



## Telecom Order CRTC 2019-416

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Ottawa, 12 December 2019

File numbers: *1011-NOC2018-0422 and 4754-624*

### **Determination of costs award with respect to the participation of the Deafness Advocacy Association Nova Scotia in the proceeding that led to Telecom Regulatory Policy 2019-269**

#### **Application**

1. By letter dated 24 June 2019, the Deafness Advocacy Association Nova Scotia (DAANS) 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. DAANS 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, DAANS submitted that it represents the interests of Nova Scotians who are Deaf, deaf-blind, hard of hearing, or late-deafened in matters related to communications access, education, employment, health, legal services, and recreation. In the proceeding, DAANS sought to reflect the interests of these Nova Scotians, who face telecommunications barriers and would be affected by the outcome of the proceeding.

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<sup>1</sup> By letter dated 23 May 2019, DAANS 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, DAANS 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.

5. DAANS requested that the Commission fix its costs at \$1,760, consisting of \$115 for legal fees and \$1,645 for in-house analyst fees. DAANS filed a bill of costs with its application.
6. DAANS submitted that the telecommunications service providers that participated in the proceeding are the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents).

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

7. 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.
8. 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, DAANS has demonstrated that it meets this requirement: it is an organization that advocates for Deaf, deaf-blind, hard-of-hearing, and late-deafened Nova Scotians with regard to their access to telecommunications services.
9. DAANS has also satisfied the remaining criteria through its participation in the proceeding. In particular, DAANS' submissions, made with its joint interveners,<sup>2</sup> assisted the Commission in developing a better understanding of the matters that were considered, such as the minimum trial period for Internet services for Canadians with disabilities.
10. The rates claimed in respect of legal and analyst fees are in accordance with the rates established in the *Guidelines for the Assessment of Costs*, as set out in Telecom

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<sup>2</sup> These interveners were the Canadian Association of the Deaf; the Canadian National Society of the Deaf-Blind, Inc.; and the Deaf Wireless Canada Consultative Committee.

Regulatory Policy 2010-963. The Commission finds that the total amount claimed by DAANS was necessarily and reasonably incurred and should be allowed.

11. 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.
12. 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>3</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.; Rogers Communications Canada Inc.; 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.
13. 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>4</sup>
14. 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.
15. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated to TCI.<sup>5</sup>

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<sup>3</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.

<sup>4</sup> TORs consist of Canadian telecommunications revenues from local and access, long distance, data, private line, Internet, and wireless services.

<sup>5</sup> In this order, the Commission has used the TORs of the costs respondents based on their most recent audited financial statements.

## Policy Direction

16. The Governor in Council issued a policy direction to the Commission, 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>6</sup> DAANS' application 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 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

17. The Commission **approves** the application by DAANS for costs with respect to its participation in the proceeding.
18. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to DAANS at \$1,760.
19. The Commission **directs** that the award of costs to DAANS be paid forthwith by TCI.

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

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<sup>6</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.

- *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