



## Telecom Order CRTC 2019-35

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*File numbers: 8663-A182-201800467 and 4754-599*

### **Determination of costs award with respect to the participation of l'Union des consommateurs in the proceeding that led to Telecom Decision 2018-384**

#### **Application**

1. By letter dated 11 May 2018, l'Union des consommateurs (l'Union) applied for costs with respect to its participation in the proceeding that led to Telecom Decision 2018-384 (the proceeding). In the proceeding, the Commission considered a proposal for a website blocking regime to address copyright piracy. The proposal was brought forward by Asian Television Network International Limited (ATN), on behalf of the FairPlay Coalition (FairPlay).<sup>1</sup>
2. The Commission did not receive any interventions in response to the application for costs.
3. L'Union 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, l'Union submitted that it represented the interests of consumers, with a particular focus on households with modest incomes. L'Union indicated that the consumers it represented had a particular interest in the outcome of the proceeding, the majority of whom use the Internet daily and might be affected by FairPlay's application.

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<sup>1</sup> FairPlay comprises more than 25 stakeholders, including broadcasting and telecommunications companies (e.g. ATN, Bell Canada, the Canadian Broadcasting Corporation, Cogeco Connexion Inc., Corus Entertainment Inc., Ethnic Channels Group Limited, Quebecor Media Inc., and Rogers Communications Canada Inc.), unions and organizations associated with the broadcasting industry (e.g. the Alliance of Canadian Cinema, Television and Radio Artists; l'Association québécoise de l'industrie du disque, du spectacle et de la vidéo; and l'Union des artistes), and organizations linked to the film and/or broadcasting industries (e.g. Cineplex Entertainment LP and the Toronto International Film Festival).

5. L'Union indicated that it comprises 13 consumer advocacy groups, the majority of which are in Quebec.<sup>2</sup> L'Union submitted that its structure enables it to maintain a broad vision of consumer issues while developing particular expertise in certain areas, notably through its research on new issues faced by consumers. In particular, l'Union indicated that its representation of consumer interests is shaped by its work on the ground and the establishment of member associations in their communities.
6. L'Union requested that the Commission fix its costs at \$6,642.50, consisting of \$3,000.00 for legal fees and \$3,642.50 for analyst fees. Specifically, l'Union claimed 3.75 days at a rate of \$800 per day for senior internal legal fees and 7.75 days at a rate of \$470 per day for internal analyst fees. L'Union filed a bill of costs with its application.
7. L'Union submitted that FairPlay is the only appropriate party to be required to pay any costs awarded by the Commission (the costs respondent).

### **Procedural letter**

8. Commission staff sent a [procedural letter](#), dated 28 November 2018, to l'Union and to potential costs respondents seeking comments on how any costs awarded in this case should be allocated. Bragg Communications Incorporated, carrying on business as Eastlink (Eastlink); the British Columbia Broadband Association (BCBA); the Canadian Communication Systems Alliance Inc. (CCSA); the Canadian Network Operators Consortium Inc. (CNOc); Shaw Communications Inc. (Shaw); TekSavvy Solutions Inc. (TekSavvy); TELUS Communications Inc. (TCI); Xplornet Communications Inc. (Xplornet); the Canadian Internet Policy and Public Interest Clinic, jointly with OpenMedia Engagement Network (CIPPIC/OpenMedia); the Forum for Research and Policy in Communications (FRPC); the Public Interest Advocacy Centre (PIAC); and l'Union provided additional comments.
9. The BCBA, CIPPIC/OpenMedia, the FRPC, and PIAC argued that the Commission's general practice of allocating costs based on telecommunications operating revenues (TORs)<sup>3</sup> should be maintained for reasons including expediency, consistency with past practice, and the fact that all of the telecommunications service providers that intervened in the proceeding had an interest in its outcome. In contrast, CNOc, Eastlink, Shaw, TCI, TekSavvy, l'Union, and Xplornet argued that FairPlay should be responsible for 100% of any costs award granted by the Commission given that the proceeding, at its core, sought the protection of copyright interests, and that telecommunications service providers that were not part of FairPlay would bear an unreasonable and disproportionate amount of the apportionment of costs if the general practice of allocating costs based on TORs were applied. The CCSA noted

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<sup>2</sup> These groups are l'Association coopérative d'économie familiale (ACEF) in 10 regions, l'Association des consommateurs pour la qualité dans la construction, the EBO Financial Education Centre (formerly Entraide budgétaire Ottawa), and le Centre d'intervention budgétaire et sociale de la Mauricie.

<sup>3</sup> TORs consist of Canadian telecommunications revenues from local and access, long distance, data, private line, Internet, and wireless services.

that it should not be held responsible for a costs award because its members are small, resulting in the difficult and inefficient collection of costs, and because its submission in the proceeding was very brief.

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

10. 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.
11. 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, l'Union has demonstrated that it meets this requirement. L'Union indicated that it represented the interests of consumers, particularly households with modest incomes, and identified its member organizations. Further, l'Union described how it determined that the positions it put forward to the Commission reflected the interests of the members it claimed to represent.
12. L'Union has also satisfied the remaining criteria through its participation in the proceeding. In particular, since its contribution was well structured and well focused, and since it put forward its points of view on the creation of a new regime for copyright holders and on compliance with the Canadian telecommunications policy objectives, l'Union helped the Commission develop a better understanding of the matters that were considered. As well, l'Union participated in the proceeding in a responsible way.
13. Accordingly, the Commission finds that l'Union meets the criteria for an award of costs under section 68 of the Rules of Procedure.
14. The rates claimed in respect of internal legal and analyst fees 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 l'Union was necessarily and reasonably incurred and should be allowed.

15. 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.
16. 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.
17. The Commission considers that the following parties had a significant interest in the outcome of the proceeding and participated actively in the proceeding: the BCBA, the CCSA, CNOC, Eastlink, FairPlay, the Independent Telecommunications Providers Association, Shaw, TCI, TekSavvy, and Xplornet. Therefore, these parties are the appropriate costs respondents to l'Union's application for costs.
18. The Commission notes that its general practice is to allocate the responsibility for payment of costs among costs respondents based on their TORs. In general, the Commission considers that TORs are indicators of the relative size and interest of the parties involved in proceedings. However, if the Commission were to apply its normal approach to the allocation of costs among costs respondents in this case, FairPlay would be responsible for few, if any, of these costs, since its members are primarily broadcasting companies (rather than telecommunications companies) and do not report significant, if any, TORs. The Commission considers that such an outcome would not appropriately reflect the significant interest that FairPlay's members had in the outcome of the proceeding. However, allocation of the responsibility for payment of costs entirely to FairPlay would ignore the interests of the telecommunications service providers that participated in the proceeding and whose submissions generally addressed how the proposed website blocking regime would affect their telecommunications businesses.
19. In the circumstances of this case, the Commission considers that it would be appropriate to allocate 85% of the costs to FairPlay and 15% of the costs among all other costs respondents based on their TORs as an indicator of the relative size and interest of the parties involved in the proceeding.<sup>4</sup>
20. 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.
21. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated entirely to FairPlay.
22. Consistent with its general approach articulated in Telecom Costs Order 2002-4, the Commission makes ATN, which filed the application on behalf of FairPlay, responsible for payment on behalf of FairPlay's members. The Commission leaves it

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<sup>4</sup> In this order, the Commission has used the TORs of the costs respondents based on their most recent audited financial statements.

to FairPlay's members to determine the appropriate allocation of the costs among themselves.

### **Directions regarding costs**

23. The Commission **approves** the application by l'Union for costs with respect to its participation in the proceeding.
24. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to l'Union at \$6,642.50.
25. The Commission **directs** that the award of costs to l'Union be paid forthwith by ATN.

Secretary General

### **Related documents**

- *Asian Television Network International Limited, on behalf of the FairPlay Coalition – Application to disable online access to piracy websites*, Telecom Decision CRTC 2018-384, 2 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