



## Telecom Order CRTC 2019-415

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Ottawa, 12 December 2019

*File numbers: 1011-NOC2018-0422 and 4754-623*

### **Determination of costs award with respect to the participation of the Deaf Wireless Canada Consultative Committee in the proceeding that led to Telecom Regulatory Policy 2019-269**

#### **Application**

1. By letter dated 24 June 2019, the Deaf Wireless Canada Consultative Committee (DWCC) applied for costs<sup>1</sup> 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. The DWCC 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 DWCC submitted that it is a committee composed of Deaf, deaf-blind and hard-of-hearing (DDBHH) Canadians who, as customers, have dealt with inaccessible Internet service contracts and Internet service providers.
5. With respect to the group or class of subscribers that the DWCC has submitted it represents, it was explained that the DWCC and its joint interveners<sup>2</sup> represent distinct subsets of the DDBHH community. With respect to the specific methods by

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<sup>1</sup> By letter dated 23 May 2019, the DWCC requested an extension to the deadline to file its application for costs, which was granted by way of a procedural letter dated 4 June 2019. By letter dated 17 June 2019, the DWCC requested a further extension to the deadline to file its application for costs, which was granted by way of a procedural letter dated 19 June 2019.

<sup>2</sup> These interveners were the Canadian Association of the Deaf, the Canadian National Society of the Deaf-Blind, Inc; and the Deafness Advocacy Association Nova Scotia.

which the DWCC has submitted that it represents this group, it explained that it had solicited the views of DDBHH individuals through a quadrilingual survey, undertaken with its joint interveners, and made recommendations on the basis of the responses.

6. The DWCC submitted that it had assisted the Commission in developing a better understanding of the matters that were considered through a focused, structured intervention, which offered distinct points of view and outlined how various issues, such as bill shock from Internet service data overage charges, were problematic for members of the DDBHH community.
7. The DWCC requested that the Commission fix its costs at \$47,537.50, consisting of \$46,637.50 for the work of two external consultants and one external analyst, and \$900 for disbursements. With regard to the consultant and analyst fees, the DWCC claimed a total of 217.5 hours, at various hourly rates, for filing its intervention and replying to interventions, creating the survey and the associated analytical report, and preparing its final submissions. The DWCC filed a bill of costs with its application.
8. The DWCC applied for costs it incurred in the proceeding while its joint interveners, in their own applications for costs, claimed portions of the associated work to the extent they were involved, notably the creation and analysis of the quadrilingual survey.
9. The DWCC submitted that telecommunications service providers that provide Internet or wireless services are the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents). The DWCC also requested that any costs awarded be paid to the Canadian Association of the Deaf (CAD).

### **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, the DWCC has demonstrated that it meets this requirement through its quadrilingual survey and its representation of members of the DDBHH community with regard to accessing telecommunications services.
12. The DWCC has also satisfied the remaining criteria through its participation in the proceeding. In particular, the DWCC's survey and the accompanying report provided the perspective of Canadians with disabilities, which were specifically sought by the Commission to assist it in developing a better understanding of the matters that were considered.<sup>3</sup>
13. The rates claimed in respect of consultant and analyst fees as well as 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 DWCC was necessarily and reasonably incurred and should be allowed.
14. 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.
15. 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>4</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 Providers Association; Quebecor Media Inc., on behalf of Videotron Ltd. (Videotron); Rogers Communications Canada Inc. (RCCI); Saskatchewan Telecommunications (SaskTel); 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.
16. The Commission considers that, consistent with its practice, it is appropriate to allocate the responsibility for payment of costs among costs respondents based on

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<sup>3</sup> See question #2 in Appendix 2 of Telecom Notice of Consultation 2018-422.

<sup>4</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.

their telecommunications operating revenues (TORs) as an indicator of the relative size and interest of the parties involved in the proceeding.<sup>5</sup>

17. 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.
18. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated as follows:<sup>6</sup>

<b>Company</b>	<b>Proportion</b>	<b>Amount</b>
TCI	32.16%	\$15,288.24
RCCI	31.18%	\$14,822.15
Bell companies	27.11%	\$12,889.54
Videotron	6.39%	\$3,035.05
SaskTel	3.16%	\$1,502.52

19. 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 Bell companies to determine the appropriate allocation of the costs among themselves.

### **Policy Direction**

20. 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 Direction).<sup>7</sup> The DWCC's application for costs was received on 24 June 2019; accordingly, the 2019 Policy Direction applies to this order. The Commission considers that the awarding of costs in this instance complies with paragraph 1(a)(iv) of the 2019 Policy Direction, because it facilitates the involvement of a group that represents consumer interests. Since consumer groups often require financial assistance to effectively participate in proceedings, the Commission is of the view

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<sup>5</sup> TORs consist of Canadian telecommunications revenues from local and access, long distance, data, private line, Internet, and wireless services.

<sup>6</sup> In this order, the Commission has used the TORs of the costs respondents based on their most recent audited financial statements.

<sup>7</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.

that its practice of awarding costs, as exercised in this instance, enables such groups to provide their perspectives on how consumer interests may be affected by the outcomes of the proceedings.

### **Directions regarding costs**

21. The Commission **approves** the application by the DWCC for costs with respect to its participation in the proceeding.
22. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to the DWCC at \$47,537.50.
23. The Commission **directs** that the award of costs to the DWCC be paid forthwith to CAD by TCI; RCCI; Bell Canada, on behalf of the Bell companies; Videotron; and SaskTel according to the proportions set out in paragraph 18.

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
- *Call for comments – Proceeding to establish a mandatory code for Internet services*, Telecom Notice of Consultation CRTC 2018-422, 9 November 2018; as amended by Telecom Notices of Consultation CRTC 2018-422-1, 21 February 2019, and 2018-422-2, 18 March 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