



Telecom Order CRTC 2018-401

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File numbers: 1011-NOC2017-0033 and 4754-582

Determination of costs award with respect to the participation of Maple Communications Group Inc. in the Telecom Notice of Consultation 2017-33 proceeding

Application

1. By letter dated 8 January 2018, Maple Communications Group Inc. (Maple) applied for costs with respect to its participation in the proceeding initiated by Telecom Notice of Consultation 2017-33 (the proceeding). In the proceeding, the Commission examined the regulatory framework for message relay services (MRS).¹
2. TELUS Communications Inc. (TCI)² filed an intervention, dated 12 January 2018, in response to Maple's application. By letter dated 21 January 2018, Maple filed a reply to TCI's intervention.
3. Maple requested that the Commission fix its costs at \$5,614.35, consisting of \$2,820 for internal consultant fees and \$2,794.35 for disbursements. Maple filed a bill of costs with its application.
4. Maple claimed six days for internal consultant fees at a rate of \$470 per day (\$2,820 with no Harmonized Sales Tax [HST]) and 10 hours at a rate of \$225 USD per hour (\$2,794.35 CAD with no HST) for disbursements in relation to external assistance in reviewing files and preparing submissions for the proceeding.

Answer

5. TCI submitted that the Commission should deny Maple's application because Maple is not eligible for costs under the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (the Rules of Procedure). In particular, TCI referred to subparagraph 66(1)(a)(i), which requires that the applicant demonstrate in its application that it has, or represents a group or class of subscribers that has, an interest in the outcome of the proceeding.

¹ MRS are text-to-voice services that enable people with a hearing or speech disability to make and receive telephone calls.

² In the proceeding, submissions were received from TELUS Communications Company (TCC). However, effective 1 October 2017, TCC's assets were legally transferred to TCI and TCC ceased to exist. For ease of reference, "TCI" is used in this order.

6. TCI argued that Maple did not represent a group or class of subscribers that had an interest in the outcome of the proceeding and did not provide sufficient evidence to show that it satisfies this requirement.
7. TCI further submitted that Maple is a commercial enterprise and that its participation is based on its private commercial interests, whereas, as set out in paragraph 12 of Telecom Regulatory Policy 2010-963, costs awards are intended to encourage the participation of individuals and groups who represent subscriber interests, rather than private interests.

Reply

8. Maple replied that the Commission should allow its application for costs. Maple submitted that being a for-profit commercial enterprise and representing subscriber interests are not mutually exclusive. It argued that categorically dismissing private companies from receiving costs awards is erroneous, since private companies may also represent subscribers, and that value is added when as many subscribers as possible are represented.
9. Maple submitted that it was established by and for the Deaf community, and remains invested in that community's interests. It added that it is a Deaf-owned and -operated company that interacts with the Deaf community on a grassroots level from a unique perspective.
10. Maple also submitted that it satisfied the requirement set out in subparagraph 66(1)(a)(i) of the Rules of Procedure through its role in the Deaf and hard-of-hearing communities, as well as through the value it returns to them by advocating for them and providing them with communications access.
11. Maple further submitted that its intervention added value to the proceeding.

Subsequent process

12. Maple's costs application was found to be deficient; accordingly, Commission staff issued a letter to the company, dated 5 March 2018, in which it (i) requested additional information, (ii) stated the criteria for an award of costs, and (iii) reminded Maple that the Commission grants costs awards to for-profit organizations on an exceptional basis, and that the threshold to meet the criteria for an award of final costs is high.
13. Maple filed a response to the request for information, dated 15 March 2018. Bell Canada filed an answer to Maple's response, dated 26 March 2018. Maple and the Deaf Wireless Canada Consultative Committee (DWCC) filed replies, both dated 5 April 2018, to Bell Canada's answer.
14. Pursuant to subsection 27(1) of the Rules of Procedure, only an applicant may file a reply to an answer. In the present case, the applicant is Maple; therefore, the

Commission has excluded the DWCC's reply from the record of this costs proceeding.

Response to request for information

15. In its response, Maple submitted that it had met the criteria for an award of costs set out in section 68 of 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.
16. With regard to 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, Maple submitted that it represents the interests of members of the Deaf and hard-of-hearing communities in Canada and, as a service provider, offered a fuller understanding of the issues considered by the Commission, particularly regarding the improvement of MRS for the Deaf and hard-of-hearing communities.
17. With respect to the specific methods by which Maple has submitted that it represents this group or class, Maple explained that it is a communications company that provides sign language interpreting access for the Deaf and hard-of-hearing communities across Canada. It also submitted that it has deeply rooted experience in deafness and that its team has cumulative experience in communications access, which enables the company to improve MRS. Maple further submitted that its Chief Executive Officer (CEO), Devin Currie, has had personal experience using relay services.
18. With regard to the extent to which the applicant assisted the Commission in developing a better understanding of the matters that were considered, Maple submitted that it is distinct from other interveners in the proceeding because, as a transcription service provider, it is fully aware of issues concerning typing speed and accuracy. Further, in its submission dated 18 July 2017, it provided comments about (i) the need for more openness in MRS practices, (ii) the issue of hiring a third-party vendor to develop the mobile version of the Internet Protocol (IP) relay service website, and (iii) a proposal on how to apportion financial surpluses gained after the provision of MRS. Maple also noted that in its submission dated 7 November 2017, it provided comments about (i) typing speeds and overall quality assurance, (ii) using US platforms for IP relay service, and (iii) phasing out IP relay service in favour of real-time text (RTT) service.
19. With regard to whether the applicant participated in the proceeding in a responsible way, Maple submitted that it participated in all aspects of the proceeding responsibly by submitting the required documentation in a timely fashion, and that it collaborated with other interveners in the proceeding.

20. Maple submitted that the telecommunication service providers (TSPs) that participated in the proceeding, including wireless service providers, are the appropriate parties to be required to pay any costs awarded by the Commission.

Subsequent answer

21. Bell Canada argued that the Commission should find either that Maple is a commercial entity not entitled to an award of costs, or that it meets the first criterion for an award of costs on the basis of Mr. Currie's participation as an individual, and should be entitled to an award of costs for disbursements only.
22. In particular, Bell Canada argued that Maple made submissions to the Commission as a for-profit business that has an interest in becoming a provider of MRS, and that the Commission's costs award process is not meant to support the participation of private interests in its proceedings.
23. Bell Canada also submitted that Maple's response failed to provide sufficient evidence that Maple represented the interests of a group or class of subscribers.
24. Further, Bell Canada argued that Mr. Currie's personal experience in using relay services is insufficient to meet the requirements set out in Telecom Information Bulletin 2016-188, in which the Commission provided guidance regarding how an applicant may demonstrate that it satisfies the first criterion with respect to its representation of interested subscribers. In Bell Canada's opinion, Maple's views represented only those of Mr. Currie, not those of a specific group or class of subscribers. Bell Canada argued that if Maple is found to be eligible for costs, such costs should be awarded as if Mr. Currie had participated as an individual.
25. Bell Canada added that the claim for \$2,794.35 for disbursements in relation to external assistance in preparing Maple's intervention in the proceeding should be classified as external consultant fees, not as disbursements.

Subsequent reply

26. Maple replied that, before filing its costs application, it had consulted with Commission staff and other parties about any possible conflicts of interest in applying for costs for its participation in the proceeding, given that it had openly expressed its interest in becoming a relay provider. Maple submitted that, based on these discussions, there was no conflict of interest and that it was entitled to submit a costs application. Maple also submitted that it is not a TSP, and that it does not currently provide relay services or obtain any financial gain relating to MRS.
27. In reply to whether there is sufficient evidence that Maple represented the interests of a group or class of subscribers, the company submitted that it remains fully invested in the Deaf and hard-of-hearing communities' interests.
28. With respect to Mr. Currie, Maple submitted that (i) he is an internal consultant working for Maple and claiming a daily rate; (ii) if he qualifies for an award of costs,

Maple should also qualify; and (iii) it is more sensible to have Mr. Currie under Maple's name and keep Maple as an entity receptive to the Deaf and hard-of-hearing communities' interests.

29. Maple added that the *Guidelines for the Assessment of Costs* (the Guidelines), as set out in Telecom Regulatory Policy 2010-963, and [Form III](#), "Summary of Consultant and Analyst Fees," are not clear on how external consultant fees should be reported. Maple argued that it reported the fees in relation to external assistance for preparing its intervention in the proceeding as disbursements since they were a third-party expense billed to it. Maple submitted that it would correct this expense claim, should the Commission so require.

Commission's analysis and determinations

Eligibility

30. 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.
31. Parties challenged Maple's eligibility for costs on the basis that it does not meet the first eligibility criterion.
 32. 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.
 33. Maple identified the group or class of subscribers it purports to represent as members of the Deaf and hard-of-hearing communities in Canada. The company also submitted several blanket statements that it represents a group or class of subscribers but failed to elaborate on which other specific individual(s) or group(s), aside from Mr. Currie, informed the positions Maple put forward in the proceeding.

34. Parties also raised concerns that, as a for-profit enterprise, Maple's participation was motivated by private commercial interests, and that the Commission's costs awards are not meant to support the participation of businesses in its proceedings.
35. As set out in paragraph 12 of Telecom Regulatory Policy 2010-963, costs awards are intended to encourage the participation of individuals and groups who represent subscriber interests, rather than private interests. In paragraph 4 of Telecom Costs Order 98-18, the Commission noted that it has normally denied costs applications by commercial entities on the basis that, by virtue of their participation in the industry, these parties already have a sufficient incentive to participate in a proceeding.
36. The Commission notes that Maple is a small for-profit enterprise that provides sign language interpreting access. While Maple is not an MRS provider, the company has expressed interest in providing communications services for Deaf and hard-of-hearing individuals.
37. The record of the proceeding shows that, even though Maple is concerned with the improvement of communications services for Deaf and hard-of-hearing individuals, its participation also included certain statements revealing private commercial interests, such as expanding the scope of its service offerings to include MRS.
38. The Commission therefore considers that Maple's participation was, at least in part, motivated by private interests. The Commission also considers that such interests were, to some extent, a sufficient incentive to participate in the proceeding and contrary to the purpose of costs awards.
39. In light of all the above, the Commission is of the view that Maple failed to establish that it represented a group or class of subscribers that had an interest in the outcome of the proceeding.
40. However, the Commission is also of the view that Mr. Currie, Maple's CEO, a user of relay services and an active member of the Deaf and hard-of-hearing communities, had an interest in the outcome of the proceeding as an individual. In light of this, the Commission considers that Mr. Currie, in his personal capacity, would meet the first eligibility criterion.
41. Section 56 of the *Telecommunications Act* (the Act) authorizes the Commission to award costs associated with telecommunications proceedings, as well as to determine by whom and to whom costs are to be paid, and in what amounts.
42. The Commission considers that Mr. Currie's personal experience informed Maple's submissions related to the interests of the Deaf and hard-of-hearing communities. Accordingly, taking into account the unique circumstances of this case, the Commission finds that Maple, by virtue of Mr. Currie, whose expertise and personal views are reflected in Maple's submissions, meets the first eligibility criterion.
43. Maple (Mr. Currie) has also satisfied the remaining criteria through its participation in the proceeding. In particular, its submissions, especially regarding (i) the potential

need for an MRS operator typing speed standard, (ii) an MRS user interface for mobile devices, (iii) improving the functionality of IP relay service, and (iv) the promotion of MRS, offered valuable insights and assisted the Commission in developing a better understanding of the matters that were considered. Maple (Mr. Currie) participated in a responsible manner throughout the proceeding.

44. In light of all the above, the Commission finds that Maple (Mr. Currie) has satisfied the criteria for an award of costs as an individual.

Rates and amounts

45. As noted above, Maple claimed \$2,820 for internal consultant fees and \$2,794.35 for disbursements.
46. As set out in paragraph 13 of the Guidelines, an applicant who is an individual who has participated in a Commission proceeding on his or her own behalf will generally be compensated only for out-of-pocket disbursements, and will generally not be compensated for time spent preparing for or appearing at a hearing.
47. A disbursement is an amount that represents an out-of-pocket expense. Paragraph 30 of the Guidelines indicates that the Commission will generally allow disbursements if the amount claimed is reasonable and has been necessarily incurred in connection with the applicant's participation in the proceeding. As stated in paragraph 32 of Telecom Order 2017-163, the Commission's consideration of whether any particular out-of-pocket expenses are necessary and reasonable depends on the specific circumstances of a given case.
48. In the present case, Maple claimed out-of-pocket expenses for fees in relation to external assistance in reviewing files and preparing submissions for the proceeding.
49. Generally, external assistance in preparing submissions is considered an external consultant fee. However, given that individuals cannot claim consulting fees, but Maple has incurred out-of-pocket expenses in connection with its participation in the proceeding, the Commission finds it appropriate in this case to allow these expenses as disbursements. The Commission also finds that these disbursements were reasonable and necessary.
50. Accordingly, the Commission determines that Maple's eligible costs for its participation in the proceeding are \$2,794.35, and that this amount was necessarily and reasonably incurred and should be allowed.
51. 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.
52. 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, Bell Mobility Inc., Bell MTS, Northwestel Inc., and Télébec, Limited Partnership (collectively, the Bell companies); Cogeco Communications Inc.; Bragg Communications Incorporated, carrying on business as Eastlink; Freedom Mobile Inc.; Quebecor Media Inc., on behalf of Videotron Ltd.; Rogers Communications Canada Inc. (RCCI); Saskatchewan Telecommunications; Shaw Telecom G.P.; and TCI.

53. 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) as an indicator of the relative size and interest of the parties involved in the proceeding.³
54. 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. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated as follows:

Company	Percentage	Amount
Bell companies	60.5%	\$1,690.58
TCI	39.5%	\$1,103.77

55. 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

56. The Commission **approves with changes** the application by Maple for costs with respect to its participation in the proceeding.
57. Pursuant to subsection 56(1) of the Act, the Commission fixes the costs to be paid to Maple at \$2,794.35.
58. The Commission **directs** that the award of costs to Maple be paid forthwith by Bell Canada, on behalf of the Bell companies, and TCI according to the proportions set out in paragraph 54.

Secretary General

³ 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.

Related documents

- *Determination of costs award with respect to the participation of Manitoba Keewatinowi Okimakanak Inc. in the proceeding leading to Telecom Regulatory Policy 2016-496*, Telecom Order CRTC 2017-163, 19 May 2017
- *Review of the regulatory framework for text-based message relay services*, Telecom Notice of Consultation CRTC 2017-33, 2 February 2017; as amended by Telecom Notice of Consultation CRTC 2017-33-1, 1 June 2017
- *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 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 Costs Order 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
- *In re: Telesat Canada – Application to Review and Vary Telecom Decision CRTC 97-17*, Telecom Costs Order CRTC 98-18, 9 October 1998