

26. The hourly rate applicable to a particular consultant or analyst will be based on the number of completed years that person has been acting as a consultant or analyst. Years shall be calculated as at the date of the commencement of the proceeding.

Applicable Time Increments

27. Claimants must use the applicable time increments set out in Appendix A.
28. In the case of rates expressed in daily increments in Appendix A (i.e. those for in-house legal counsel, articling students, legal assistants, analysts/consultants, and expert witnesses), a day shall be deemed to consist of at least seven full hours of work on the proceeding, not including breaks. If fewer than seven hours in a day are worked, then the applicant shall reduce its claim for that day using quarter-day increments. In the case of daily rates, no amount in addition to the daily fee shall be permitted for days in which more than seven hours of work were spent on the proceeding.

Time for Travel and Meals

29. Time spent travelling or eating meals will not *per se* be allowed. This does not prevent the applicant from being awarded costs for work performed in relation to the proceeding while in transit or while eating meals.

III. Disbursements

General

30. Reasonable disbursements necessarily incurred in connection with the applicant's participation in the proceeding will generally be allowed, subject to these Guidelines.
31. Disbursements incurred by volunteers and by employees of applicants will be allowed in the same manner as disbursements incurred by legal counsel, articling students, legal assistants, consultants, analysts and expert witnesses.

Travel, Accommodation and Meals

32. Claims for accommodation will generally only be allowed in connection with hearings or meetings which take place at a distance greater than 50 kilometres from the regular place of work of the person who makes those disbursements.
33. In respect of accommodation, reasonable disbursements for hotels will normally be allowed, together with reasonable incidental expenses.
34. The daily meal allowance set out in Appendix A will apply where meals are taken in connection with hearings or meetings which take place at a distance greater than 50 kilometres from the regular place of work of the person who makes those disbursements. Receipts will not be required for this *per diem* meal allowance.
35. The individual meal allowance set out in Appendix A will apply where meals are taken in connection with hearings or meetings which take place at a distance of 50 kilometres or less from the regular place of work of the person who makes those disbursements. Receipts will not be required, unless requested by the Commission.

36. In respect of inter-city travel, disbursements will be allowed for the most efficient means of transportation. Automobile travel will be compensated at the rate set out in Appendix A. In respect of air travel, it will be expected that persons purchase a discounted ticket, if available. Best efforts should be made to purchase a ticket as early in advance as possible in order to fully benefit from the discounts available. Penalty fees reasonably incurred because of a change in a person's return schedule will be allowed. Generally, disbursements in excess of economy fares will not be allowed.
37. In respect of intra-city travel, local taxi fares, parking expenses or other local travel disbursements may be claimed provided that such disbursements are necessarily and reasonably incurred, and provided that they would not otherwise normally have been incurred.

Photocopying and Other Disbursements

38. Disbursements for photocopies made on the applicant's photocopying equipment shall be allowed at the rate set out in Appendix A. Photocopies made using an outside photocopying service shall be recovered as an ordinary disbursement.
39. All other reasonable disbursements may be allowed at the Commission's discretion.

Submission of Disbursement Claims

40. All claims for disbursements shall be submitted in accordance with Exhibit A of Form IV. An affidavit of disbursements in Form IV, which shall be sworn or affirmed by an officer of the applicant or by its legal counsel, shall also be filed.
41. The applicant shall file receipts for all claims of disbursements relating to hotel accommodation and inter-city air, train or bus travel. Where receipts are not available, the applicant shall file other evidence of disbursement. Receipts should be photocopied legibly onto numbered pages with a different series of pages for each legal/consulting firm, company, organization or individual that has expended disbursements.
42. All applicants are expected to keep receipts for all disbursements claimed. Applicants are not expected to file receipts for disbursements, other than those specified in section 41, unless requested by the Commission. Failure to provide receipts upon request will generally result in the disallowance of the disbursements in question.

Financial Assistance, GST, PST, HST and Costs of the Assessment Process

43. In its affidavit of disbursements, an applicant shall attest to whether or not it has or will receive financial assistance in connection with its participation in a particular proceeding. This does not include general fundraising revenues or other support.

44. In the event that an applicant has received or will receive financial assistance in connection with its participation, then the amount of allowable costs shall be reduced by that amount. In the assessment of costs, in the event that the Commission has awarded partial costs, then the reduction to take into account financial assistance shall first be applied to the amount of costs that are not recoverable by the applicant under the Commission's cost order.

Example:

Hypothesis:

1. The applicant has submitted costs of \$110,000.
2. The applicant has been awarded partial costs of 70%.
3. In the assessment process, the sum of \$100,000 has been allowed by the application of other rules in these Guidelines.
4. The applicant has received financial assistance of \$40,000.

Analysis:

The amount of costs which are not recoverable by the applicant under the cost order is \$30,000 [i.e. $30\% \times \$100,000 = \$30,000$]. The financial assistance is first deducted against that amount of \$30,000 [$\$30,000 - \$40,000 = (\$10,000)$]. An amount of \$10,000 has yet to be deducted. Therefore, that amount is then deducted against the amount of costs allowed which are recoverable under the cost order. The amount recoverable after deduction of the financial assistance is \$60,000 [i.e. $(70\% \times \$100,000) - \$10,000 = \$60,000$].

45. In its affidavit of disbursements and as required in the Forms, the applicant shall indicate whether or not it is entitled to a rebate in connection with the federal Goods and Services Tax (GST), a provincial sales tax (PST), a Harmonized Sales Tax (HST) or any other applicable tax, the extent of the rebate and the basis of its eligibility. The Commission will take that information into account when assessing the tax payable on the costs claimed.
46. Fees and disbursements reasonably and necessarily incurred in the course of submitting the information required under section 8 shall normally be allowed.

IV. Allocation of Costs

47. Where the Commission determines that it is appropriate to allocate payment for costs according to each costs respondent's telecommunications operating revenues (TORs), unless otherwise stated, the revenue segments used in the calculation of TORs shall include Canadian telecommunications revenues from local and access, long distance, data, private line, Internet, and wireless services based on the most recent data provided to the Commission by the telecommunications service providers.

48. Where the Commission limits the number of costs respondents in a given proceeding, it will generally do so based on the following scale:

Amount Awarded	Number of Respondents
≤ \$1,000	Maximum 3 respondents
\$1,000.01 to \$10,000	Maximum 6 respondents
\$10,000.01 to \$20,000	Maximum 10 respondents
> \$20,000	Maximum 1 extra respondent for each additional \$5,000 awarded*

* The Commission will generally exclude any potential costs respondent who, according to the apportionment of costs in relation to other costs respondents, would have been responsible for paying less than \$100 of a total costs award.

Appendix A: Scale of Costs

Legal Fees (Outside Counsel) – Hourly Rates		
Service Provider	Completed Years of Practice	Hourly Rate
Legal Assistant	-	35 \$
Articling Student	-	70 \$
Legal Counsel	0-2	135 \$
Legal Counsel	3-5	165 \$
Legal Counsel	6-10	206 \$
Legal Counsel	11-19	250 \$
Legal Counsel	20 or more (with at least 10 years of relevant experience)	290 \$

Expert Witnesses	
Service Provided	Rate
Attendance at an Oral Hearing in Order to Testify	\$1,650/day
Other Services	\$225/hour

Consultant and Analyst Fees – Hourly Rates		
Service Provider	Completed Years of Practice	Hourly Rate
Analyst/Consultant	0-4	\$110
Intermediate Analyst/Consultant	5-8	\$165
Senior Analyst/Consultant	9 or more	\$225

In-house Fees – Daily Rates		
Service Provider	Completed Years of Practice	Daily Rate
Legal Counsel	0-8 years	\$600
Legal Counsel	over 8 years	\$800
Articling Student	-	\$235
Legal Assistant	-	\$175
Analyst/Consultant	-	\$470

Disbursements

Private residence accommodation: Claims for accommodation in a private residence will be allowed at a fixed rate of \$20 per day.

Travel by automobile: \$0.35 per kilometre

Meals:

- *Per diem* rate applies where meals are taken in connection with a hearing or meetings which take place at a distance of more than 50 kilometres from regular place of work:
 - \$48.00 per day
- Meal allowance where meals are taken in connection with a hearing or meetings which take place at a distance of 50 kilometres or less:
 - Breakfast: \$10
 - Lunch: \$12
 - Dinner: \$26

In-house photocopies: \$0.15 per copy