



Telecom Decision CRTC 2018-439

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Deaf Wireless Canada Consultative Committee – Application to review and vary Telecom Order 2018-66

*The Commission finds that there is no substantial doubt as to the correctness of its determination set out in Telecom Order 2018-66 to award half the costs that the Deaf Wireless Canada Consultative Committee had claimed related to a survey it had undertaken. Accordingly, the Commission **denies** the Deaf Wireless Canada Consultative Committee’s application to review and vary that order.*

Introduction

1. In Telecom Order 2018-66, the Commission awarded the Deaf Wireless Canada Consultative Committee (DWCC) a portion of the costs it had claimed related to its participation in the proceeding that led to Telecom Regulatory Policy 2017-182 (the substantive proceeding). In the substantive proceeding, the Commission set out determinations on the implementation and provision of new, enhanced, and innovative 9-1-1 services and networks in Canada with Internet Protocol (IP)-based capabilities, referred to as next-generation 9-1-1.
2. In particular, the Commission awarded half the costs claimed in connection with a survey undertaken by the DWCC. The survey focussed on the views of Deaf, hard-of-hearing, and deaf-blind Canadians on issues related to the Text with 9-1-1 service, which the Commission requires to be offered on current 9-1-1 networks. Apart from the survey, the Commission awarded the DWCC the full remaining amount of the costs claimed.
3. Also in Telecom Order 2018-66, the Commission acknowledged that surveys can be a useful tool to report on the represented communities’ views and that the survey in question did assist it in developing a better understanding of the matters that were considered. However, the Commission concluded that the associated time and costs spent on the survey in question were not proportionate to what was reasonable in the circumstances of the substantive proceeding.

Application

4. The Commission received an application from the DWCC, dated 16 May 2018, in which the DWCC requested that the Commission review and vary Telecom Order 2018-66 to award the DWCC the full amount of the costs it had claimed in relation to the survey.

5. The DWCC argued that to contribute to a better understanding of the issues that were considered in the substantive proceeding, and to demonstrate its representation of a particular group or class of subscribers, its submissions had to be supported by evidence and reflect the views of the accessibility community. The DWCC submitted that a survey was a necessary and reasonable way to collect such evidence.
6. The DWCC indicated that it has experience and expertise in conducting surveys that are accessible to Canadians with disabilities, and that such surveys involve more work and higher costs than those targeting other Canadians. In the DWCC's view, the survey results were highly relevant and valuable to the substantive proceeding, and its costs were proportionate to this value.
7. The Commission received interventions supporting the DWCC's application from consumer groups, as well as accessibility consultants and groups. The Commission received interventions opposing the DWCC's application from Bell Canada and TELUS Communications Inc. (TCI).

Review and vary criteria

8. In Telecom Information Bulletin 2011-214, the Commission outlined the criteria it would generally use to assess review and vary applications filed pursuant to section 62 of the *Telecommunications Act*. Specifically, the Commission stated that applicants must demonstrate that there is substantial doubt as to the correctness of the original decision, for example due to (i) an error in law or in fact, (ii) a fundamental change in circumstances or facts since the decision, (iii) a failure to consider a basic principle which had been raised in the original proceeding, or (iv) a new principle which has arisen as a result of the decision.
9. Based on the record of the current proceeding, the relevant criterion in this case is whether substantial doubt has been demonstrated by reason of an error in law or in fact.

Did the Commission err in law or in fact in Telecom Order 2018-66, such that there is substantial doubt as to the correctness of its determination to award the DWCC half the costs claimed related to the survey?

Positions of parties

10. The accessibility consultants and groups, as well as the consumer groups, indicated that the DWCC was the only costs applicant in the substantive proceeding that undertook a survey. Many of these interveners discussed the steps and costs involved in creating, conducting, and analyzing a survey that targets the accessibility community. They generally submitted that there could be no doubt that the costs claimed by the DWCC were actually incurred and that the costs claimed should be considered very conservative.

11. The accessibility consultants and groups, as well as the consumer groups, argued that the survey placed valuable information on the record of the substantive proceeding that would not otherwise have been available to the Commission. The consumer groups added that even if the Commission did not consider the survey to be valuable, the costs incurred should still be considered reasonable.
12. The consumer groups generally argued that the Commission erred by comparing the DWCC's costs to those of other interveners, some of whom were not accessibility groups and none of whom performed their own surveys. They added that the Commission should be sensitive to the particular circumstances of accessibility groups and the greater costs that they may need to incur relative to other parties.
13. The consumer groups also argued that it was inconsistent for the Commission to reduce the DWCC's survey costs since the DWCC had conducted the survey to satisfy the costs criteria. Finally, they submitted that the Commission erred by failing to provide general guidance regarding surveys on a prospective basis instead of reducing survey costs that had already been incurred.
14. Bell Canada and TCI generally argued that the Commission's determinations in Telecom Order 2018-66 represented a reasonable exercise of its discretionary power to award costs based on the extent of the DWCC's participation in and contribution to the substantive proceeding. These companies submitted that there was no evidence of any error that would raise substantial doubt as to the correctness of the Commission's determinations in Telecom Order 2018-66.

Commission's analysis and determinations

15. Section 56 of the *Telecommunications Act* provides the Commission with the discretionary power to award costs incidental to proceedings before it and to fix those costs. The criteria for an award of costs are set out in section 68 of the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (the Rules of Procedure). Subsection 70(2) of the Rules of Procedure establishes that the total amount of costs awarded by the Commission to an applicant must not exceed what is necessarily and reasonably incurred. The Commission's determinations in Telecom Order 2018-66 were made pursuant to these provisions.

Commission's guidance to costs applicants

16. In Telecom Information Bulletin 2016-188, the Commission set out guidance for costs applicants regarding the types of information they can include in their applications to demonstrate that they represent a group or class of subscribers with an interest in the outcome of the proceeding in question.
17. The purpose of the Bulletin is to inform applicants of the Commission's expectation that they describe (i) whom they represent, with some degree of precision, and (ii) how their submissions reflect the interests of this group. The Bulletin provides, among other things, that an applicant may represent a group through direct consultation with its members or otherwise, and that any consultation can be either formal or informal.

18. The Commission does not consider that Telecom Information Bulletin 2016-188 can reasonably be interpreted as requiring costs applicants to perform formal surveys in all proceedings to be eligible for a costs award and notes that it has not been the Commission's practice, either before or since the publication of the Bulletin, to require this.
19. As many interveners in the current proceeding noted, no other costs applicant in the substantive proceeding performed a survey. Nonetheless, the Commission determined that all of these costs applicants were eligible for costs awards.
20. Further, if the Commission were to approve survey costs in all cases simply because the Bulletin indicates that formal consultation is one potential method of demonstrating representation, this would preclude a closer analysis of the remaining costs criteria and whether the survey costs were necessarily and reasonably incurred in the context of the proceeding in question. This would, in turn, improperly fetter the Commission's discretion in awarding costs.
21. Regarding the argument that the Commission could have used Telecom Order 2018-66 to issue prospective guidance on costs claims related to surveys while awarding the full costs claimed in that case, this possibility would have inhibited the full application of the Commission's well-established costs requirements in the circumstances. Given the Commission's requirement that the amounts awarded represent the costs that are necessarily and reasonably incurred, it was reasonable for the Commission to award only a portion of the DWCC's costs in this case.
22. Accordingly, the Commission determines that no inconsistency has been established between its guidance to costs applicants and its determinations in Telecom Order 2018-66 that would constitute an error in law or in fact and raise substantial doubt as to the correctness of that order.

Value of the DWCC's contribution

23. The Commission indicated in Telecom Order 2018-66 that (i) the DWCC had met the costs award criteria, (ii) the survey was useful in gathering the views of Deaf, hard-of-hearing, and deaf-blind communities, and (iii) the survey assisted it in developing a better understanding of the matters that were considered. Accordingly, the Commission found the survey to be valuable. It is, in part, out of recognition of this value that the Commission awarded the DWCC a significant portion of the costs claimed in relation to its survey.
24. However, while meeting the costs award criteria is a prerequisite to being eligible for a costs award, it does not guarantee costs applicants the full amount of costs claimed. The Commission will also take these criteria into account, and may take into account other factors, in determining the percentage of costs that it is to be awarded. Some of these factors are listed in the *Guidelines for the Assessment of Costs* (the Guidelines), as set out in Telecom Regulatory Policy 2010-963, including the extent of an applicant's participation in the proceeding in question and other costs awarded in the context of the same or similar proceedings.

25. The DWCC conducted its survey in the context of a broad Commission review of issues related to the modernization of 9-1-1 services available to Canadians. While numerous accessibility issues were raised during the substantive proceeding, the DWCC's survey related principally to one specific service that is already available to Canadians with disabilities, namely, Text with 9-1-1. The Commission considers that in the context of this broad review, while the survey was valuable, its scope was relatively narrow.
26. Further, the Guidelines provide a basis for the common Commission practice of assessing the necessity and reasonableness of costs claimed by referring to other costs applicants. In the substantive proceeding, almost all of the costs applicants were accessibility groups, and several of these groups represented Canadians with hearing disabilities. By making such a comparison, the Commission therefore acknowledged and took into account the levels of costs associated with participation by comparable accessibility groups. The Commission does not consider that this comparison was inappropriate, especially given that the other costs applicants claimed lower costs in respect of the substantive proceeding and were generally able to participate effectively regarding a wide range of key issues.
27. Accordingly, the Commission determines that no error in law or in fact has been established with respect to its assessment of the value of the DWCC's contribution to the substantive proceeding that would raise substantial doubt as to the correctness of Telecom Order 2018-66.

Accessibility considerations and costs actually incurred

28. The legal requirements against which the Commission assesses costs applications – for instance, the costs criteria and the requirement that costs be necessarily and reasonably incurred in the context of the proceeding in question – are well established and apply equally to all applicants.
29. However, as the Commission has emphasized in the Guidelines and in individual costs orders, it evaluates each costs application against these requirements in light of the specific circumstances involved. These circumstances may relate to the applicant or the group of subscribers the applicant represents, and may include accessibility considerations.
30. Telecom Order 2018-66 was a case that involved such accessibility considerations. The Commission took these into account by, for instance, explicitly recognizing the DWCC's status as a group that represented members of the accessibility community and that sought the views of this community in part through a survey. It acknowledged the utility and value of this survey.
31. Regarding parties' arguments that significant amounts of time and money are required to conduct accessible surveys, and that the DWCC actually incurred such amounts, the Commission made no finding that this was not the case, either in Telecom Order 2018-66 or in the present decision.

32. However, costs applicants are not only required to demonstrate that the full amount of costs claimed have been incurred. Pursuant to the Rules of Procedure, costs must meet the threshold of being necessarily and reasonably incurred in the context of the proceeding in question.
33. While the accessibility considerations raised by the DWCC's circumstances were a relevant factor in the Commission's analysis of the costs award, they were not the only factor. As noted above, the Commission considers that the scope of the survey and the extent of the DWCC's participation in the substantive proceeding were relatively narrow compared to the scope of that proceeding. The Commission also took into consideration the costs claimed by other costs applicants in the substantive proceeding, many of whom had accessibility considerations of their own. The Commission exercised its discretion to weigh these factors in the circumstances and concluded that a costs award reflecting a portion of the survey costs was representative of what had been necessarily and reasonably incurred in the circumstances.
34. Accordingly, the Commission determines that no error in law or in fact has been established with respect to its assessment of the relevant accessibility considerations that would raise substantial doubt as to the correctness of Telecom Order 2018-66.

Conclusion

35. The Commission values the contributions that accessibility groups are able to provide to its proceedings. While formal surveys are not required, they are one tool, among many, that such groups may use to participate in Commission proceedings. The Commission is aware that accessibility considerations may arise with respect to accessibility groups' participation in Commission proceedings and encourages individuals and groups to clearly identify these considerations throughout such proceedings, as appropriate, including in any costs applications they may file.
36. It is evident that the DWCC has the experience and expertise to perform surveys of Canadians with disabilities. Further, there is no indication that the DWCC claimed amounts beyond the costs it actually incurred in the substantive proceeding.
37. Nonetheless, in the context of a proceeding in which the Commission has called for comments within a particular scope, the Commission generally evaluates any contribution for which costs are claimed, in part, against that scope. Likewise, the Commission may, where appropriate, take into account the claims of other costs applicants in similar situations.
38. These practices are consistent with the Guidelines and the Rules of Procedure. Ultimately, in assessing costs applications, the Commission weighs all relevant considerations in the totality of the circumstances, thereby exercising its discretion granted by the *Telecommunications Act*, which it did in Telecom Order 2018-66.

39. In light of all the above, the Commission determines that it did not err in law or in fact such that there is substantial doubt as to the correctness of its determination to award the DWCC half the costs claimed related to its survey. The Commission therefore **denies** the DWCC's review and vary application.

Secretary General

Related documents

- *Determination of costs award with respect to the participation of the Deaf Wireless Canada Committee in the proceeding that led to Telecom Regulatory Policy 2017-182*, Telecom Order CRTC 2018-66, 16 February 2018
- *Next-generation 9-1-1 – Modernizing 9-1-1 networks to meet the public safety needs of Canadians*, Telecom Regulatory Policy CRTC 2017-182, 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
- *Revision of CRTC costs award practices and procedures*, Telecom Regulatory Policy CRTC 2010-963, 23 December 2010