



Telecom Order CRTC 2017-130

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Determination of costs award with respect to the participation of Media Access Canada in the proceeding leading to Telecom Regulatory Policy 2016-496

Application

1. By letter dated 15 July 2016, Media Access Canada (MAC) applied for costs with respect to its participation in the proceeding leading to Telecom Regulatory Policy 2016-496, in which the Commission reviewed its policies regarding basic telecommunications services in Canada (the proceeding).
2. Bell Canada¹ filed an answer dated 3 August 2016. MAC filed a reply dated 15 August 2016.
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. With respect to the group or class of subscribers MAC has submitted that it represents, MAC indicated that it provides information to, and collects feedback from, 82 non-profit accessibility organizations across Canada. It added that it represents the Access 2020 Group of Disability Organizations, including March of Dimes Canada, Easter Seals Canada, the Bob Rumball Associations for the Deaf, the Canadian Council of the Blind, Disabled Women's Network Canada, and the Canadian Hard of Hearing Association.
5. MAC submitted that it participated in every stage of the proceeding and that its contribution provided the Commission with a clearer understanding of the needs and priorities of Canadians with disabilities. In particular, MAC indicated that it held meetings across the country with people with disabilities and with related

¹ Although Bell Canada filed an answer solely on its own behalf, it participated in the basic telecommunications services proceeding on its own behalf, and on behalf of its affiliates Bell Aliant Regional Communications, Limited Partnership (which, effective 1 July 2015, is operated as a division of Bell Canada); Bell Mobility Inc.; Câblevision du Nord du Québec inc.; DMTS; KMTS; NorthernTel, Limited Partnership; Northwestel Inc.; Ontera; and Télébec, Limited Partnership.

organizations, and that it consulted with subject matter experts to gather the necessary feedback to formulate its positions.

6. MAC requested that the Commission fix its costs at \$42,953.13, consisting of \$40,933.44 for consultant fees, and \$2,019.69 for disbursements. MAC's claim included the federal Goods and Services Tax (GST) and the Ontario Harmonized Sales Tax (HST) on fees, as applicable. MAC filed an initial bill of costs with its application, and then filed a revised bill of costs on 5 October 2016.²
7. With respect to its three consultants, MAC claimed 47.5 hours for a consultant from the Neil Squire Society and for another consultant from Analysis and Research in Communications, at the external rate for senior consultants of \$225 per hour (\$10,687.50 in total), and 158 hours for a third consultant at the external rate of \$165 per hour for intermediate consultants (\$26,070.00 in total).
8. MAC made no submission as to the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents).

Answer

9. Bell Canada argued that MAC had improperly claimed the external rate for one of its consultants, who is essentially an internal resource. Bell Canada submitted that the internal rate of \$470 per day should apply.
10. Bell Canada also submitted that MAC had not claimed a sales tax rebate, which is typically available to non-profit organizations. Bell Canada requested that the Commission clarify MAC's entitlement to such a rebate and adjust MAC's costs claim as necessary.
11. With respect to the allocation of the responsibility for payment of costs, Bell Canada submitted that MAC's costs should be apportioned between the telecommunications service providers that participated in the proceeding based on telecommunications operating revenues (TORs),³ consistent with the Commission's *Guidelines for the Assessment of Costs* (the Guidelines).

Reply

12. MAC responded that its costs were necessarily and reasonably incurred.
13. MAC indicated that the consultant to which Bell Canada referred as being an internal consultant to MAC had acted as the volunteer chief executive officer (CEO) of MAC for many years and had retired from that position in December 2015. MAC argued

² The total amount of \$42,953.13 is based on the revised bill of costs that MAC filed in its reply. MAC's initial bill of costs set out a total amount of \$43,106.57.

³ TORs consist of Canadian telecommunications revenues from local and access, long distance, data, private line, Internet, and wireless services.

that this consultant (i) is a subject matter expert for organizations other than MAC, (ii) pays for her own tools, equipment, and training for the persons doing the work, and (iii) does not manage MAC's daily operations. Further, MAC argued that the Commission had previously determined that MAC was entitled to claim the external consultant rate for this consultant in Telecom Orders 2016-155 and 2013-525.

14. With respect to the sales tax rebate, MAC stated that it is not a registered charitable organization, nor does it receive government funding for its ongoing operations; hence, it is not entitled to claim a sales tax rebate.

Commission's analysis and determinations

Eligibility

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. In Telecom Information Bulletin 2016-188, the Commission provided guidance regarding how an applicant may demonstrate that it satisfies the first criterion with respect to its representation of interested subscribers. MAC provided information to, and collected feedback from, 82 non-profit accessibility organizations across Canada. It also represented various disability organizations, which had an interest in the outcome of the proceeding. Accordingly, MAC satisfies the first criterion.
17. MAC has also satisfied the remaining criteria through its participation in the proceeding. In particular, MAC's submissions, especially regarding the provision of accessible media to Canadians with disabilities, as well as its recommendations regarding regulatory measures that could assist them, assisted the Commission in developing a better understanding of how the issues that were considered could affect Canadians with disabilities.
18. Accordingly, MAC is eligible for an award of costs in relation to its participation in the proceeding.

Consultant fees

19. The Commission recognizes the important contribution that non-profit organizations make to its ability to better understand the issues in a proceeding and to help the Canadians represented by the organization. However, it remains important for the Commission to ensure that individuals acting in their consultant roles are properly categorized as in-house or external consultants based on the principles set out in Telecom Order 2014-351, adapted to the circumstances. The costs that can be reasonably claimed for external consultants are higher than those for in-house consultants. This is because it is presumed that in-house consultants are part of the organization and providing services as part of their regular duties, the costs for which are covered by the organization's regular operating costs. However, external consultants are presumed to be charging the organization industry rates for specific expertise.
20. In Telecom Order 2014-351, the Commission provided a number of factors to consider in assessing consultants' independence from costs applicants, including whether the consultant has other clients in the communications field and whether they used their own resources and equipment to complete their work.
21. The record indicates that MAC's consultant whose time is being disputed provides consulting services to other clients, for which she receives payment, and that she pays for her own tools, equipment, and training for the persons doing the work. Further, there is no compelling evidence on the record of the costs proceeding suggesting that the consultant's costs should be recovered at the in-house rate. Accordingly, it is appropriate for MAC to claim costs for this consultant at the external rate.
22. The rates claimed in respect of the other consultants are in accordance with the rates established in the Guidelines, as set out in Telecom Regulatory Policy 2010-963.

Disbursements

23. The rates claimed in respect of disbursements are also in accordance with the rates established in the Guidelines.

Conclusion

24. The Commission finds that the total amount claimed by MAC, including the GST and the HST on consultant fees, was necessarily and reasonably incurred and should be allowed.
25. 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.

Costs respondents and allocation

26. 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. Given the scope of the proceeding, a large number of parties both had a significant interest in the outcome of the proceeding and participated actively in the proceeding.
27. It is the Commission's general practice to allocate the responsibility for payment of costs among costs respondents based on their TORs⁴ as an indicator of the relative size and interest of the parties involved in the proceeding. No party disputed the appropriateness of using TORs in the present case.
28. As set out in the Guidelines, the Commission will generally name a maximum of 10 costs respondents for a costs award of up to \$20,000 and will add an extra respondent for each additional \$5,000 awarded. 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.
29. Accordingly, Bell Canada; MTS Inc. (MTS); Quebecor Media Inc., on behalf of Videotron G.P. (Videotron); Rogers Communications Canada Inc. (RCCI);⁵ Saskatchewan Telecommunications (SaskTel); Shaw Cablesystems G.P. (Shaw); and TELUS Communications Company (TCC) are the appropriate costs respondents in the circumstances. The responsibility for payment of costs should be allocated as follows:

Company	Percentage	Amount
Bell Canada	37.5%	\$16,107.42
TCC	25.6%	\$10,996.00
RCCI	23.3%	\$10,008.08
Videotron	4.6%	\$1,975.84
MTS	3.4%	\$1,460.41
Shaw	3.1%	\$1,331.55

⁴ In this order, the Commission has used the TORs of the costs respondents based on their most recent audited financial statements.

⁵ In the proceeding, submissions were received from Rogers Communications Partnership (RCP). However, on 1 January 2016, RCP ceased to exist. All of RCP's business activities, including its assets and liabilities, are now held by RCCI.

SaskTel	2.5%	\$1,073.83
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30. 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. The Commission leaves it to the members of the Bell companies to determine the appropriate allocation of the costs among themselves.

Directions regarding costs

31. The Commission **approves** the application by MAC for costs with respect to its participation in the proceeding.
32. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to MAC at \$42,953.13.
33. The Commission **directs** that the award of costs to MAC be paid forthwith by the cost respondents and according to the proportions set out in paragraph 29.

Secretary General

Related documents

- *Modern telecommunications services – The path forward for Canada’s digital economy*, Telecom Regulatory Policy CRTC 2016-496, 21 December 2016
- *Guidance for costs award applicants regarding representation of a group or a class of subscribers*, Telecom Information Bulletin CRTC 2016-188, 17 May 2016
- *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*, Telecom Order CRTC 2016-155, 27 April 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
- *Determination of costs award with respect to the participation of the DiversityCanada Foundation in the proceeding initiated by the application of Bragg Communications Inc., operating as EastLink, regarding 30-day notice requirements for service cancellations*, Telecom Order CRTC 2014-351, 3 July 2014
- *Determination of costs award with respect to the participation of Media Access Canada in the proceeding leading to Telecom Regulatory Policy 2013-271*, Telecom Order CRTC 2013-525, 27 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