



Compliance and Enforcement Order CRTC 2014-536

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File numbers: 8665-C12-201313030 and 4754-444

Determination of costs award with respect to the participation of the DiversityCanada Foundation in the proceeding leading to Compliance and Enforcement Regulatory Policy 2014-341

1. By letter dated 13 December 2013, the DiversityCanada Foundation (DiversityCanada), on behalf of itself and the National Pensioners Federation (NPF),¹ applied for costs with respect to its participation in the proceeding leading to Compliance and Enforcement Regulatory Policy 2014-341 regarding permanent number registration on the National Do Not Call List (the proceeding). The proceeding was initiated by Compliance and Enforcement Notice of Consultation 2013-527.
2. On 1 August 2014, Commission staff sent a letter to DiversityCanada requesting additional information in relation to its application for costs, especially information concerning the relationship between DiversityCanada and the NPF. DiversityCanada responded by way of letter on 6 August 2014.
3. The Commission did not receive any interventions in response to the application.

Application

4. 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.
5. DiversityCanada requested that the Commission fix its costs at \$8,503.82, consisting of \$1,186.50 in fees for external counsel and \$7,317.32 in fees for an external consultant. DiversityCanada's claim included the Ontario Harmonized Sales Tax (HST) on fees. DiversityCanada filed a bill of costs with its application.
6. DiversityCanada made no express submission as to the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents), but did make note of the telecommunications service providers (TSPs) that participated

¹ Formerly the National Pensioners and Senior Citizens Federation

in the proceeding, thereby suggesting that these parties be named as costs respondents.

7. In response to Commission staff's letter, DiversityCanada noted that it is not related to the NPF and that it does not have a licence to use the NPF name. Rather, DiversityCanada stated that it has an agreement with the NPF that it will represent the NPF before the Commission until both parties agree otherwise. DiversityCanada filed with the Commission a letter from the NPF to DiversityCanada, dated 18 July 2013, describing this agreement. DiversityCanada further stated that it is in frequent contact with the NPF for the purpose of consulting on Commission submissions.

Commission's analysis and determinations

8. The criteria for eligibility for an award of costs are set out in section 68 of the Rules of Procedure, which reads as follows:

68. The Commission must determine whether to award final costs and the maximum percentage of costs that is to be awarded on the basis of the following criteria:

(a) whether the applicant had, or was the representative of a group or a class of subscribers that had, an interest in the outcome of the proceeding;

(b) the extent to which the applicant assisted the Commission in developing a better understanding of the matters that were considered; and

(c) whether the applicant participated in the proceeding in a responsible way.

9. The Commission finds that DiversityCanada has satisfied these criteria through its participation in the proceeding. In particular, based on its additional submissions in response to Commission staff's letter, the Commission considers that in the proceeding, DiversityCanada represented the NPF, which constitutes a group of elderly and retired Canadians that had an interest in the outcome of the proceeding. DiversityCanada also assisted the Commission in developing a better understanding of the matters that were considered, especially in its evaluation of the effectiveness of the finite registration period for telecommunications numbers registered on the National Do Not Call List.
10. The Commission notes that the rates claimed in respect of legal and consultant fees are in accordance with the rates established in the Commission's *Guidelines for the Assessment of Costs*, as set out in Telecom Regulatory Policy 2010-963. The Commission finds that the total amount claimed by DiversityCanada was necessarily and reasonably incurred and should be allowed.

11. 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.
12. The Commission notes that it has generally determined that the appropriate costs respondents to an award of costs are the parties that have a significant interest in the outcome of the proceeding in question and have participated actively in that proceeding. The Commission considers that the following parties had a significant interest in the outcome of the proceeding and participated actively throughout: Bell Aliant Regional Communications, Limited Partnership and Bell Canada (collectively, the Bell companies); Bragg Communications Inc., operating as Eastlink; MTS Inc. and Allstream Inc.; Rogers Communications Partnership (RCP); Saskatchewan Telecommunications (SaskTel); Shaw Communications Inc.; TBayTel; and TELUS Communications Company (TCC).
13. 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.
14. 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 it is appropriate to limit the costs respondents to the Bell companies, RCP, and TCC.
15. The Commission notes that it generally allocates the responsibility for payment of costs among costs respondents based on their telecommunications operating revenues (TORs)² 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 audited financial statements. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated as follows:

Bell companies	34.4%	\$2,926.01
TCC	33.1%	\$2,811.16
RCP	32.5%	\$2,766.65

16. The Commission notes that Bell Canada filed submissions in the proceeding on behalf of the Bell companies and SaskTel. Consistent with its general approach articulated in Telecom Costs Order 2002-4, the Commission makes Bell Canada responsible for payment on behalf of the Bell companies and leaves it to the members

² TORs consist of Canadian telecommunications revenues from local and access, long distance, data, private line, Internet, and wireless services.

of the Bell companies to determine the appropriate allocation of the costs among themselves. As noted above, SaskTel is not a costs respondent to this order.

Directions regarding costs

17. The Commission **approves** the application by DiversityCanada for costs with respect to its participation in the proceeding.
18. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to DiversityCanada at \$8,503.82.
19. The Commission **directs** that the award of costs to DiversityCanada be paid forthwith by Bell Canada on behalf of the Bell companies, by TCC, and by RCP according to the proportions set out in paragraph 15.

Secretary General

Related documents

- *Permanent number registration*, Compliance and Enforcement Regulatory Policy CRTC 2014-341, 25 June 2014
- *Permanent number registration*, Compliance and Enforcement Notice of Consultation CRTC 2013-527, 30 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