



Telecom Order CRTC 2016-154

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Ottawa, 27 April 2016

File numbers: 8657-C12-201505505 and 4754-503

Determination of costs award with respect to the participation of l'Union des consommateurs in the proceeding initiated by Broadcasting and Telecom Notice of Consultation 2015-239

Application

1. By letter dated 16 December 2015, l'Union des consommateurs (l'Union) applied for costs with respect to its participation in the proceeding initiated by Broadcasting and Telecom Notice of Consultation 2015-239 (the proceeding). In that proceeding, the Commission asked for input on the service that the Commissioner for Complaints for Telecommunications Services Inc. (CCTS) provides to consumers; the consumer experience with the CCTS; public awareness of the CCTS; company participation in the CCTS; and the mandate, activities, structure, and funding of the CCTS.
2. TELUS Communications Company (TCC) filed an intervention, dated 17 December 2015, in response to l'Union's application. L'Union did not file a reply.
3. L'Union 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. In particular, l'Union submitted that it represents the interests of Canadian consumers, especially modest-income families, and focuses on furthering social justice, equality, and social justice goals and values. L'Union further submitted that Quebec consumers in general use the CCTS's services, and that any change to its mandate would impact the consumers l'Union represents. Finally, l'Union submitted that through its submissions, expertise, comments at the public hearing, and targeted arguments, it offered a distinct point of view during the proceeding as an organization representing the interest of Canadian consumers.
5. L'Union requested that the Commission fix its costs at \$10,148.31, consisting of \$3,200.00 for legal fees, \$6,815.00 for analyst fees, and \$133.31 for disbursements. L'Union's claim included the federal Goods and Services Tax (GST) and the Quebec Provincial Sales Tax (PST) on fees less the rebate to which l'Union is entitled in connection with the GST and PST. L'Union filed a bill of costs with its application.

6. L'Union made no submission as to the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents).

Answer

7. In response to the costs application, TCC did not object to l'Union's entitlement to an award of costs in the proceeding. However, TCC noted that the proceeding was a combined broadcasting and telecommunications proceeding and that there are no provisions for awarding costs related to broadcasting issues under the *Telecommunications Act* (the Act). To that end, TCC noted that l'Union failed to indicate the proportion of its costs that were related to broadcasting issues.
8. TCC argued that l'Union should be required to resubmit its costs application indicating the proportion of time spent on telecommunications issues as opposed to broadcasting issues.
9. TCC submitted that if parties do not file evidence indicating time spent between telecommunications and broadcasting matters, the Commission should make an order that only two thirds of the total costs are entitled to be awarded, with the assumption that one third of the time spent on the proceeding was spent on broadcasting matters.

Request for information

10. In a letter dated 12 February 2016, it was noted that the proceeding related to both telecommunications and broadcasting issues, and that this is important because the Commission may only award costs related to telecommunications matters under the Act.
11. The letter noted that the Commission cannot predetermine the amount of time spent by costs applicants in combined telecommunications and broadcasting proceedings. In particular, it was noted that the overall division of issues in the proceeding does not necessarily translate into the amount of time that any specific costs applicant spends on either telecommunications or broadcasting matters. It was noted that only the individual costs applicant knows the amount of time allocated to particular issues and whether these issues related to telecommunications or broadcasting matters.
12. Accordingly, all costs applicants to the proceeding, including l'Union, were requested to provide the percentage of time spent on telecommunications matters during the proceeding, including support as to how parties determined the allocation of time spent on telecommunications as opposed to broadcasting matters.
13. In its response, dated 22 February 2016, l'Union submitted that it did not distinguish between time spent on telecommunications matters as opposed to broadcasting matters because it tracks its time based on the types of tasks it performs and not the types of topics it works on. Further, l'Union submitted that due to the administrative burden involved it would be impossible to separate the hours claimed according to the topics it worked on.

14. L'Union noted that the majority of questions raised during the proceeding related to telecommunication matters, and suggested that certain topics were relevant to both broadcasting and telecommunications. Though l'Union did speak briefly on the subject of television service providers, its detailed submissions pertained to telecommunication matters, such as the implementation of the Wireless Code by the CCTS, the mandate of the CCTS, an assessment of the quality of services the CCTS provides, governance, and financing.
15. Upon reviewing its files, and logically assessing the work it did during the proceeding, l'Union concluded that its overall apportionment of time in the proceeding is best represented as 75% for telecommunications and 25% for broadcasting.
16. No answers with respect to l'Union's response to the request for information were received from other parties.

Commission's analysis and determinations

17. The criteria 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.
18. L'Union has satisfied these criteria through its participation in the proceeding. In particular, l'Union made constructive submissions regarding how the CCTS should be strengthened to fulfill and expand its mandate. Further, l'Union contributed useful comments on why and how to enhance public awareness of the CCTS. L'Union also contributed useful comments on how to maintain the financial stability of the CCTS, create a better complaint management system, and expand participation. In this way, l'Union assisted the Commission in developing a better understanding of the matters that were considered.
19. The rates claimed in respect of analyst and legal 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.
20. The proceeding related to both telecommunications and broadcasting issues. As noted above, the Commission may only award costs related to telecommunications

matters under the Act. However, parties are free to apply to the Broadcasting Participation Fund for the portion of time that they dedicated to broadcasting matters in the proceeding.

21. Based on the record of the proceeding, the Commission finds that the 75% allocation of time by l'Union to telecommunications matters is acceptable, and that the total amount claimed in its initial costs application should be adjusted to \$7,611.23 (75% of its initial costs claim of \$10,148.31). The Commission finds that the amended total amount claimed by l'Union was necessarily and reasonably incurred and should be allowed.
22. 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.
23. The Commission 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 in the proceeding: Bell Canada; Bragg Communications Incorporated, operating as Eastlink; the Canadian Network Operators Consortium Inc.; Cogeco Cable Inc.; MTS Inc. and Allstream Inc.; Quebecor Media Inc., on behalf of Videotron G.P.; Rogers Communications Partnership (RCP); Saskatchewan Telecommunications; Shaw Communications Inc.; TBayTel; and TCC.
24. The Commission considers that, consistent with its practice, it is appropriate to allocate 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.
25. However, as set out in paragraph 21 of Telecom Order 2015-160, the Commission considers \$1,000 to be the minimum amount that a costs respondent should be required to pay due to the administrative burden that small costs awards impose on both the applicant and costs respondents.
26. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated as follows:

¹ TORs consist of Canadian telecommunications revenues from local and access, long distance, data, private line, Internet, and wireless services. In this order, the Commission has used the TORs of the costs respondents based on their most recent audited financial statements.

Company	Percentage	Amount
TCC	36.4%	\$2,770.49
RCP	33.1%	\$2,519.32
Bell Canada	30.5%	\$2,321.42

Directions regarding costs

27. The Commission **approves with changes** the application by l'Union for costs with respect to its participation in the proceeding.
28. Pursuant to subsection 56(1) of the Act, the Commission fixes the costs to be paid to l'Union at \$7,611.23.
29. The Commission **directs** that the award of costs to l'Union be paid forthwith by TCC, RCP, and Bell Canada according to the proportions set out in paragraph 26 above.

Secretary General

Related documents

- *Review of the structure and mandate of the Commissioner for Complaints for Telecommunications Services Inc.*, Broadcasting and Telecom Notice of Consultation CRTC 2015-239, 4 June 2015, as amended by Broadcasting and Telecom Notices of Consultation CRTC 2015-239-1, 24 July 2015, and 2015-239-2, 25 September 2015
- *Determination of costs award with respect to the participation of the Ontario Video Relay Service Committee in the proceeding initiated by Telecom Notice of Consultation 2014-188*, Telecom Order CRTC 2015-160, 23 April 2015
- *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