



Telecom Order CRTC 2014-433

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Determination of costs award with respect to the participation of the DiversityCanada Foundation in the proceeding initiated by Telecom Notice of Consultation 2013-338

1. By letter dated 7 October 2013, the DiversityCanada Foundation (DiversityCanada), on its own behalf and on behalf of the National Pensioners and Senior Citizens Foundation, applied for costs with respect to its participation in the proceeding initiated by Telecom Notice of Consultation 2013-338 regarding the removal of the last payphone in a community (the proceeding).
2. On 17 October 2013, TELUS Communications Company (TCC) filed an intervention in response to DiversityCanada's application. DiversityCanada filed a reply on 27 October 2013.

Application

3. DiversityCanada submitted that it had met the criteria for an award of costs set out in section 68 of the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (the Rules of Procedure) because it represented a group or class of subscribers that had an interest in the outcome of the proceeding, it had assisted the Commission in developing a better understanding of the matters that were considered, and it had participated in a responsible way.
4. DiversityCanada requested that the Commission fix its costs at \$11,512.44, consisting entirely of external consultant fees. DiversityCanada's claim included the Ontario Harmonized Sales Tax (HST) on fees. DiversityCanada filed a bill of costs with its application.
5. While DiversityCanada made no express submission as to who would be the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents), it did make note of the incumbent local exchange carriers (ILECs) and small ILECs that the Commission made parties to the proceeding, thereby suggesting that these parties be named as costs respondents.

Answer

6. In response to the application, TCC submitted that it opposes DiversityCanada's costs claim because DiversityCanada did not participate responsibly in the proceeding and did not

seriously further the interests of the group it claimed to represent. Consequently, TCC requested that DiversityCanada's costs claim be reduced by at least 85 percent.

7. In particular, TCC argued that DiversityCanada's participation in the proceeding disproportionately relied upon a survey of a number of Northern Ontario municipalities regarding their views towards payphones. TCC argued that DiversityCanada represents the National Pensioners and Senior Citizens Foundation and not any Canadian municipality and that, despite this, DiversityCanada did not appear to have canvassed the views of senior citizens or retired Canadians in making its submissions.
8. TCC further argued that much of DiversityCanada's participation in the proceeding, including its submission of two international studies to the Commission, was out of scope, given the issues in the proceeding as defined in Telecom Notice of Consultation 2013-338.
9. Finally, TCC argued that DiversityCanada's costs claim was excessive, especially when compared to the claims of the other consumer groups that participated in the proceeding.

Reply

10. In reply, DiversityCanada submitted that the Commission should reject TCC's objections. In particular, DiversityCanada argued that, while it never claimed to represent municipalities in the proceeding, their views nonetheless provided important context for the positions taken by DiversityCanada in the proceeding. DiversityCanada further argued that its participation was fully within the scope of the proceeding.
11. DiversityCanada submitted that the costs claimed by different consumer groups in proceedings often vary, sometimes significantly, and that such variation is not necessarily an indication that the costs claimed by any one group are excessive.
12. Finally, DiversityCanada argued that if costs respondents are able to circumscribe the participation of consumer groups by way of objections to costs applications, it may have a chilling effect on the participation of consumer groups before the Commission.

Commission's analysis and determinations

13. In response to DiversityCanada's argument that objections to costs applications by costs respondents may produce a chilling effect on public interest groups' participation in Commission proceedings, the Commission notes that TCC, as a potential costs respondent, has a direct interest in the outcome of this application for costs. Accordingly, TCC is properly afforded the opportunity to respond to the costs application, and any such response must be considered by the Commission in its deliberations.

Eligibility for costs

14. The Commission finds that DiversityCanada has satisfied the criteria for an award of costs set out in section 68 of the Rules of Procedure. Specifically, the Commission finds that DiversityCanada represented a group of subscribers that had an interest in the outcome of the proceeding, including a group of elderly and retired Canadians. The Commission finds

that, to a degree and as explained further below, DiversityCanada assisted the Commission in developing a better understanding of the matters that were considered, especially regarding the potential impact of the removal of the last payphone in a community on Canadians without alternative access to basic telecommunications services. Finally, the Commission finds that DiversityCanada participated in a responsible way.

Rates

15. The Commission notes that the rates claimed in respect of external consultant fees are in accordance with the rates established in the Commission's *Guidelines for the Assessment of Costs* (the Guidelines), as set out in Telecom Regulatory Policy 2010-963.
16. However, for the reasons set out below, the Commission considers that DiversityCanada has claimed excessive time in respect of its external consultant. Consequently, the Commission considers that the total amount claimed by DiversityCanada was not reasonably and necessarily incurred, and finds that this total amount must be varied in order to be allowed.
17. The Commission notes that the scope of Telecom Notice of Consultation 2013-338 was narrow, dealing only with the issue of whether certain ILECs should be prohibited from removing the last payphone in a community as an interim measure during the proceeding initiated by Telecom Notice of Consultation 2013-337, which was launched on the same day as Telecom Notice of Consultation 2013-338. This is in contrast to the scope of Telecom Notice of Consultation 2013-337, which was intended as a much broader fact-finding exercise regarding payphones in Canada.
18. In the circumstances, the Commission agrees with TCC that a significant portion of DiversityCanada's participation in the proceeding was out of scope. While the Commission anticipated that a wide range of stakeholders, including public bodies such as municipalities, would comment on the issues that were under consideration in the proceeding, the Commission notes that municipalities are not part of the group that DiversityCanada stated that it represented. Moreover, the Commission notes that municipalities were free to participate in the proceeding on their own initiative, which a number of them did. The Commission also considers that, given the methodology of the surveys provided to municipalities by DiversityCanada, the results were of limited value in the proceeding.
19. The Commission also agrees with TCC that the international studies submitted by DiversityCanada are beyond the scope of the proceeding.
20. The Commission agrees with DiversityCanada that a disparity among the amounts claimed by various costs applicants in a proceeding does not necessarily indicate that any one participant has claimed excessive time. However, the Commission notes that taking such a divergence into account is consistent with the Guidelines.
21. The Commission considers that the amounts claimed by the other costs applicants in the proceeding, and allowed by the Commission, are more closely indicative of the order of magnitude of costs that could be reasonably and necessarily incurred in the proceeding, given its narrow scope. In Telecom Order 2014-408, the Commission allowed a costs claim of \$1,752.37 by the Consumers' Council of Canada. In Telecom Order 2014-407, the

Commission allowed a costs claim of \$1,762.82 by the Public Interest Advocacy Centre. In Telecom Order 2014-428, the Commission allowed a costs claim of \$2,280 by l'Union des Consommateurs.

22. Nevertheless, the Commission does consider, as noted above, that DiversityCanada contributed to a better understanding of the issues in the proceeding, in that it did provide a focused and structured argument in support of its position that the Commission should prohibit ILECs from removing the last payphone in a community pending the resolution of the proceeding initiated by Telecom Notice of Consultation 2013-337.
23. In light of the above, the Commission finds that the time claimed in respect of DiversityCanada's external consultant should be reduced by 60 percent and that, therefore, the amount of \$4,604.98 was reasonably and necessarily incurred and should be allowed.
24. The Commission considers that 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.

Costs allocation

25. In determining the appropriate costs respondents, the Commission has generally considered which parties are affected by the issues and have actively participated in the proceeding. The Commission notes that the proceeding related to payphone removals by all ILECs. The following ILECs filed submissions in the proceeding: Amtelecom Limited Partnership and People's Tel Limited Partnership, carrying on business as Eastlink; Bell Aliant Regional Communications, Limited Partnership, Bell Canada, DMTS, KMTS, NorthernTel, Limited Partnership, Northwestel Inc., and Télébec, Limited Partnership (collectively, Bell Canada et al.); MTS Inc. (MTS) and Allstream Inc. (collectively, MTS Allstream); Saskatchewan Telecommunications (SaskTel); TBayTel; and TCC.
26. The Commission further notes, however, that in allocating costs among costs respondents, it has also been sensitive to the fact that if numerous costs respondents are named, the applicant may have to collect small amounts from many costs respondents, resulting in a significant administrative burden to the applicant.
27. In light of the above, and given the relatively small size of the costs award and the large number of potential costs respondents in this case, the Commission considers that, consistent with section 48 of the Guidelines, it is appropriate to limit the costs respondents to Bell Canada et al., MTS Allstream, SaskTel, and TCC.
28. The Commission notes that it generally allocates the responsibility for payment of costs among costs respondents based on their telecommunications operating revenues (TORs)¹ as an indicator of the relative size and interest of the parties involved in the proceeding. The Commission considers that, in the present circumstances, it is appropriate to apportion the costs among the costs respondents in proportion to their TORs, based on their most recent

¹ TORs consist of Canadian telecommunications revenues from local and access, long distance, data, private line, Internet, and wireless services.

audited financial statements. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated as follows:

Bell Canada et al.:	46.4%
TCC:	42.1%
MTS Allstream:	7.1%
SaskTel:	4.4%

29. The Commission notes that Bell Canada filed submissions in the proceeding on behalf of Bell Canada et al., and MTS filed submissions on behalf of MTS Allstream. Consistent with its general approach articulated in Telecom Costs Order 2002-4, the Commission makes Bell Canada and MTS responsible for payment on behalf of Bell Canada et al. and MTS Allstream, respectively. The Commission leaves it to the members of Bell Canada et al. and MTS Allstream to determine the appropriate allocation of the costs among themselves.

Directions regarding costs

30. The Commission **approves with changes** the application by DiversityCanada for costs with respect to its participation in the proceeding.
31. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to DiversityCanada at \$4,604.98.
32. The Commission **directs** that the award of costs to DiversityCanada be paid forthwith by Bell Canada on behalf of Bell Canada et al., by TCC, by MTS on behalf of MTS Allstream, and by SaskTel according to the proportions set out in paragraph 28.

Secretary General

Related documents

- *Determination of costs award with respect to the participation of l'Union des Consommateurs in the proceeding initiated by Telecom Notice of Consultation 2013-338, Telecom Order CRTC 2014-428, 14 August 2014*
- *Determination of costs award with respect to the participation of the Consumers' Council of Canada in the proceeding initiated by Telecom Notice of Consultation 2013-338, Telecom Order CRTC 2014-408, 5 August 2014*
- *Determination of costs award with respect to the participation of the Public Interest Advocacy Centre in the proceeding initiated by Telecom Notice of Consultation 2013-338, Telecom Order CRTC 2014-407, 5 August 2014*
- *Removal of the last payphone in a community, Telecom Notice of Consultation CRTC 2013-338, 16 July 2013, as amended by Telecom Notice of Consultation CRTC 2013-338-1, 2 August 2013*

- *Fact-finding process on the role of payphones in the Canadian communications system*, Telecom Notice of Consultation CRTC 2013-337, 16 July 2013, as amended by Telecom Notice of Consultation CRTC 2013-337-1, 11 September 2013
- *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