



## Telecom Order CRTC 2019-413

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Ottawa, 12 December 2019

*File numbers: 1011-NOC2018-0422 and 4754-621*

### **Determination of costs award with respect to the participation of l'Union des consommateurs in the proceeding that led to Telecom Regulatory Policy 2019-269**

#### **Application**

1. By letter dated 27 May 2019, l'Union des consommateurs (l'Union) applied for costs with respect to its participation in the proceeding that led to Telecom Regulatory Policy 2019-269 (the proceeding). In the proceeding, the Commission sought comments on establishing a mandatory code of conduct that would address issues related to consumer contracts for retail fixed Internet access services provided to individuals and small businesses by large facilities-based Internet service providers.
2. The Commission did not receive any interventions in response to the application for costs.
3. L'Union noted that it had inadvertently submitted its application for costs four days late because of an error made in calculating the deadline. L'Union requested authorization for this late filing. It submitted that the error occurred during a period in which there was a very heavy workload, and was unlikely to cause prejudice to those to whom the order would be directed. L'Union also noted that another applicant had requested extra time to complete its application for an award of costs with respect to the same proceeding.
4. 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.
5. In particular, l'Union submitted that it represented the interests of consumers, particularly those from modest-income households. L'Union noted that the focus of its interventions were values such as solidarity, equality, and social justice, as well as the improvement of consumers' economic, social, political, and environmental living conditions.

6. L'Union indicated that it comprises 13 consumer advocacy groups, the majority of which are in Quebec.<sup>1</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 the outcome of the proceeding is of interest primarily to the class of consumers whose interests it defends, notably consumers of Internet access services, who need additional protections, as demonstrated by the many complaints that the Commission for Complaints for Telecom-television Services Inc. receives every year.
7. L'Union requested that the Commission fix its costs at \$17,777.50, consisting of \$9,200.00 in legal fees and \$8,577.50 in analyst fees. Specifically, l'Union claimed 11.50 days at a rate of \$800 per day in fees for senior internal counsel and 18.25 days at a rate of \$470 per day in internal analyst fees. L'Union filed a bill of costs with its application.
8. L'Union made no submission as to the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents).

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

9. L'Union's application was filed after the deadline set out in the Rules of Procedure. Nonetheless, the Commission considers that the delay did not prejudice any party to the proceeding because the parties were informed of the application and had the opportunity to intervene. As a result, in the circumstances, it is appropriate to examine l'Union's costs application.
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.

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<sup>1</sup> These groups are l'Association coopérative d'économie familiale 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.

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 those from modest-income households, 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 l'Union presented its detailed analysis of the components of the Commission's proposed Internet Code in a clear and structured manner, 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 notes that l'Union did not specify who should be named as costs respondents. In this regard, the Commission reminds l'Union that, pursuant to paragraph 66(1)(b) of the Rules of Procedure, the applicant must identify in its application the respondents that should pay the costs.
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, on its own behalf and on behalf of its affiliates (collectively, the Bell companies);<sup>2</sup> Bragg Communications Incorporated, carrying on business as Eastlink; the Canadian Association of Wireless Internet Service Providers; the Canadian Communication Systems Alliance; the Canadian Network Operators Consortium Inc.; Cogeco Communications inc., on behalf of its subsidiary Cogeco Connexion Inc.; Distributel Communications Limited; the Independent Telecommunications

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<sup>2</sup> These affiliates are Bell Aliant, a division of Bell Canada; Bell MTS Inc.; Câblevision du Nord de Québec inc.; DMTS, a division of Bell Canada; KMTS, a division of Bell Canada; NorthernTel, Limited Partnership; Northwestel Inc.; Ontera; and Télébec, Société en commandite.

Providers Association; Quebecor Media Inc., on behalf of Videotron Ltd. (Videotron); Rogers Communications Canada Inc. (RCCI); Saskatchewan Telecommunications; Shaw Cablesystems G.P., on its own behalf and on behalf of its affiliate Shaw Telecom G.P.; TekSavvy Solutions Inc.; TELUS Communications Inc. (TCI); and Xplornet Communications Inc.

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.<sup>3</sup>
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.
20. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated as follows:<sup>4</sup>

| <b>Company</b> | <b>Proportion</b> | <b>Amount</b> |
|----------------|-------------------|---------------|
| TCI            | 33.2%             | \$5,902.13    |
| RCCI           | 32.2%             | \$5,724.36    |
| Bell companies | 28.0%             | \$4,977.70    |
| Videotron      | 6.6%              | \$1,173.31    |

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 Bell companies. The Commission leaves it to the members of the Bell companies to determine the appropriate allocation of the costs among themselves.

### **Policy Direction**

22. The Governor in Council issued a policy direction, which came into force on 17 June 2019, directing the Commission to consider how its decisions can promote competition, affordability, consumer interests, and innovation (the 2019 Policy

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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.

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

Direction).<sup>5</sup> In this instance, the 2019 Policy Direction does not apply, because the final claims in this application were filed with the Commission before the 2019 Policy Direction came into force, and less than a year has passed since the period for filing final submissions ended, in accordance with subsection 11(3) of the *Telecommunications Act* (the Act).

### 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 Act, the Commission fixes the costs to be paid to l'Union at \$17,777.50.
25. The Commission **directs** that the award of costs to l'Union be paid forthwith by TCI, RCCI, Bell Canada on behalf of the Bell companies, and Videotron according to the proportions set out in paragraph 20.

Secretary General

### Related documents

- *The Internet Code*, Telecom Regulatory Policy CRTC 2019-269, 31 July 2019; as amended by Telecom Regulatory Policy CRTC 2019-269-1, 9 August 2019
- *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

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<sup>5</sup> *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives to Promote Competition, Affordability, Consumer Interests and Innovation*, SOR/2019-227, 17 June 2019