



Telecom Order CRTC 2019-166

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Determination of costs award with respect to the participation of the Manitoba Branch of the Consumers' Association of Canada and the Aboriginal Council of Winnipeg in the proceeding that led to Telecom Decision 2018-475

Application

1. By letter dated 22 November 2018, the Manitoba Branch of the Consumers' Association of Canada, and the Aboriginal Council of Winnipeg (collectively, the Manitoba Coalition) applied for costs with respect to their participation in the proceeding that led to Telecom Decision 2018-475 (the proceeding). In the proceeding, the Commission considered proposals by Bell Mobility Inc. (Bell Mobility), Rogers Communications Canada Inc. (RCCI), and TELUS Communications Inc. (TCI) [collectively, the national wireless carriers] for lower-cost data-only mobile wireless service plans, which were filed pursuant to Telecom Notice of Consultation 2018-98.
2. Bell Canada, on behalf of Bell Mobility, and TCI filed interventions, dated 3 December 2018, in which they addressed general issues that were raised in the six costs applications filed with respect to the proceeding, including the Manitoba Coalition's application.
3. The Manitoba Coalition 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 Manitoba Coalition submitted that it represented the interests of consumers in Manitoba with a focus on vulnerable groups, including newcomers to Canada and low-income individuals, as well as on the urban Indigenous community of Winnipeg. The Manitoba Coalition indicated that it engages with these groups through formal research, including surveys; as well as informally, through workshops, focus groups, and education and information programs. The Manitoba Coalition further submitted that it assisted the Commission in developing a better understanding of the matters that were considered in the proceeding by filing

extensive evidence, including an expert report and a consumer engagement report, as well as distinct legal arguments.

5. The Manitoba Coalition argued that it participated responsibly in the proceeding and that its costs were necessarily and reasonably incurred. Specifically, it argued that it relied on junior resources to the greatest extent possible and that one of its expert witnesses claimed lower rates than what they would be entitled to under the Commission's *Guidelines for the Assessment of Costs* (the Guidelines).
6. The Manitoba Coalition requested that the Commission fix its costs at \$70,367.76, consisting of \$62,884.00 for legal counsel, expert witness, and consultant fees, and \$7,483.76 for disbursements. The Manitoba Coalition filed a bill of costs with its application.
7. The Manitoba Coalition claimed 66.5 hours for senior external legal counsel at a rate of \$290 per hour (\$19,285.00 in total), 31 hours for senior external legal counsel at a rate of \$250 per hour (\$7,750.00 in total), 75.4 hours for external junior legal counsel at a rate of \$135 per hour (\$10,179.00 in total), a total of 70 hours for two external legal assistants at a rate of \$35 per hour (\$2,450.00 in total), and 27.5 hours for another external legal assistant at a rate of \$15 per hour (\$412.50 in total).
8. The Manitoba Coalition also claimed 40 hours for an expert witness at a rate of \$225 per hour plus the provincial sales tax (\$9,720.00 in total), 92.25 hours for an expert witness at a rate of \$110 per hour (\$10,147.50 in total), and 12.25 days for an external consultant at a rate of \$240 per day (\$2,940.00 in total).
9. The Manitoba Coalition submitted that the national wireless carriers are the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents), but took no position as to whether additional costs respondents should be included.

Answer

10. Bell Canada argued that all the telecommunications service providers that participated in the proceeding should be named costs respondents, with the responsibility for payment of costs allocated on the basis of telecommunications operating revenues (TORs).¹
11. Conversely, TCI argued that the costs respondents should be limited to the national wireless carriers, as well as Ice Wireless Inc. (Ice Wireless), Quebecor Media Inc. (QMI), and Shaw Communications Inc. (Shaw). TCI further argued that the responsibility for payment of costs should be apportioned based on mobile wireless service revenues only, rather than on TORs. TCI cited the costs awards issued (e.g. in Telecom Order 2017-362) in connection with the proceeding that led to

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

Telecom Regulatory Policy 2017-200 as an example of the Commission making a similar determination in the past.

12. Bell Canada further argued that the Manitoba Coalition's expert witness fees should be reduced on the basis that the expert report was overly broad in scope.
13. TCI also argued that the disbursement costs claimed by the Manitoba Coalition and by other costs applicants should be reduced, given that the Manitoba Coalition's survey was substantially duplicative of the surveys put forward by the Public Interest Advocacy Centre and the Forum for Research and Policy in Communications, and that the associated costs would have been lower had these applicants collaborated to a greater extent.
14. TCI submitted that certain legal counsel fees claimed by the Manitoba Coalition should be disallowed because those counsel are employed by the Public Interest Law Centre (PILC), which is funded, in part, by the Province of Manitoba through Legal Aid Manitoba.
15. TCI further submitted that the costs claimed by the Manitoba Coalition were excessive and generally out of proportion to those claimed by other costs applicants.

Request for information

16. On 10 December 2018, Commission staff issued a request for information in which it asked the six costs applicants to address how the Commission's determinations in Telecom Orders 2018-437 and 2018-438, and in Telecom Decision 2018-439, might apply to the costs they were claiming for their participation in the proceeding. Commission staff also requested greater details from the Manitoba Coalition regarding certain disbursement costs.
17. In response, the Manitoba Coalition voluntarily removed several items from its costs claim, lowering its total disbursements to \$7,319.46 and bringing the revised total amount of costs sought to \$70,203.46.
18. The Manitoba Coalition argued that its survey and consumer engagement evidence were distinct from the surveys provided by other costs applicants, since they (i) focused on the market in Manitoba, and (ii) canvassed particular vulnerable groups, including newcomers to Canada and low-income individuals.
19. With respect to its legal counsel fees, the Manitoba Coalition noted that it had received costs awards related to the participation of PILC lawyers in the past. It acknowledged that PILC lawyers are salaried employees of Legal Aid Manitoba, but argued that PILC is independent of the provincial government and that it depends, in part, on costs awards from regulatory tribunals to fulfill its mandate of representing individuals and groups in public interest matters.
20. With respect to its overall costs, the Manitoba Coalition agreed that its costs were higher than those of other costs applicants, but argued that this was appropriate

because it filed more varied and comprehensive evidence in the proceeding than the other costs applicants.

Commission's analysis and determinations

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. In the present case, the Manitoba Coalition has demonstrated that it meets this requirement. Specifically, the Manitoba Coalition represented the interests of groups of mobile wireless service subscribers in the province of Manitoba by surveying and directly engaging with these groups.

23. The Manitoba Coalition has also satisfied the remaining criteria through its participation in the proceeding. Specifically, the Manitoba Coalition assisted the Commission in developing a better understanding of the matters that were considered by filing a range of submissions from a variety of sources, many of which were unique in the proceeding. Further, the Manitoba Coalition participated in the proceeding in a responsible way: it respected the relevant deadlines set by the Commission and relied on legal assistants, students, and junior legal counsel to develop its submissions in order to reduce its costs.

24. The rates claimed in respect of legal fees are in accordance with the rates established in the Guidelines, as set out in Telecom Regulatory Policy 2010-963.

25. The Commission considers that it would not be appropriate to reduce or exclude the costs claimed by the Manitoba Coalition relating to legal work undertaken by PILC lawyers. PILC is an entity that is separate from, does not represent, and cannot be instructed by the Government of Manitoba. PILC's client in this case was a coalition of public interest groups, and there is no evidence that either PILC or its client

received government funding in relation to the proceeding. The allowance of PILC lawyer fees to be claimed is consistent with past Commission practice, and TCI did not raise any arguments that would justify a deviation from such practice in the circumstances.

26. Concerning the Manitoba Coalition's expert witness fees, two-thirds of the hours claimed in respect of the report relate to the work of an individual who claimed less than half of the allowable rate (i.e. \$110 per hour, rather than \$225 per hour). Accordingly, while the report was broader in scope than the proceeding, the Manitoba Coalition has already taken appropriate steps to address the necessity and reasonableness of the associated costs claimed.
27. The Commission considers that in the circumstances, the Manitoba Coalition's use of a survey generated distinct and useful data regarding the views of mobile wireless service subscribers in Manitoba. A significant portion of these views concerned lower-cost data-only mobile wireless service plans directly. The Commission therefore considers that the amounts claimed in relation to the survey are appropriate and should be allowed. The Manitoba Coalition similarly contributed valuably to the record of the proceeding through its other submissions, including those resulting from its consumer engagement sessions.
28. While the Manitoba Coalition's overall costs were higher than those of any other costs applicant, the Manitoba Coalition was the only costs applicant to participate in every stage of the proceeding. Its submissions were thorough and well-researched, and it raised distinct legal issues. The Commission therefore finds that the fee amounts and disbursements claimed by the Manitoba Coalition were necessarily and reasonably incurred and should be allowed.
29. Accordingly, the Commission fixes the Manitoba Coalition's total costs for its participation in the proceeding at \$70,203.46.
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. 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: the national wireless carriers, as well as Bragg Communications Incorporated, carrying on business as Eastlink (Eastlink); Cogeco Communications Inc. (Cogeco); Ice Wireless; QMI, on behalf of Videotron Ltd. (Videotron); Saskatchewan Telecommunications (SaskTel); Shaw; SSi Micro Ltd. (SSi Micro); and Xplornet Communications Inc. (Xplornet).
32. While Telecom Notice of Consultation 2018-98, which initiated the proceeding, was directed towards the national wireless carriers in particular, the submissions of the

other companies in the proceeding made clear that they also had a significant interest in its outcome. Many argued strenuously against the Commission imposing any additional form of regulation because of their view that it would impact their own ability to compete in the market.

33. Therefore, the Commission finds that the following parties are the appropriate costs respondents to the Manitoba Coalition’s application for costs: Bell Mobility, Cogeco, Eastlink, Ice Wireless, RCCI, SaskTel, Shaw, SSi Micro, TCI, Videotron, and Xplornet.
34. 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 TORs as an indicator of the relative size and interest of the parties involved in the proceeding.²
35. 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, the Commission finds that the responsibility for payment of costs should be allocated as follows:

Company	Proportion	Amount
TCI	31.5%	\$22,114.09
RCCI	30.5%	\$21,412.06
Bell Mobility	21.9%	\$15,374.56
Videotron	6.3%	\$4,422.82
Shaw	4.4%	\$3,088.95
SaskTel	3.1%	\$2,176.31
Cogeco	2.3%	\$1,614.68

² In this order, the Commission has used the TORs of the costs respondents based on their most recent audited financial statements.

Directions regarding costs

37. The Commission **approves** the revised application by the Manitoba Coalition for costs with respect to its participation in the proceeding.
38. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to the Manitoba Coalition at \$70,203.46.
39. The Commission **directs** that the award of costs to the Manitoba Coalition be paid forthwith by TCI, RCCI, Bell Mobility, Videotron, Shaw, SaskTel, and Cogeco according to the proportions set out in paragraph 36.

Secretary General

Related documents

- *Lower-cost data-only plans for mobile wireless services*, Telecom Decision CRTC 2018-475, 17 December 2018
- *Deaf Wireless Canada Consultative Committee – Application to review and vary Telecom Order 2018-66*, Telecom Decision CRTC 2018-439, 28 November 2018
- *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*, Telecom Order CRTC 2018-438, 28 November 2018
- *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
- *Lower-cost data-only plans for mobile wireless services*, Telecom Notice of Consultation CRTC 2018-98, 22 March 2018; as amended by Telecom Notice of Consultation CRTC 2018-98-1, 10 May 2018
- *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
- *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*