



Telecom Order CRTC 2021-145

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Ottawa, 30 April 2021

File numbers: 1011-NOC2019-0057 and 4754-635

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

Application

1. By letter dated 27 August 2020, the Public Interest Advocacy Centre (PIAC) applied for costs on behalf of the Coalition for Cheaper Wireless Services (the CCWS) with respect to the CCWS's 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) filed an intervention, dated 4 September 2020, in response to the CCWS's application. TELUS Communications Inc. (TCI) filed an intervention dated 8 September 2020.
3. The CCWS 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 (i) it 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 CCWS submitted that it represents the interests of seniors and low-income Canadians and provided a fuller understanding of the barriers these groups face regarding the affordability of retail wireless services and other pitfalls those consumers face under the current regulatory regime.
5. The CCWS requested that the Commission fix its costs at \$85,706.67, consisting of \$69,783.99 for legal fees, \$5,640 for in-house analyst fees, and \$10,282.68 for disbursements. The CCWS's claim included the Ontario Harmonized Sales Tax (HST) on fees less the rebate to which the CCWS is entitled in connection with the HST. The CCWS filed a bill of costs with its application.
6. The CCWS submitted that all wireless service providers (WSPs) that participated in the proceeding are the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents).

7. The CCWS 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

8. TCI submitted that it disagreed with naming only participating WSPs as costs respondents and instead argued that all participating telecommunications service providers (TSPs) should be named as costs respondents.
9. Both TCI and Bell Mobility submitted that the application contained an error. The CCWS acknowledged and corrected this error. Bell Mobility had no further submissions in its answer.

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 CCWS has demonstrated that it meets this requirement. The CCWS is a coalition composed of ACORN [Association of Community Organizations for Reform Now] Canada, C.A.R.P. [Canadian Association of Retired Persons], National Pensioners Federation (NPF), and PIAC. C.A.R.P. and NPF advocate for and have expertise regarding Canadian seniors, while ACORN Canada advocates for and has expertise regarding low-income Canadians. Together, ACORN Canada, C.A.R.P., NPF, and PIAC represent well over one million seniors and low-income Canadians. They bring the

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

perspectives of seniors and low-income Canadians to the Commission and were therefore able to represent those groups' interests in the proceeding.

12. The CCWS has also satisfied the remaining criteria through its participation in the proceeding by bringing forth two unique proposals, including a proposed mandated low-cost wireless service plan and a mobile virtual network operator (MVNO)² phase-in proposal. Accordingly, the Commission finds that the applicant meets the criteria for an award of costs under section 68 of the Rules of Procedure.
13. The rates claimed in respect of analyst 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 CCWS 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 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 an MVNO service. 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.
16. 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; 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);

² An MVNO is a WSP 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.

SSi Micro Ltd.; TBayTel; TekSaavy Solutions Inc.; TCI; TNW Wireless Inc.; Tucows Inc.; Voyageur Internet Inc.; 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 TORs as an indicator of the relative size and interest of the parties involved in the proceeding.
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:³

Company	Proportion⁴	Amount
RCCI	32.15%	\$27,552.79
TCI	31.96%	\$27,388.65
Bell Mobility	22.65%	\$19,412.15
Videotron	6.56%	\$5,619.23
SaskTel	2.95%	\$2,530.56
Cogeco	2.26%	\$1,934.77
Shaw	1.48%	\$1,268.52

2019 Policy Direction

20. 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

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

considers that the awarding of costs in this instance is consistent with subparagraph 1(a)(iv) of the 2019 Policy Direction.

21. 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 CCWS promotes consumer interests.

Directions regarding costs

22. The Commission **approves** the application by the CCWS 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 CCWS at \$85,706.67.
24. The Commission **directs** that the award of costs to the CCWS be paid forthwith by RCCI, TCI, Bell Mobility, Videotron, SaskTel, Cogeco, and Shaw according to the proportions set out in paragraph 19.

Secretary General

Related documents

- *Review of mobile wireless services*, Telecom Regulatory Policy CRTC 2021-130, 15 April 2021
- *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