



## Telecom Order CRTC 2019-338

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Ottawa, 25 September 2019

*File numbers: 1011-NOC2018-0246 and 4754-615*

### **Determination of costs award with respect to the participation of the Canadian National Society of the Deaf-Blind, Inc. in the Telecom and Broadcasting Notice of Consultation 2018-246 proceeding**

#### **Application**

1. By letter dated 18 December 2018, the Canadian National Society of the Deaf-Blind, Inc. (CNSDB) applied for costs<sup>1</sup> for its participation in the proceeding initiated by Telecom and Broadcasting Notice of Consultation 2018-246 (the proceeding). In the proceeding, pursuant to Order in Council P.C. 2018-0685, 6 June 2018, the Commission sought comments from Canadians concerning their personal experiences with any misleading or aggressive retail sales practices of Canada's large telecommunications carriers and those carriers' practices in respect of service bundles that include both broadcasting and telecommunications services. The proceeding led to the Commission's [Report on Misleading or Aggressive Communications Retail Sales Practices](#).
2. The Commission did not receive any interventions in response to the application for costs.
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 submitted that it and its joint interveners<sup>2</sup> were the only accessibility groups that participated in the proceeding, and that the CNSDB contributed a distinct point of view by offering the unique views of a specific subset of Deaf, deaf-blind, and hard-of-hearing (DDBHH) telecommunications service consumers.

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<sup>1</sup> By letter dated 7 December 2018, the CNSDB requested an extension to the deadline to file its application for costs, which was granted by way of a [procedural letter](#) dated 11 December 2018.

<sup>2</sup> The CNSDB filed joint interventions with the Deaf Wireless Canada Consultative Committee, the Canadian Association of the Deaf, and the Deafness Advocacy Association Nova Scotia.

5. With respect to the group or class of subscribers that the CNSDB has submitted it represents, the CNSDB explained that it solicited the views of DDBHH individuals in part through (i) a quadrilingual survey undertaken with its joint interveners, (ii) the personal experience of the CNSDB's President (Megan McHugh) assisting a deaf-blind senior in the provision of a telecommunications service, and (iii) soliciting testimonials of the sales experiences of members of the deaf-blind community.
6. The CNSDB requested that the Commission fix its costs at \$4,401.24, consisting of \$1,650 for consultant fees and \$2,751.24 for disbursements. The CNSDB filed a bill of costs with its application.
7. The CNSDB submitted that all telecommunications service providers are the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents).

### **Request for information**

8. In a letter dated 1 May 2019, the Commission noted that the proceeding related to both telecommunications and broadcasting issues, and that the Commission may award costs related only to telecommunications matters under the *Telecommunications Act* (the Act). The Commission also indicated that parties claiming costs for broadcasting matters were free to apply to the Broadcasting Participation Fund for the portion of their time in the proceeding that was dedicated to broadcasting matters.
9. In the letter, the Commission outlined that the overall division of issues in the proceeding does not necessarily translate into the amount of time that any specific costs applicant spends on either telecommunications or broadcasting matters. In particular, the Commission noted that the individual costs applicants had the best knowledge of the amount of time allocated to particular issues and whether these issues related to telecommunications or broadcasting matters.
10. Accordingly, the Commission requested that all costs applicants to the proceeding provide the percentage of time spent on telecommunications matters during the proceeding, including supporting information as to how they determined the time allocated to telecommunications as opposed to broadcasting matters.
11. The CNSDB did not file a response to this request.

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

12. 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.
13. 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 meets this requirement because it is a national consumer-run advocacy association seeking new and improved services for Canadians who are deaf-blind.
14. The CNSDB has also satisfied the remaining criteria through its participation in the proceeding. In particular, the CNSDB's submissions, especially those made during the oral hearing, assisted the Commission in developing a better understanding of the matters that were considered from the perspective of deaf-blind Canadians.
15. The rates claimed in respect of consultant fees and disbursements 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 total amount claimed by the CNSDB was necessarily and reasonably incurred and should be allowed.
16. Since the CNSDB did not file a response to the 1 May 2019 request for information letter, the Commission does not have any information from that organization regarding how much of its costs were incurred as a result of its work relating to telecommunications versus broadcasting matters. In this instance, the Commission has chosen to exercise its discretion to exceptionally determine that 100% of CNSDB's costs were incurred as a result of working on telecommunications matters that may have incidentally touched on broadcasting matters in the context of bundled telecommunications and broadcasting services. The Commission has done so on the basis that the other three parties that joined CNSDB in filing its intervention provided a response to the 1 May 2019 letter, noting that 100% of their costs related to telecommunications matters. Moreover, it is in the public interest for the Commission to use its discretion to dispose of this application on the basis of the record before it, as further procedural steps would delay resolution and additional delay may prejudice potential costs respondents.
17. The Commission reminds costs applicants that when applying for costs in joint telecommunications and broadcasting matters, applicants should indicate how much of their costs related to telecommunications and broadcasting matters, along with

how that allocation was determined, because the Commission has the authority to award costs related only to telecommunications matters under the Act.

18. 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.
19. 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, including all their subsidiaries, had a significant interest in the outcome of the proceeding and participated actively in the proceeding: Bell Canada, on its own behalf and on behalf of Bell Aliant, a division of Bell Canada; Bell Mobility Inc.; Bell MTS Inc.; Câblevision du Nord de Québec inc.; DMTS, a division of Bell Canada; KMTS, a division of Bell Canada; NorthernTel Limited Partnership; Ontera; and Télébec, Société en commandite (collectively, Bell Canada et al.); Bragg Communications Incorporated, carrying on business as Eastlink; the Canadian Network Operators Consortium Inc.; Cogeco Communications Inc.; Northwestel Inc.; Quebecor Media Inc., on behalf of Videotron Ltd.; Rogers Communications Canada Inc. (RCCI); Saskatchewan Telecommunications; Shaw Communications Inc.; TBayTel; TekSavvy Solutions Inc.; TELUS Communications Inc. (TCI); and Xplornet Communications Inc.
20. 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.<sup>3</sup> 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:

<b>Company</b>	<b>Proportion</b>	<b>Amount</b>
Bell Canada et al.	43.57%	\$1,917.53
TCI	28.65%	\$1,261.08
RCCI	27.78%	\$1,222.63

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<sup>3</sup> 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.

21. Consistent with its general approach articulated in Telecom Costs Order 2002-4, the Commission makes Bell Canada responsible for payment on behalf of the members of Bell Canada et al. The Commission leaves it to Bell Canada et al. to determine the appropriate allocation of the costs among themselves.

### **Directions regarding costs**

22. The Commission **approves** the application by the CNSDB for costs with respect to its participation in the proceeding.
23. Pursuant to subsection 56(1) of the Act, the Commission fixes the costs to be paid to the CNSDB at \$4,401.24.
24. The Commission **directs** that the award of costs to the CNSDB be paid forthwith by Bell Canada, TCI, and RCCI according to the proportions set out in paragraph 20.

Secretary General

### **Related documents**

- *Report regarding the retail sales practices of Canada's large telecommunications carriers*, Telecom and Broadcasting Notice of Consultation CRTC 2018-246, 16 July 2018; as amended by Telecom and Broadcasting Notice of Consultation CRTC 2018-246-1, 16 October 2018
- *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