



## Telecom Order CRTC 2017-380

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*File numbers: 1011-NOC2016-0293 and 4754-560*

### **Determination of costs award with respect to the participation of the Deaf Wireless Canada Consultative Committee in the proceeding that led to Telecom Regulatory Policy 2017-200**

#### **Application**

1. By letter dated 11 April 2017, the Deaf Wireless Canada Consultative Committee (DWCC) applied for costs with respect to its participation in the proceeding leading to Telecom Regulatory Policy 2017-200 (the proceeding). In the proceeding, the Commission undertook a review of the Wireless Code (the Code).
2. TELUS Communications Company (TCC) filed an intervention, dated 28 April 2017, in response to the DWCC's application. The DWCC filed a reply dated 24 May 2017, and filed additional information related to its application on 31 May and 30 June 2017.
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 represented the interests of Canadian subscribers to wireless services who use American Sign Language (ASL) or langue des signes québécoise (LSQ) to communicate. The DWCC submitted that its participation in the proceeding brought to light the concerns of Deaf and Deaf-Blind Canadians regarding the Code's accessibility measures.
5. The DWCC requested that the Commission fix its costs at \$75,802.75. This total amount includes \$65,010.00 for the fees of three external consultants (two senior consultants claiming at the rate of \$165 per hour, and one junior consultant claiming at the rate of \$110 per hour). It also includes \$10,792.75 for disbursements. The DWCC filed a bill of costs with its application.
6. The DWCC's bill of costs included a claim for 127 hours of work, performed by the two senior consultants, for the production of sign language videos interpreting a list of common terminologies used by wireless service providers (WSPs) in contracts for

wireless services. As presented in its bill of costs, this aspect of the DWCC's claim totalled \$20,955.00 in fees.

7. The DWCC's bill of costs also included a claim for 33 hours of work performed by the two senior consultants and 12 hours of work performed by the junior consultant, related to sign language interpretation of various materials on the record of the proceeding. As presented in its bill of costs, this aspect of the DWCC's claim totalled \$6,765.00 in fees.
8. The claim for disbursements in the DWCC's bill of costs included \$3,249.47 related to the production of its terminology videos. It also included \$4,746.00 related to sign language interpretation during the public hearing and \$780.00 for sign language interpretation of various materials on the record of the proceeding.
9. The DWCC submitted that the telecommunications service providers that participated in the proceeding are the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents).
10. In response to a Commission staff letter to potential costs respondents seeking comment on how any costs awarded in this case should be allocated, Bell Mobility Inc. (Bell Mobility); Quebecor Media Inc., on behalf of Videotron G.P. (Videotron); and TCC provided additional comments.

## **Answer**

11. TCC submitted that, in general, the Commission should provide interpretation services when they are necessary in the context of a public hearing. However, it did not object to the specific claims for interpretation during the proceeding made by the DWCC in the circumstances of this case.
12. However, TCC did argue that the Commission should reduce the DWCC's costs by \$44,784.00. In its view, a reduction of this amount would serve to exclude all costs associated with the production of the DWCC's terminology videos. In TCC's view, since these videos are not on the record of the proceeding, they could not have assisted the Commission in developing a better understanding of the issues under consideration and should not be considered eligible for an award of costs.
13. On the subject of allocation, TCC submitted that, if the Commission does determine that the DWCC is eligible for an award of costs, the award should be allocated among costs respondents on the basis of wireless revenues rather than telecommunications operating revenues (TORs),<sup>1</sup> given that the subject matter of the proceeding focused exclusively on wireless services. It noted that certain information regarding wireless revenues appears in the Commission's annual *Communications Monitoring Report*.

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<sup>1</sup> TORs consist of Canadian telecommunications revenues from local and access, long distance, data, private line, Internet, and wireless services.

14. Videotron agreed with TCC. In its view, it would be unreasonable under the circumstances of this case to allocate costs on the basis of telecommunications revenues that did not stem from the provision of wireless services.
15. Bell Mobility argued that there was no reason to deviate from the Commission's general practice of allocating costs on the basis of TORs. It submitted that potential costs respondents are free to structure their affairs such that separate entities report telecommunications revenues to the Commission for wireless and wireline business segments respectively.

## **Reply**

16. In reply, the DWCC reiterated that all costs related to the production of the terminology videos should be recovered, given the importance of the information contained in the videos to Deaf subscribers to wireless services.

## **Commission's analysis and determinations**

### **Eligibility**

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. In the present case, the DWCC has demonstrated that it meets the first requirement. The DWCC represented Deaf and Deaf-Blind Canadians in the proceeding. The record of the proceeding, including correspondence between the DWCC and Commission staff, contains clear evidence that the DWCC actively engaged with members of these groups throughout the proceeding, and its participation in the proceeding clearly reflected the views of members of these groups.
19. The DWCC has also satisfied the remaining criteria through its participation in the proceeding. In particular, the DWCC's submissions, especially regarding how the Commission could engage in compliance monitoring of the revised Code going forward, assisted the Commission in developing a better understanding of the matters that were considered.

## Rates and amounts

20. As a preliminary matter, the record contains several instances in which the information contained in the DWCC's bill of costs is at odds with the information provided by the DWCC in the dockets of its consultants (both in terms of the number of hours and the nature of the work in respect of which costs have been claimed). In these instances, the Commission has generally preferred the evidence contained in the dockets, given their greater level of detail.
21. The Commission considers that the nature of costs claimed by the DWCC for consultants and disbursements can be separated into three categories: (i) costs directly related to the DWCC's submissions on the record of the proceeding; (ii) costs related to sign language interpretation during the hearing and of various materials on the record of the proceeding; and (iii) costs related to the production of the DWCC's terminology videos.
22. For the reasons that follow, the Commission considers that, in the circumstances of this case, costs related to the first two categories are eligible for a costs award, and costs related to the third category are not.
23. Concerning the first category, as set out above, the DWCC's general eligibility for an award of costs related to its participation in the proceeding is not in dispute. Its submissions provided a valuable perspective and brought important concerns to bear on the Commission's consideration of key issues. The rates claimed by the DWCC in respect of its three external consultants are in accordance with the rates established in the *Guidelines for the Assessment of Costs*, as set out in Telecom Regulatory Policy 2010-963. The Commission finds that the amounts claimed by the DWCC in this regard should be allowed. Specifically, this comprises the following:
  - 185 hours of work performed by the two senior consultants at the rate of \$165 per hour;
  - 55 hours of work performed by the junior consultant at the rate of \$110 per hour; and
  - disbursements for travel, meals, and accommodation related to the DWCC's appearance at the hearing in the amount of \$2,017.58.
24. Concerning the second category, the Commission notes that neither TCC nor any other party has objected to such costs being recovered in the specific case at hand. In the context of the proceeding, the Commission provided specific accommodation measures in order to ensure the DWCC's fair and effective participation. The costs at issue here do not relate to the Commission's accessibility obligations, which those measures addressed.
25. Rather, these costs relate to supplementary measures, undertaken by the DWCC in its role as a group representing Deaf and Deaf-Blind subscribers in this proceeding and

intended to inform and engage this group of subscribers. The evidence on the record of the proceeding clearly demonstrated the importance of wireless telecommunications services to this group of subscribers.

26. While each application for costs will be considered on its own merits in light of the particular circumstances in which it arose, it is consistent with the representative role played by the DWCC in the proceeding for it to have taken these measures in this case. Further, it is consistent with the role that costs play in ensuring broad, public participation in Commission proceedings and, consequently, fulsome records on the basis of which the Commission can determine issues of importance to the communications system, for these amounts to be recoverable in the circumstances.
27. Accordingly, the Commission finds that that the amounts claimed by the DWCC in this regard should be allowed in this case. Specifically, this comprises the following:
  - 47 hours of work performed by the two senior consultants at the rate of \$165 per hour;
  - 11 hours of work performed by the junior consultant at the rate of \$110 per hour; and
  - disbursements in the amount of \$5,526.00.
28. Concerning the third category, namely costs related to the production of the DWCC's terminology videos, the Commission notes that these videos did not form part of the record of the proceeding. In fact, the videos were neither completed nor available publicly, on the record or elsewhere, prior to the issuance of Telecom Regulatory Policy 2017-200. Accordingly, the Commission could not have taken them into account in its consideration of the matters at issue in the proceeding, and the other parties to the proceeding had no opportunity to view or comment on them in the course of formulating their own submissions. In the circumstances, it would be inappropriate for these parties to be ordered to pay an award of costs relating to the production of these videos. This leads to an exclusion of 120 hours for the two senior consultants at the rate of \$165 per hour and \$3,249.17 in disbursements.
29. However, the videos themselves are separate and distinct from a list of 32 common wireless contract terminologies of particular concern to Deaf subscribers, which was prepared by the DWCC and filed on the record of the proceeding. The Commission determines that the DWCC's costs in relation to the preparation of this list should be allowed. The hours of work spent by the DWCC's consultants on this task have been included in the first category of costs, as discussed above.
30. 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.
31. In light of all of the considerations above, the Commission fixes the DWCC's total costs for its participation in the proceeding at \$53,083.58.

32. Despite these determinations, the Commission notes the efforts undertaken by the DWCC and its consultants in the production of its terminology videos. In Telecom Regulatory Policy 2017-200, the Commission directed a number of WSPs to work collaboratively, and in consultation with accessibility groups, to create and promote sign language videos explaining terminologies commonly found in their contracts for wireless services. While the videos created by the DWCC were not on the record of the proceeding and are thus ineligible for a costs award, the Commission encourages WSPs to take note of these videos in the course of fulfilling their own regulatory obligation in this regard.

### **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.

34. The Commission considers that Bell Mobility; Bragg Communications Incorporated, operating as Eastlink (Eastlink); Freedom Mobile Inc. (Freedom Mobile); Rogers Communications Canada Inc. (RCCI); Saskatchewan Telecommunications (SaskTel); TCC; and Videotron had a significant interest in the outcome of the proceeding and participated actively throughout the proceeding. Therefore, these parties are the appropriate costs respondents to the DWCC's application for costs.

35. It is the Commission's general practice to allocate the responsibility for the payment of costs among costs respondents based on their TORs. In general, the Commission considers that TORs are indicators of the relative size and interest of the parties involved in proceedings.

36. However, in Telecom Order 2017-362, the Commission determined that a deviation from the Commission's general practice was justified on the issue of allocation.

37. In that order, the Commission determined that it would be appropriate to allocate 92% of the applicants' costs in that case between Bell Mobility, RCCI, and TCC, drawing upon the allocation of wireless revenue market share from the most recent time period detailed in the Commission's 2015 *Communications Monitoring Report* (the report).<sup>2</sup> The remaining 8% was to be allocated evenly between the other costs respondents in that case.

38. The Commission considers that a similar approach is appropriate in the present case as well, which flows from the same proceeding as Telecom Order 2017-362, and which gives rise to similar considerations.

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

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<sup>2</sup> As of the initiation of the proceeding, this was the most current volume of the report.

<b>Company</b>	<b>Percentage</b>	<b>Amount</b>
RCCI	35%	\$18,579.26
Bell Mobility	29%	\$15,394.24
TCC	28%	\$14,863.40
Eastlink	2%	\$1,061.67
Freedom Mobile	2%	\$1,061.67
SaskTel	2%	\$1,061.67
Videotron	2%	\$1,061.67

### **Directions regarding costs**

40. The Commission **approves, with changes** the application by the DWCC for costs with respect to its participation in the proceeding.
41. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to the DWCC at \$53,083.58.
42. The Commission **directs** that the award of costs to the DWCC be paid forthwith by the costs respondents according to the proportions set out in paragraph 39.

Secretary General

### **Related documents**

- *Determination of costs award with respect to the participation of the Forum for Research and Policy in Communications in the proceeding that led to Telecom Regulatory Policy 2017-200, Telecom Order CRTC 2017-362, 16 October 2017*
- *Review of the Wireless Code, Telecom Regulatory Policy CRTC 2017-200, 15 June 2017*
- *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*