



Telecom Order CRTC 2021-178

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Determination of costs award with respect to the participation of l'Union des consommateurs in the proceeding that led to Telecom Decision 2021-177

Application

1. By letter dated 8 January 2020, l'Union des consommateurs (l'Union) applied for costs with respect to its participation in the proceeding that led to Telecom Decision 2021-177 (the proceeding). In the proceeding, the Commission considered a Part 1 application by Xplornet Communications Inc. (Xplornet) to review and vary the Internet Code,¹ in particular the provisions governing the disconnection of Internet services for non-payment.
2. The Commission did not receive any interventions in response to the application for costs.
3. L'Union 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, l'Union submitted that it represents the interests and rights of consumers, with a particular focus on households with modest incomes. L'Union indicated that the consumers it represented had a particular interest in the outcome of the proceeding since many of them are likely to experience financial difficulties with their Internet service subscription and ultimately could risk having their service suspended or disconnected for non-payment.
5. L'Union indicated that it is composed of 13 consumer advocacy groups, the majority of which are located in Quebec.² L'Union submitted that its structure enables it to

¹ The Internet Code was established in Telecom Regulatory Policy 2019-269.

² These groups include: l'Association cooperative d'économie familiale in 10 regions, l'Association des consommateurs pour la qualité dans la construction, the EBO Financial Education Centre, and le Centre d'intervention budgétaire et sociale de la Mauricie.

maintain a broad vision of consumer issues while developing a particular expertise in certain areas, notably through its research on new issues faced by consumers. In particular, l'Union indicated that its representation of consumer interests is shaped by its work on the ground and the establishment of member associations in their communities.

6. L'Union requested that the Commission fix its costs at \$2,645, consisting of \$1,000 for legal fees and \$1,645 for analyst fees. L'Union filed a bill of costs with its application.
7. L'Union made no submission regarding the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents).

Procedural letter

8. Commission staff sent a procedural letter dated 26 February 2020, to l'Union requesting that it indicate who it considered to be the appropriate costs respondents to its costs application.
9. In its response dated 2 March 2020, l'Union submitted that Bell Canada, Bragg Communications Inc., carrying on business as Eastlink (Eastlink), and Xplornet had participated actively in the proceeding and had a significant interest in its outcome, and that accordingly, it considered those three companies to be the appropriate costs respondents to its costs application.

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 on how an applicant may demonstrate that it satisfies the first criterion with respect to its representation of interested subscribers. In the present case, l'Union has

demonstrated that it meets this requirement. Specifically, l'Union indicated that it represented the interests of consumers, particularly households with modest incomes, and identified its member organizations. Further, l'Union described how it determined that the positions it put forward to the Commission reflected the interests of the members it claimed to represent. Lastly, l'Union submitted that its structure enables it to maintain a broad vision of consumer issues while developing particular expertise in certain areas, notably through its research on new issues faced by consumers.

12. L'Union has also satisfied the remaining criteria through its participation in the proceeding. In particular, l'Union assisted the Commission to develop a better understanding of the matters that were considered, as its contribution was well structured and well focused; it put forward its view on a potential framework for disconnection and suspension of service for non-payment through a study it conducted and filed; and it was the only public interest group that intervened in Xplornet's review and vary application. L'Union also participated in the proceeding in a responsible way. Accordingly, the Commission considers that l'Union meets the criteria for an award of costs under section 68 of the Rules of Procedure.
13. The rates claimed in respect of legal fees and analyst 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 l'Union 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 notes that l'Union did not identify in its application the respondents that should be responsible for the payment of its costs. In this regard, the Commission reminds l'Union that, pursuant to paragraph 66(1)(b) of the Rules of Procedure, an applicant must identify in its application the respondents that should pay the costs.
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 Bell Canada, Eastlink, and Xplornet had a significant interest in the outcome of the proceeding and participated actively in the proceeding, and are therefore the appropriate costs respondents to l'Union's application for costs.
17. The Commission notes that its general practice is 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.³ While in most cases the general practice of

³ TORs consist of Canadian telecommunications revenues from local and access, long distance, data, private line, Internet, and wireless services.

allocating the responsibility for payment of costs among costs respondents in accordance with their TORs is appropriate, a strict application of this practice in this case would result in Bell Canada being responsible for substantially all of the costs awards. The Commission finds that making Bell Canada responsible for the payment of substantially all of the costs awards would not appropriately reflect Eastlink's and Xplornet's interests and participation in the proceeding. Accordingly, in the circumstances of this case, the Commission considers that it would be appropriate to allocate 60% of the costs to Xplornet, since it filed the application initiating the proceeding, and 40% of the costs split evenly between Bell Canada and Eastlink, since they both participated in the proceeding actively and equally.

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 considers it appropriate that the responsibility for payment of costs should be allocated entirely to Xplornet.

Directions regarding costs

20. The Commission **approves** the application by l'Union for costs with respect to its participation in the proceeding.
21. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to l'Union at \$2,645.
22. The Commission **directs** that the award of costs to l'Union be paid forthwith by Xplornet.

2019 Policy Direction

23. 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).⁴ The Commission considers that the awarding of costs in this instance is consistent with subparagraph 1(a)(iv) of the 2019 Policy Direction.
24. 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 telecommunications service providers. Since consumer groups often require financial assistance to effectively participate in Commission

⁴ *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

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 l'Union promotes consumer interests.

Secretary General

Related documents

- *Xplornet Communications Inc. – Application to review and vary Telecom Regulatory Policy 2019 269 regarding disconnection*, Telecom Decision CRTC 2021-177, 19 May 2021
- *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
- *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