



Telecom Order CRTC 2016-155

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File numbers: 8657-C12-201505505 and 4754-504

Determination of costs award with respect to the participation of Media Access Canada in the proceeding initiated by Broadcasting and Telecom Notice of Consultation 2015-239

Application

1. By letter dated 2 December 2015, Media Access Canada (MAC) 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. The Commission did not receive any interventions in response to the application for costs.
3. MAC 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, MAC submitted that it represents the Access 2020 Group of disability organizations as one voice for Canadians with disabilities. MAC also submitted that its contribution provided the Commission with a clearer understanding of the needs and priorities of Canadians with disabilities and solutions to address them. Finally, MAC submitted that it engaged the disability community and subject matter experts in an effort to provide the Commission with the necessary information to make its determinations regarding the scope of the CCTS.
5. MAC requested that the Commission fix its costs at \$47,626.97, consisting of \$3,300.00 for expert witness fees, \$39,491.11 for consultant fees, and \$4,835.86 for disbursements. MAC's claim included the federal Goods and Services Tax and the Ontario Harmonized Sales Tax on fees. MAC filed a bill of costs with its application.

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

Request for information

7. 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 *Telecommunications Act* (the Act).
8. 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.
9. Accordingly, all costs applicants to the proceeding, including MAC, 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.
10. In its response, dated 21 February 2016, MAC submitted that, based on its review of its initial intervention, presentation at the oral hearing and undertaking filed, final submission, and the overall focus of its submissions in the proceeding, 100% of its costs were related to telecommunications matters.
11. No answers with respect to MAC's response to the request for information were received from other parties.
12. MAC was also requested to provide additional information regarding technical details of the costs application on 12 February and 15 March 2016. MAC provided responses on 21 February and 24 March 2016, respectively.

Commission's analysis and determinations

13. 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.

14. MAC has satisfied these criteria through its participation in the proceeding. In particular, MAC represented a group of subscribers that had an interest in the outcome of the proceeding, namely Canadians with disabilities. MAC's submissions, such as its proposal regarding the creation of an Accessibility Rights Office, gave the Commission a better understanding of the needs and priorities of the accessibility community in the context of the CCTS. Without MAC's participation, the Commission would not have had as comprehensive an understanding of the priorities and key issues for the accessibility community.
15. The rates claimed in respect of expert witness 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.
16. 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.
17. Based on the record of the proceeding, and given that MAC's submissions during the proceeding were primarily focused on accommodating Canadians with disabilities and MAC's experiences with the CCTS up to the point of the proceeding, the Commission finds that the 100% allocation of time by MAC to telecommunications matters is acceptable, and that the total amount of \$47,626.97 claimed by MAC was necessarily and reasonably incurred and should be allowed.
18. 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 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. (Cogeco); MTS Inc. (MTS) and Allstream Inc. (collectively, MTS Allstream); Quebecor Media Inc., on behalf of Videotron G.P. (Videotron); Rogers Communications Partnership (RCP); Saskatchewan Telecommunications (SaskTel); Shaw Communications Inc. (Shaw); TBayTel; and TELUS Communications Company (TCC).
20. 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.

21. 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.
22. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated as follows:

Company	Percentage	Amount
TCC	29.4%	\$14,002.33
RCP	26.7%	\$12,716.40
Bell Canada	24.6%	\$11,716.23
Shaw	5.3%	\$2,524.23
Videotron	4.8%	\$2,286.09
MTS Allstream	4.1%	\$1,952.71
SaskTel	3.0%	\$1,428.81
Cogeco	2.1%	\$1,000.17

23. Consistent with its general approach articulated in Telecom Costs Order 2002-4, the Commission makes MTS responsible for payment on behalf of MTS Allstream. The Commission leaves it to MTS Allstream to determine the appropriate allocation of the costs among themselves.

Directions regarding costs

24. The Commission **approves** the application by MAC for costs with respect to its participation in the proceeding.
25. Pursuant to subsection 56(1) of the Act, the Commission fixes the costs to be paid to MAC at \$47,626.97.

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.

26. The Commission **directs** that the award of costs to MAC be paid forthwith by TCC, RCP, Bell Canada, Shaw, Videotron, MTS on behalf of MTS Allstream, SaskTel, and Cogeco according to the proportions set out in paragraph 22 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
- *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