



Telecom Order CRTC 2017-137

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Determination of costs award with respect to the participation of the Deaf Wireless Canada Consultative Committee in the proceeding leading to Telecom Regulatory Policy 2016-496

Application

1. By letter dated 11 July 2016, the Deaf Wireless Canada Consultative Committee (DWCC) 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. The Commission received answers from Bell Canada¹ and TELUS Communications Company (TCC), both dated 29 July 2016. The DWCC filed a reply dated 31 August 2016.
3. The DWCC 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, the DWCC submitted that it had advanced the interests of persons with disabilities regarding issues that were discussed during the proceeding. It conducted a national survey, presented evidence regarding wireless service issues for the Deaf community, and recommended solutions to the Commission.
5. With respect to the group or class of subscribers the DWCC has submitted that it represents, the DWCC explained that it is an *ad hoc* committee within the Canadian Association of the Deaf (CAD), established to advocate for fair wireless service packages and consumer rights on behalf of Deaf, hard-of-hearing, and deaf-blind Canadians.

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.

6. The DWCC requested that the Commission fix its costs at \$80,371.92, consisting of \$70,455.00 in consultant fees and \$9,916.92 in disbursements. The DWCC filed a bill of costs with its application.
7. With respect to its consultant fees, the DWCC claimed 255 hours at the external rate of \$165 per hour for intermediate consultants, and 258 hours at the external rate of \$110 per hour for junior consultants.
8. With respect to disbursements, almost all of the DWCC's costs related to the surveys it undertook to support its submissions, as well as its participation in the public hearing.
9. The DWCC submitted that all of the telecommunications service providers that participated in the proceeding, especially the wireless service providers, should be required to pay any costs awarded by the Commission (the costs respondents).

Answer

10. Bell Canada and TCC submitted that the DWCC's costs claims related to its consultants were not consistent with the Commission's *Guidelines for the Assessment of Costs* (the Guidelines). They argued that the DWCC's consultants were serving as volunteers. Therefore, since the DWCC did not actually incur the associated costs, Bell Canada and TCC stated that it is not appropriate for those costs to be recovered under the Commission's costs awards process and that those costs should be removed from the DWCC's costs claim.
11. Bell Canada and TCC also argued that the DWCC had improperly claimed the external consultant rates for the time spent by its five consultants. In their view, the five individuals were in-house resources, and as such, the daily rate for in-house consultants, as established in the Guidelines, should have been used.
12. Bell Canada and TCC did not object to the DWCC's eligibility to recover the costs claimed with respect to its disbursements. However, Bell Canada noted that the DWCC fundraised \$2,134.15 to support its participation in the proceeding. Bell Canada argued that pursuant to the Guidelines, this amount should be deducted from the allowable costs claimed.
13. Bell Canada submitted that the responsibility for payment of costs should be allocated between the telecommunications service providers that participated in the proceeding based on telecommunications operating revenues (TORs),² consistent with the Guidelines.

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

Reply

14. The DWCC argued that its consultants should not be considered in-house consultants but external ones. The DWCC explained that all five consultants are not its employees, but were members designated as consultants to lead the DWCC's participation in the proceeding. As such, they spent an extraordinary amount of time preparing and drafting the DWCC's submissions for the proceeding.
15. With respect to Bell Canada and TCC's argument that the DWCC's members were serving as volunteers, the DWCC explained that its consultants may have started out as volunteers, but that as the proceeding progressed, it demanded more hours than expected.
16. With respect to its disbursements, the DWCC agreed to reduce the fundraised amount from its disbursements (\$2,134.15).

Subsequent process

17. On 15 December 2016, Commission staff sent a letter requesting additional information on the DWCC's structure and the independence of its consultants.
18. The DWCC responded on 20 January 2017. The DWCC explained that it does not have either a formally elected board of directors or daily staff. It organizes its work through several teams working independently and then together for various tasks. An executive team is put in place when teams require a certain level of problem-solving and strategizing.
19. Regarding its consultants, the DWCC noted that although they are DWCC members, many of its consultants provide their services, such as survey analysis reports, and expertise in video relay services and in social media, to other clients regarding various communications issues.
20. The DWCC requested that the Commission not apply the Guidelines in a strict manner to charitable organizations like itself that do not have the resources that for-profit companies do to participate in Commission proceedings.

Commission's analysis and determinations

Eligibility

21. 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.

22. 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. The DWCC's members are Deaf community members across Canada. Through their interaction with their respective communities, the DWCC's members ensured that the life experience of those communities were represented in the positions advanced by the DWCC. Those positions were also informed by the results of the Deaf Wireless Survey, an initiative the DWCC undertook in response to the proceeding. As well, through social media and other means, the DWCC ensured that its positions accurately reflected the Deaf communities' wishes and had their support. Accordingly, the DWCC has demonstrated that it meets the first criterion.

23. The DWCC has also satisfied the remaining criteria through its participation in the proceeding. In particular, the DWCC provided a valuable and unique perspective that helped the Commission understand how the issues under consideration could affect Deaf, hard-of-hearing, and deaf-blind Canadians who require the telecommunications services under review to be available in an accessible manner.

24. Regarding the issue of whether the work of a volunteer should be eligible for a costs award, the *Telecommunications Act* gives the Commission broad discretion with respect to its costs award determinations, and costs have been awarded for the work of a volunteer in the past.³

25. The Commission recognizes the important contribution that an organization comprised of volunteer members with lived experience make to its ability to better understand the issues in a proceeding. In these organizations, it is common for their members to take on active roles by (i) participating in decision making, and (ii) conducting work traditionally undertaken by paid staff or consultants, including researching and drafting the organization's submissions to the Commission.

26. However, it remains important for the Commission to ensure that these individuals 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

³ See Telecom Order 2015-341.

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.

27. 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, whether they manage the day-to-day operations of the organization, and whether they used their own resources and equipment to complete their work.
28. The DWCC is an *ad hoc* committee within CAD. It does not have a formally elected board of directors or daily staff. Its decisions are taken by its members based on the principle of collectivism, which is supported by Deaf communities throughout Canada.
29. The DWCC designated five of its members to lead its participation in the proceeding. The costs claimed by the DWCC relate to the time spent by these members to prepare and present the DWCC's positions in the proceeding. In other organizations, these tasks are usually undertaken by paid staff or external consultants. The DWCC's members are not paid staff, and they take part in, but do not control, the day-to-day operations of the DWCC, as evidenced by the organization's collective decision making. Moreover, the record of the proceeding demonstrates that three of these consultants provide consulting services to other organizations. Given this, as well as the consultants' experience and expertise, the Commission considers that the DWCC's members were acting as external consultants.

Disbursements

30. The revised amounts claimed in respect of the DWCC's disbursements are in accordance with the Guidelines, as set out in Telecom Regulatory Policy 2010-963.

Conclusion

31. In light of the above, the Commission finds that the total revised amount claimed by the DWCC, \$78,241.51, was necessarily and reasonably incurred and should be allowed.
32. 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

33. 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 had a significant interest in the outcome of the proceeding and participated actively in the proceeding.

34. 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.
35. 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.
36. Accordingly, Bell Canada; Cogeco Communications Inc. (Cogeco);⁵ MTS Inc. (MTS); Quebecor Media Inc., on behalf of Videotron G.P. (Videotron); Rogers Communications Canada Inc. (RCCI);⁶ Saskatchewan Telecommunications (SaskTel); Shaw Cablesystems G.P. (Shaw); and TCC are the appropriate costs respondents in the circumstances. The Commission finds that the responsibility for payment of costs should be allocated as follows:

Company	Percentage	Amount
Bell Canada	36.9%	\$28,871.12
TCC	25.2%	\$19,716.86
RCCI	22.9%	\$17,917.31
Videotron	4.5%	\$3,520.87
MTS	3.3%	\$2,581.97
Shaw	3.1%	\$2,425.49
SaskTel	2.5%	\$1,956.04

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 initially received from Cogeco Cable Inc. However, the company underwent a corporate name change during the proceeding and thereafter participated as Cogeco Communications Inc.

⁶ 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.

Cogeco	1.6%	\$1,251.86
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37. 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

38. The Commission **approves** the application by the DWCC for costs with respect to its participation in the proceeding.

39. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to the DWCC at \$78,241.51.

40. The Commission directs that the award of costs to the DWCC be paid forthwith by the cost respondents and according to the proportions set out in paragraph 36.

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 OpenMedia.ca in the proceeding initiated by Telecom Notice of Consultation 2013-551*, Telecom Order CRTC 2015-341, 28 July 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
- *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
- *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