



Telecom Order CRTC 2018-438

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Ottawa, 28 November 2018

File numbers: 1011-NOC2017-0033 and 4754-576

Determination of costs award with respect to the participation of the Canadian National Society of the Deaf-Blind, Inc. in the Telecom Notice of Consultation 2017-33 proceeding

Application

1. By letter dated 14 December 2017, the Canadian National Society of the Deaf-Blind, Inc. (CNSDB) 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 8 January 2018, in response to the CNSDB's application.
3. The CNSDB 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 CNSDB noted that it is a consumer-run association that advocates for new and improved services for people who are deaf-blind, it promotes public awareness of issues associated with such disabilities, and it gathers information to help people who are deaf-blind.
5. With respect to the specific methods by which the CNSDB has submitted that it represents this group or class, the CNSDB explained that it collaborated with the Deaf Wireless Canada Consultative Committee (DWCC) in a joint national survey while analyzing the deaf-blind participants' responses and editing parts of the associated survey report. The CNSDB added that it ensured that the part of the report

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.

on deaf-blind-related issues was focused and structured and offered the deaf-blind perspective.

6. The CNSDB requested that the Commission fix its costs at \$3,607.50, consisting of \$3,107.50 for junior external consultant fees (28.5 hours at a rate of \$110 per hour with no Harmonized Sales Tax [HST]) and \$500 for disbursements associated with technical assistance in preparing the costs application (5 hours at a rate of \$100 per hour with no HST). The CNSDB filed a bill of costs with its application.

Answer

7. TCI submitted that the Commission should ensure that the CNSDB meets the criteria for a costs award.

Subsequent process

8. By letter dated 26 February 2018, Commission staff requested additional information regarding the amount of costs claimed by the DWCC in a separate costs application for time that appeared to relate to assisting the CNSDB with its submissions in the proceeding. Specifically, the CNSDB and the DWCC were requested to indicate whether certain hours were claimed in error or to explain how the DWCC was billed for the time claimed in relation to work that appeared to be conducted for the CNSDB. Commission staff also asked the CNSDB to make submissions on the appropriate parties to be required to pay any costs awarded by the Commission (costs respondents).
9. In a joint response with the CNSDB, the DWCC submitted that a total of 27 hours, as follows, were claimed in error in the DWCC's costs application and should have been claimed as part of the CNSDB's application instead:
 - 16 hours at the senior consultant rate for Lisa Anderson-Kellett,
 - 5 hours at the intermediate consultant rate for Jeffrey Beatty, and
 - 6 hours at the junior analyst rate for Michael J. Stewart.
10. The CNSDB also submitted that telecommunications service providers, including wireless service providers, are the appropriate costs respondents to its application.

Commission's analysis and determinations

11. 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.
12. 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. In the present case, the CNSDB has demonstrated that it met this requirement. In particular, the CNSDB is a national consumer-run advocacy association focused on assisting deaf-blind Canadians. For example, the CNSDB demonstrated that it represented the interests of deaf-blind Canadians by collaborating with the DWCC in a joint national survey that revealed, among other things, the perspective of deaf-blind participants.
13. The CNSDB has also satisfied the remaining criteria through its participation in the proceeding. In particular, the CNSDB assisted the Commission in developing a better understanding of the matters that were considered by providing focused and structured submissions, especially regarding the perspectives of deaf-blind community members with respect to MRS and their need for accessible telecommunications services. In addition, the CNSDB participated in the proceeding in a responsible way.

Rates and amounts

14. With regard to the 27 hours claimed by the DWCC for work that its consultants and analyst conducted for the CNSDB, the Commission considers it appropriate to add these 27 hours to the CNSDB's costs claim as follows:
- \$2,640 with no HST for 16 hours at the intermediate external consultant rate of \$165 per hour,³
 - \$825 with no HST for 5 hours at the intermediate external consultant rate of \$165 per hour, and
 - \$660 with no HST for 6 hours at the junior external analyst rate of \$110 per hour.⁴

³ Based on the additional information provided by the DWCC, the Commission finds that Lisa Anderson-Kellett first began acting as a consultant in June 2008. As of the date the proceeding commenced, she would have had eight years of experience acting as a consultant, which entitles her to the intermediate external consultant rate.

15. The rates claimed in respect of consultant and analyst fees, as adjusted above, are in accordance with the rates established in the *Guidelines for the Assessment of Costs* (the Guidelines), as set out in Telecom Regulatory Policy 2010-963. The Commission finds that the total amount of \$7,732.50 was necessarily and reasonably incurred and should be allowed.
16. 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.
17. 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.
18. 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.⁵
19. 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	44.1%	\$3,410.03
TCI	28.7%	\$2,219.23
RCCI	27.2%	\$2,103.24

20. Consistent with its general approach articulated in Telecom Costs Order 2002-4, the Commission makes Bell Canada responsible for payment on behalf of the

⁴ These hours are properly reduced from the DWCC's costs application in the proceeding, which the Commission has addressed in Telecom Order 2018-437.

⁵ 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.

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

21. The Commission **approves with changes** the application by the CNSDB for costs with respect to its participation in the proceeding.
22. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to the CNSDB at \$7,732.50.
23. The Commission **directs** that the award of costs to the CNSDB be paid forthwith by Bell Canada, on behalf of the Bell companies; TCI; and RCCI according to the proportions set out in paragraph 19.

Secretary General

Related documents

- *Determination of costs award with respect to the participation of the Deaf Wireless Canada Consultative Committee in the Telecom Notice of Consultation 2017-33 proceeding*, Telecom Order CRTC 2018-437, 28 November 2018
- *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 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