



## Telecom Order CRTC 2015-130

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Ottawa, 9 April 2015

*File numbers: 8650-C12-201310060 and 4754-457*

### **Determination of final costs award with respect to the participation of the DiversityCanada Foundation in the Telecom Notice of Consultation 2013-337 proceeding**

1. By letter dated 13 April 2014, the DiversityCanada Foundation, on behalf of itself and the National Pensioners Federation<sup>1</sup> (DiversityCanada), applied for a final costs award (the final costs application) with respect to its participation in the proceeding initiated by Telecom Notice of Consultation 2013-337 regarding the fact-finding process on the role of payphones in the Canadian communications system (the proceeding).
2. The Commission did not receive any interventions in response to the final costs application.
3. DiversityCanada had applied for an interim costs award with respect to its participation in the proceeding by letter dated 29 July 2013. In Telecom Order 2014-87, the Commission denied that application, but noted that DiversityCanada could apply for final costs at the end of the proceeding, and that the denial was not to be interpreted as a prejudgment regarding any eventual final costs application by DiversityCanada.

#### **Application**

4. In its final costs application, 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 \$27,749.98, consisting of \$1,765.63 for legal fees, and \$25,984.35 for consultant fees, claimed at the external rate. DiversityCanada's claim included the Ontario Harmonized Sales Tax (HST) on fees. DiversityCanada filed a bill of costs with its application.

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<sup>1</sup> Formerly known as the National Pensioners and Senior Citizens Federation.

6. While DiversityCanada made no express submission as to the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents), DiversityCanada did make note of the incumbent local exchange carriers (ILECs) and the small ILECs that the Commission made parties to the proceeding in Telecom Notice of Consultation 2013-337, thereby suggesting that these parties be named as costs respondents.

### **Commission's analysis and determinations**

7. The criteria for an award of final 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.

8. The Commission finds that DiversityCanada has satisfied these criteria through its participation in the proceeding. Specifically, DiversityCanada made relevant submissions in a number of the areas on which the Commission called for comments. While DiversityCanada's positions on some of the issues under consideration were similar to those of the other consumer groups that participated in the proceeding, DiversityCanada made distinct and constructive submissions on certain other issues.
9. For example, DiversityCanada made submissions regarding the significance of payphones to aging Canadians and to Canadians with hearing disabilities, including by highlighting the overlap between these groups and by pointing out the potentially adverse effects that the removal of teletypewriter (TTY)-equipped payphones could have on these groups.
10. DiversityCanada also made submissions regarding the contribution of payphones to the maintenance of Canada's public safety due to their availability in emergency situations. In addition, DiversityCanada's participation in the interrogatory phase of the proceeding led to valuable information being placed on the record regarding the percentage of payphone removals conducted at the request of the owners of the locations containing the payphones. As a result, DiversityCanada's participation in the proceeding assisted the Commission in developing a better understanding of the matters that were considered.

11. On the issue of whether 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* (the Guidelines), as set out in Telecom Regulatory Policy 2010-963, the Commission considers that DiversityCanada has claimed an excessive amount of time in respect of its external consultant. As a result, the Commission finds that the total amount claimed by DiversityCanada was not necessarily and reasonably incurred, and must be reduced.
12. Specifically, the Commission considers that the 102.2 hours and associated fees that DiversityCanada claimed for its consultant, at the external rate, are not commensurate with the contribution that DiversityCanada made to the positive development of the record of the proceeding.
13. The Commission considers that DiversityCanada's claim for its consultant is disproportionate compared to the costs claim of l'Union des consommateurs (l'Union) in the proceeding. L'Union submitted the only other costs claim related to a consultant or analyst, either internal or external, in the proceeding. The Guidelines do not distinguish between costs claims for consultants and those for analysts. L'Union claimed fees related to six 7-hour workdays for an analyst, for a total of 42 hours, at the in-house rate.
14. As the Commission determined in Telecom Order 2015-129, l'Union's level of participation was sufficient to enable it to make relevant submissions in the proceeding that contributed to a better understanding by the Commission of the issues being considered. While the level of DiversityCanada's participation in the proceeding may have been more extensive than l'Union's, the Commission does not consider that there was a corresponding increase in the value of DiversityCanada's participation in the proceeding. For these reasons, the Commission considers that DiversityCanada's claim for 102.2 hours of a consultant's time at the external rate is excessive and unjustified.
15. Consequently, the Commission reduces the time allowed in respect of DiversityCanada's consultant by 50%, to 51.1 hours. The Commission considers that the amount of \$14,757.81 was necessarily and reasonably incurred and should be allowed. This represents the amount claimed by DiversityCanada in respect of (i) its legal fees, (ii) the fees associated with 51.1 hours for its consultant at the external rate, and (iii) applicable taxes.
16. Going forward, the Commission expects applicants that claim costs in respect of a consultant or analyst at the external rate to provide evidence to support the necessity of using an outside, as opposed to an in-house, analyst or consultant. For instance, the applicant may demonstrate that its full participation in the proceeding required it to temporarily retain the services of an outside specialist that the applicant could not financially justify employing in-house. Furthermore, the Commission expects these applicants to provide objective evidence that the external consultant or analyst possesses specialized knowledge or relevant experience that bears directly on the subject matter of the proceeding.

17. In the event that a costs applicant does not provide such evidence and that the Commission decides to award costs, it may do so at the in-house rate, regardless of the consultant's or analyst's employment status in relation to the applicant. The Commission considers that this would be consistent with the overarching principle governing the Guidelines that costs be awarded only for expenses that are necessarily and reasonably incurred by the applicant.
18. 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.
19. 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 ILECs made party to the proceeding in Telecom Notice of Consultation 2013-337 had a significant interest in the outcome of the proceeding, and that many ILECs participated actively in the proceeding.
20. Given the large number of ILECs that participated in the proceeding and the relatively small amount of the costs award in this case, the Commission considers that it is appropriate to limit the costs respondents to Bell Aliant Regional Communications, Limited Partnership and Bell Canada (collectively, the Bell companies); MTS Inc. and Allstream Inc. (collectively, MTS Allstream); and TELUS Communications Company (TCC).
21. The Commission notes that it generally allocates the responsibility for payment of costs among costs respondents based on their telecommunications operating revenues (TORs)<sup>2</sup> 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:

<b>Company</b>	<b>Percentage</b>	<b>Amount</b>
Bell companies	47.1%	\$6,953.40
TCC	45.3%	\$6,680.46
MTS Allstream	7.6%	\$1,123.95

22. The Commission notes that Bell Canada filed submissions in the proceeding on behalf of the Bell companies, and that MTS Allstream filed joint submissions. Consistent with its general approach articulated in Telecom Costs Order 2002-4, the

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

Commission makes Bell Canada responsible for payment on behalf of the Bell companies, and makes MTS Inc. responsible for payment on behalf of MTS Allstream. The Commission leaves it to the respective members of the Bell companies and MTS Allstream to determine the appropriate allocation of the costs among themselves.

### **Directions regarding costs**

23. The Commission **approves with changes** the application by DiversityCanada for costs with respect to its participation in the proceeding.
24. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to DiversityCanada at \$14,757.81.
25. 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 MTS Inc. on behalf of MTS Allstream according to the proportions set out in paragraph 21.

Secretary General

### **Related documents**

- *Determination of costs award with respect to the participation of l'Union des consommateurs in the Telecom Notice of Consultation 2013-337 proceeding*, Telecom Order CRTC 2015-129, 9 April 2015
- *Determination of interim costs award with respect to the participation of the DiversityCanada Foundation in the Telecom Notice of Consultation 2013-337 proceeding*, Telecom Order CRTC 2014-87, 27 February 2014
- *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