



Telecom Order CRTC 2016-362

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Determination of costs award with respect to the participation of the Consumers' Association of Canada, the Council of Senior Citizens' Organizations of British Columbia, and the Public Interest Advocacy Centre in the proceeding leading to Telecom Decision 2016-346

Application

1. By letter dated 25 August 2015, the Consumers' Association of Canada, the Council of Senior Citizens' Organizations of British Columbia, and the Public Interest Advocacy Centre (collectively, the Consumer Groups) applied for costs with respect to their participation in the proceeding leading to Telecom Decision 2016-346 (the proceeding). The proceeding was initiated by the Consumer Groups' application to expand the current geographic boundaries associated with local number portability (LNP).
2. Allstream Inc., on behalf of itself and MTS Inc. (collectively, MTS Allstream), and TELUS Communications Company (TCC) filed interventions, dated 4 and 9 September 2015 respectively, in response to the Consumer Groups' costs application. The Consumer Groups replied to both interventions in a letter dated 18 September 2015.
3. The Consumer Groups submitted that they 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 they represented a group or class of subscribers that had an interest in the outcome of the proceeding, they had assisted the Commission in developing a better understanding of the matters that were considered, and they had participated in a responsible way.
4. In particular, the Consumer Groups submitted that they assisted the Commission by bringing an application to update the geographic boundaries associated with LNP to more accurately reflect the evolution of networks and the marketplace for telephony services. The Consumer Groups added that they enabled the Commission to develop a better understanding of the issues raised through their detailed explanations and fully developed arguments from a consumer-focused perspective.
5. The Consumer Groups requested that the Commission fix their costs at \$13,714.88, consisting entirely of external legal fees. The Consumer Groups' claim included the

Harmonized Sales Tax (HST) on fees less the rebate to which they are entitled in connection with the HST. The Consumer Groups filed a bill of costs with their application.

6. The Consumer Groups submitted that the large incumbent local exchange carriers and cable companies that participated in the proceeding are the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents).

MTS Allstream's answer

7. MTS Allstream submitted that the Consumer Groups' costs application should be denied, or in the alternative, that they should not be named as costs respondents.
8. MTS Allstream argued that the Consumer Groups had not satisfied the criteria for an award of costs. Specifically, they did not represent a group or class of subscribers, since MTS Allstream was not aware of any discernable level of interest in expanded location portability by any group or class of subscribers. MTS Allstream added that the Commission's understanding of the issues was likely well-developed from the similar application filed by TCC a month earlier, and that therefore, the Consumer Groups' application did not add any substantive insights.
9. MTS Allstream also argued that the Consumer Groups did not responsibly wait for and consider the interventions of the other parties to TCC's application before initiating the proceeding, nor did they responsibly address the challenges identified in TCC's application.

TCC's answer

10. TCC submitted that the Consumer Groups' costs application should be denied, or in the alternative, reduced to one-third of the costs claimed to account for the simplicity of the application that initiated the proceeding. According to TCC, the Consumer Groups' costs were not incurred in a responsible manner because they should have waited until the Commission disposed of TCC's application before initiating their own proceeding, since much of the subject matter would have already been addressed.
11. TCC argued that the discussion of location porting zones within the Metro Vancouver area put the Commission in a position to not only rule on TCC's application, but also decide if it should initiate activities regarding a broader implementation elsewhere in Canada. TCC argued that the Consumer Groups added no new information or analysis through the proceeding.

Reply

12. The Consumer Groups submitted that both MTS Allstream and TCC misinterpreted the criteria for an award of costs. First, with respect to the criterion of representing a group or class of subscribers with an interest in the outcome of the proceeding, the Consumer Groups contended that they effectively and efficiently represented the

interests of their members and more generally, Canadian consumers. The Consumer Groups claimed that consumers have a general interest in LNP and maximizing the geographic area in which they may move or change their service provider without switching telephone numbers.

13. Second, with respect to the criterion of assisting the Commission in developing a better understanding of the matters that were considered, the Consumer Groups claimed that TCC's application was not intended to address consumer interests for broader location portability in areas other than Metro Vancouver. Thus, the Consumer Groups submitted that they addressed a range of issues that provided the Commission with a better understanding of matters associated with location portability that were not addressed in TCC's application.
14. Finally, the Consumer Groups submitted that they participated in the proceeding in a responsible way, since their submissions were developed efficiently by competent and experienced counsel.

Commission's analysis and determinations

15. 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.

16. The Consumer Groups have satisfied these criteria through their participation in the proceeding. In particular, the Consumer Groups assisted the Commission in developing a better understanding of the matters that were considered by providing consumer-focused submissions on the issue of expanding location portability across Canada with a view to better reflecting the current marketplace for telephony services.
17. In the proceeding, the Consumer Groups proposed why the boundaries of location portability elsewhere in Canada, not just in the Metro Vancouver area, should be expanded. Therefore, although MTS Allstream claimed that the Commission's understanding of the issues was well-developed based on TCC's application, the Consumer Groups looked at a broader application of location portability in Canada. While TCC claimed that the Consumer Groups should have waited until the Commission's disposition of TCC's application before initiating the proceeding, the

Consumer Groups' application that initiated the proceeding dealt with issues distinct from those addressed in TCC's application.

18. The rates claimed in respect of 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. The Commission finds that the total amount claimed by the Consumer Groups was necessarily and reasonably incurred and should be allowed.
19. 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.
20. 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, the Canadian Network Operators Consortium Inc., MTS Allstream, Rogers Communications Partnership (RCP), Saskatchewan Telecommunications, Shaw Telecom G.P., and TCC.
21. 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.
22. However, as set out in 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.
23. In light of the above, the Commission considers that Bell Canada, RCP, and TCC are the appropriate costs respondents to the Consumer Groups' costs application. However, RCP ceased to exist as of 1 January 2016. All of RCP's business activities, including its assets and liabilities, are now held by Rogers Communications Canada Inc. (RCCI). Therefore, the appropriate costs respondents to the Consumer Groups' costs application are Bell Canada, RCCI, and TCC.

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.

24. The Commission finds that the responsibility for payment of costs should be allocated as follows:

Company	Percentage	Amount
TCC	39.4%	\$5,403.66
RCCI	35.7%	\$4,896.21
Bell Canada	24.9%	\$3,415.01

Directions regarding costs

25. The Commission **approves** the application by the Consumer Groups for costs with respect to their participation in the proceeding.
26. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to the Consumer Groups at \$13,714.88.
27. The Commission **directs** that the award of costs to the Consumer Groups be paid forthwith by TCC, RCCI, and Bell Canada, according to the proportions set out in paragraph 24.

Secretary General

Related documents

- *The Consumers' Association of Canada, the Council of Senior Citizens' Organizations of British Columbia, and the Public Interest Advocacy Centre – Application to expand the current geographic boundaries associated with local number portability*, Telecom Decision CRTC 2016-346, 26 August 2016
- *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