



Telecom Order CRTC 2021-144

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File numbers: 1011-NOC2019-0057 and 4754-634

Determination of costs award with respect to the participation of the Manitoba Coalition in the proceeding that led to Telecom Regulatory Policy 2021-130

Application

1. By letter dated 14 August 2020, the Manitoba Coalition applied for costs with respect to its participation in the proceeding that led to Telecom Regulatory Policy 2021-130 (the proceeding). In the proceeding, the Commission reviewed mobile wireless services in Canada.
2. Bell Mobility Inc. (Bell Mobility) and TELUS Communications Inc. (TCI) each filed interventions, both dated 25 August 2020, in response to the Manitoba Coalition's application. The Manitoba Coalition did not reply to either intervention.
3. The Manitoba Coalition 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 (i) represented a group or class of subscribers that had an interest in the outcome of the proceeding, (ii) it had assisted the Commission in developing a better understanding of the matters that were considered, and (iii) it had participated in a responsible way.
4. In particular, the Manitoba Coalition submitted that it represents the interests of Canadians living in Manitoba, including the urban Indigenous community of Winnipeg and those facing food scarcity and poverty.
5. With respect to the specific methods by which the Manitoba Coalition has submitted that it represents this group or class, the Manitoba Coalition explained that it retained Prairie Research Associates to conduct two online surveys, which were deployed to two separate audiences, to inform its submission. The Manitoba Coalition submitted that 1,000 Manitobans and coalition member organizations participated in the surveys. The Manitoba Coalition added that the survey responses assisted it in gaining insight into the experiences of Manitoban consumers who face barriers in the wireless marketplace and in producing reports and feedback. Further, the Manitoba Coalition submitted that this data helped inform smaller focus groups and community engagement sessions that it held with a multitude of groups, including students, newcomers to Canada, low-income individuals, and Indigenous peoples.

6. The Manitoba Coalition requested that the Commission fix its costs at \$103,439.30, consisting of \$64,389 for external legal fees, \$17,335 for expert witness fees, \$2,170 for in-house consultant fees, and \$19,545.30 for disbursements. The Manitoba Coalition's claim included the federal Goods and Services Tax (GST) on fees less the rebate to which the Manitoba Coalition is entitled in connection with the GST. The Manitoba Coalition filed a bill of costs with its application.
7. The Manitoba Coalition submitted that all participating telecommunications service providers (TSPs) are the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents).
8. The Manitoba Coalition suggested that the responsibility for payment of costs should be divided among the costs respondents on the basis of their telecommunications operating revenues (TORs).¹

Answers

9. Bell Mobility requested more information about a \$12,838.12 disbursement for an online survey by Prairie Research Associates. Bell Mobility recommended that Commission staff (i) issue a request for information to the Manitoba Coalition seeking more detail on the components of this expense and (ii) give potential costs respondents an opportunity to make brief comments on that information if they wish to do so.
10. Bell Mobility also disputed the \$175 disbursement for a contract to receive outside media relations advice. Bell Mobility argued that media relations is not an appropriate activity to be funded through the Commission's costs process.
11. TCI submitted that it had no contentions with the Manitoba Coalition's costs application. Further, TCI submitted that all participating TSPs should be named as costs respondents.

Commission's analysis and determinations

12. 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;

¹ TORs consist of Canadian telecommunications revenues from local and access, long distance, data, private line, Internet, and wireless services.

- (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.
13. 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 Manitoba Coalition has demonstrated that it meets this requirement. Its submission was informed by 1,000 survey responses from Manitobans and community engagement and focus group discussions.
 14. In particular, the Manitoba Coalition summarized in its submission the findings from its consumer engagement exercises, which consisted of surveys and workshop-like consumer engagement sessions. The Manitoba Coalition's submission, supported by its surveys and community consultations, provided the Commission with qualitative and quantitative data about the adequacy and affordability of wireless services. The submission also provided the Commission with illustrative examples of consumers' experiences accessing and relying on mobile wireless services, which assisted the Commission in developing a better understanding of the matters that were considered.
 15. Finally, the Manitoba Coalition submitted that it relied on junior resources to the extent it was able to. Ultimately, it provided an intervention that was well-structured and focused on the issues in the proceeding.
 16. Accordingly, the Commission finds that the Manitoba Coalition meets the criteria for an award of costs under section 68 of the Rules of Procedure.
 17. The rates claimed in respect of consultant and legal fees are in accordance with the rates established in the *Guidelines for the Assessment of Costs* (the Guidelines), as set out in Telecom Regulatory Policy 2010-963. The Commission finds that the total amount claimed by the Manitoba Coalition was necessarily and reasonably incurred and should be allowed.

Disbursements

18. A disbursement is an amount that represents an out-of-pocket expense. As set out in the Guidelines, the Commission will generally allow disbursements if the amount claimed is reasonable and has been necessarily incurred in connection with the applicant's participation in the proceeding.
19. Bell Mobility challenged the Manitoba Coalition's disbursement claims, particularly with respect to amounts claimed as media relations and amounts related to surveys conducted by Prairie Research Associates. The disbursement for a contract to receive

outside media relations advice totalled \$175, and the survey disbursement, as stated, amounted to \$12,838.12.

20. In Telecom Orders 2018-437 and 2018-438 and Telecom Decision 2018-439, the Commission indicated that surveys will not always be necessary for an applicant to demonstrate that it represents a group or class of subscribers. The Commission also stated that when determining whether specific survey costs have been reasonably and necessarily incurred, it may take into account the scope of the survey and the proceeding in question, the value of the survey, and any accessibility considerations, among other factors.
21. The Manitoba Coalition retained Prairie Research Associates to conduct two online surveys, which were deployed to two separate audiences, to inform the Manitoba Coalition's submission. The Manitoba Coalition focused on a narrow range of issues that it felt were specifically related to the questions identified by the Commission in Telecom Notice of Consultation 2019-57. The Manitoba Coalition used the surveys to collect quantitative data from 1,000 Manitobans and member organizations, thereby gaining insight into the experiences of Manitoban consumers who face barriers in the wireless marketplace. This quantitative data enabled the Manitoba Coalition to target specific groups, such as students, newcomers to Canada, low-income individuals, and Indigenous peoples, in smaller focus groups and further delve into the issues the surveys revealed.
22. Both surveys were focused on issues directly related to the proceeding. Although the sample size was small, the surveys led to two detailed reports that gave a sense of the current mobile wireless service landscape in Manitoba and what consumers want to see from the market going forward. Further, this data gave the Manitoba Coalition a macro-snapshot of the mobile wireless service market in Manitoba. This macro-snapshot facilitated a framework for smaller discussions with vulnerable populations. The Manitoba Coalition fleshed out and provided valuable context to the overarching trends in the quantitative data in its submission. The Manitoba Coalition's approach therefore appeared to be reasonable and necessary for the organization to produce a submission that is well-informed by subscribers in Manitoba while being attuned to the most vulnerable subscribers. The Commission considers that no additional information is needed on the record to make that finding of fact.
23. The Manitoba Coalition used online platforms to garner community engagement to inform its submission. Therefore, a short and cost-effective consultation from a subject-matter expert on how best to communicate and disseminate this call to action to the public is likely a reasonable and overall cost-effective venture.
24. In light of the above, the Commission determines that the costs related to the Manitoba Coalition's disbursements in dispute should be reimbursed at the rate it requested. The Manitoba Coalition has demonstrated that the amounts represent actual out-of-pocket expenses that were necessarily and reasonably incurred.

Allocation of costs

25. 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.
26. The Commission has generally determined that the appropriate costs respondents to an award of costs are the TSPs that have a significant interest in the outcome of the proceeding in question and have participated actively in that proceeding. Although the Commission dealt primarily with mobile wireless services in the proceeding, many service providers that do not currently provide mobile wireless services demonstrated an interest in the proceeding as potential customers of a mobile virtual network operator (MVNO) service.² Moreover, many parties made submissions related to the Commission's broader policies, including its test to determine whether a service should be mandated, which would have implications for more than the mobile wireless services specifically at issue in this proceeding. Furthermore, although Bell Mobility proposed a different mechanism for allocating costs, it did not provide a convincing reason to make an exception to the general rules, which are designed to ensure efficiency for costs applicants in collecting funds. Therefore, the Commission considers this an appropriate case in which to apply the Guidelines for the allocation of costs.
27. The Commission considers that the following parties had a significant interest in the outcome of the proceeding and participated actively in the proceeding: Bell Mobility; Bragg Communications Incorporated, carrying on business as Eastlink (Eastlink); Cogeco Communications inc. (Cogeco); Data on Tap Inc.; Distributel Communications Limited; Ice Wireless Inc.; Quebecor Media Inc., on behalf of Videotron Ltd. (Videotron); Rogers Communications Canada Inc. (RCCI); Saskatchewan Telecommunications (SaskTel); Shaw Communications Inc. (Shaw); SSi Micro Ltd.; TBayTel; TekSaavy Solutions Inc.; TCI; TNW Wireless Inc.; Tucows Inc.; Voyageur Internet Inc.; and Xplornet Communications Inc. (Xplornet).
28. 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 TORs as an indicator of the relative size and interest of the parties involved in the proceeding.
29. 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.

² An MVNO is a wireless service provider that does not own spectrum or operate its own radio access network (RAN); instead, it relies on the spectrum and RAN of a wireless carrier and, in some cases, other facilities and/or services, to provide mobile wireless services to consumers. MVNOs encompass a variety of service-based providers that rely on wholesale services to varying degrees to support their retail businesses.

30. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated as follows:³

Company	Proportion⁴	Amount
RCCI	31.33%	\$32,408.07
TCI	31.14%	\$32,214.99
Bell Mobility	22.07%	\$22,832.90
Videotron	6.39%	\$6,609.43
SaskTel	2.88%	\$2,976.49
Cogeco	2.20%	\$2,275.71
Shaw	1.44%	\$1,492.05
Eastlink	1.43%	\$1,477.40
Xplornet	1.11%	\$1,152.26

2019 Policy Direction

31. The Governor in Council issued a policy direction in which it directed the Commission to consider how its decisions can promote competition, affordability, consumer interests, and innovation (the 2019 Policy Direction).⁵ The Commission considers that the awarding of costs in this instance is consistent with subparagraph 1(a)(iv) of the 2019 Policy Direction.
32. By facilitating the participation of a group that represents consumer interests, this order contributes to enhancing and protecting the rights of consumers in their relationships with TSPs. Since consumer groups often require financial assistance to effectively participate in Commission 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. In light of the above, the Commission considers that its determination to award costs to the Manitoba Coalition promotes consumer interests.

³ In this order, the Commission has used the TORs of the costs respondents based on their most recent audited financial statements.

⁴ The total proportion does not add to exactly 100% due to rounding.

⁵ *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

Directions regarding costs

33. The Commission **approves** the application by the Manitoba Coalition for costs with respect to its participation in the proceeding.
34. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to the Manitoba Coalition at \$103,439.30.
35. The Commission **directs** that the award of costs to the Manitoba Coalition be paid forthwith by RCCI, TCI, Bell Mobility, Videotron, SaskTel, Cogeco, Shaw, Eastlink, and Xplornet according to the proportions set out in paragraph 30.

Secretary General

Related documents

- *Review of mobile wireless services*, Telecom Regulatory Policy CRTC 2021-130, 15 April 2021
- *Review of mobile wireless services*, Telecom Notice of Consultation CRTC 2019-57, 28 February 2019; as amended by Telecom Notices of Consultation CRTC 2019-57-1, 28 October 2019; 2019-57-2, 20 March 2020; and 2019-57-3, 23 June 2020
- *Deaf Wireless Canada Consultative Committee – Application to review and vary Telecom Order 2018-66*, Telecom Decision CRTC 2018-439, 28 November 2018
- *Determination of costs award with respect to the participation of the Canadian National Society of the Deaf-Blind, Inc. in the Telecom Notice of Consultation 2017-33 proceeding*, Telecom Order CRTC 2018-438, 28 November 2018
- *Determination of costs award with respect to the participation of the Deaf Wireless Canada Consultative Committee in the Telecom Notice of Consultation 2017-33 proceeding*, Telecom Order CRTC 2018-437, 28 November 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