



Telecom Order CRTC 2019-417

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Determination of costs award with respect to the participation of the Canadian National Society of the Deaf-Blind, Inc. in the proceeding that led to Telecom Regulatory Policy 2019-269

Application

1. By letter dated 25 June 2019, the Canadian National Society of the Deaf-Blind, Inc. (CNSDB) applied for costs¹ 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 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. With respect to the group or class of subscribers that the CNSDB has submitted it represents, the CNSDB explained that it and its joint interveners² represent distinct subsets of the Deaf, deaf-blind, and hard-of-hearing community. In particular, the CNSDB submitted that it is a non-profit organization that provides the specific perspective of deaf-blind Canadians. With respect to the specific methods by which the CNSDB has submitted that it represents this group, it explained that it solicited

¹ By letter dated 23 May 2019, CNSDB 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, CNSDB 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.

² These interveners were the Canadian Association of the Deaf, the Deafness Advocacy Association Nova Scotia, and the Deaf Wireless Canada Consultative Committee.

the views of deaf-blind individuals through a quadrilingual survey, undertaken with its joint interveners, and made recommendations on the basis of the responses.

5. The CNSDB submitted that it had assisted the Commission in developing a better understanding of the matters considered through a focused, structured intervention, which offered distinct points of view on various challenges and difficulties experienced by deaf-blind individuals in relation to the provision of telecommunications services. For example, the CNSDB submitted that it helped the Commission understand the difficulties that deaf-blind and blind Canadians experience in obtaining written copies of Internet service contracts in accessible formats.
6. The CNSDB requested that the Commission fix its costs at \$11,880, consisting of \$1,650 for external consultant fees and \$10,230 for disbursements. With regard to the disbursements claimed, the CNSDB provided two invoices for services rendered: (i) \$1,100 for support in filing the application for costs, and (ii) \$9,130 for various tasks undertaken to create documents to provide the perspective of deaf-blind subscribers. On the second invoice, the service provider (the Deaf Wireless Canada Consultative Committee [DWCC]) billed for 83 hours, at \$110 per hour, for the work of four individuals. 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).

Procedural letter

8. A Commission letter, dated 21 August 2019, requested that the CNSDB provide additional information regarding its application for costs. Specifically, the letter requested more information concerning the second disbursements claim for \$9,130. In particular, the letter communicated a preliminary view that the work described is more properly characterized as the work of external consultants, and not as a disbursement, which is generally an out-of-pocket expense necessarily incurred in connection with the applicant's participation in the proceeding, including travel, meals, accommodation, and photocopying. Accordingly, the letter requested that the CNSDB clarify whether the preliminary view was accurate, and, if so, clarify the number of years the four individuals providing the services have completed as consultants and whether the hourly rate of \$110 was claimed in error.
9. In its response, dated 28 August 2019, the CNSDB revised its application and noted that the \$9,130 claim should have been \$12,930, based on revised hourly consultant rates for two of the four individuals who provided services.

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 CNSDB has demonstrated that it meets this requirement through its quadrilingual survey and its representation of members of the deaf-blind community with regard to their access to telecommunications services.
12. The CNSDB has also satisfied the remaining criteria through its participation in the proceeding. In particular, the CNSDB's submissions, especially regarding the particular experiences of deaf-blind and blind Canadians seeking contracts in accessible formats, assisted the Commission in developing a better understanding of the matters that were considered.
13. The Commission accepts the CNSDB's submission concerning the \$9,130 disbursement claim. The Commission considers that the work undertaken by the DWCC on the CNSDB's behalf was the work of external consultants, which should be evaluated at the rates originally submitted by the CNSDB and include the adjustments submitted in response to the Commission letter dated 21 August 2019. Accordingly, the Commission revises the \$9,130 disbursement claim to a claim of \$12,930 for external consultant fees.
14. The revised rates claimed by the CNSDB in respect of consultant 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 the CNSDB was necessarily and reasonably incurred and should be allowed. In light of the above, the Commission fixes the CNSDB's costs at \$15,680.
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. 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);³ 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. (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.

17. 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.⁴
18. 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.
19. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated as follows:⁵

Company	Proportion	Amount
TCI	46.12%	\$7,232.36
RCCI	44.72%	\$7,011.86
Bell companies	9.16%	\$1,435.78

³ 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.

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

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

20. 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

21. 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 (2019 Policy Direction).⁶ The CNSDB's application was received on 25 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 perspective on how consumer interests may be affected by the outcomes of the proceedings.

Directions regarding costs

22. The Commission **approves with changes** the application by the CNSDB for costs with respect to its participation in the proceeding.
23. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to the CNSDB at \$15,680.
24. The Commission **directs** that the award of costs to the CNSDB be paid forthwith by TCI, RCCI, and Bell Canada on behalf of the Bell companies, according to the proportions set out in paragraph 19.

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

⁶ *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

- *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*