



Telecom Order CRTC 2022-171

PDF version

Ottawa, 23 June 2022

File numbers: 1011-NOC2021-0009 and 4754-673

Determination of costs award with respect to the participation of the Manitoba Coalition in the proceeding that led to Compliance and Enforcement and Telecom Decision 2022-170

Application

1. By letter dated 4 June 2021, the Aboriginal Council of Winnipeg, the Manitoba Branch of the Consumers' Association of Canada and Harvest Manitoba (collectively, the Manitoba Coalition) applied for costs with respect to its participation in the proceeding that led to Compliance and Enforcement and Telecom Decision 2022-170 (the proceeding). In the proceeding, the Commission sought comments on its proposal to develop a network-level blocking framework to limit the harm botnets cause to Canadians while safeguarding privacy and ensuring transparency.
2. TELUS Communications Inc. (TCI) filed an intervention, dated 11 June 2021, in response to the Manitoba Coalition's application for costs.
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 represented a group or class of subscribers that had an interest in the outcome of the proceeding, it assisted the Commission in developing a better understanding of the matters that were considered, and it participated in a responsible way.
4. In particular, the Manitoba Coalition submitted that it represents a group or class of subscribers that had an interest in the outcome of the proceeding, noting that
 - the Aboriginal Council of Winnipeg is an Indigenous political organization representing First Nations, Inuit and Métis individuals living in Winnipeg;
 - the Manitoba Branch of the Consumers' Association of Canada is a volunteer, non-profit, independent organization working to inform and empower consumers and to represent consumer interests in Manitoba; and
 - Harvest Manitoba is a non-profit, community-based organization committed to providing food to people who struggle to feed themselves and their families.

5. With respect to the specific methods by which the Manitoba Coalition submitted that it represents this group or class of subscribers, the Manitoba Coalition explained that it conducted two consumer engagement sessions to collect qualitative information about the experiences and preferences of these consumers with respect to Internet use.
6. The Manitoba Coalition submitted that it had assisted the Commission in developing a better understanding of the matters considered by (i) demonstrating the risks that consumers currently face online, and explaining the risks that could be created by a network-level botnet blocking framework, (ii) identifying consumers interests in enhanced online protections and the risks that such measures may pose, and (iii) identifying legal avenues by which the Commission may take action to address consumer needs.
7. The Manitoba Coalition requested that the Commission fix its costs at \$10,434.08, consisting of \$7,938.00 for external legal fees, \$798.00 for in-house consultant fees and \$1,698.08 for disbursements. The Manitoba Coalition noted that it was eligible for a Goods and Services Tax (GST) rebate and provided a GST registration number, but did not accordingly claim a rebate on its forms. The Manitoba Coalition filed a bill of costs with its application.
8. The Manitoba Coalition submitted that the appropriate costs respondents should be the telecommunications service providers that participated in the proceeding and that costs should be allocated among them based on their respective telecommunications operating revenues (TORs).¹

Answer

9. TCI submitted that any costs awarded in this proceeding should be allocated on the basis of TORs since the proceeding focused on the issue of network blocking to limit botnet traffic on public consumer networks. TCI added that this issue affects a variety of network providers, including national providers, regional providers, and cable carriers.

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:

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

- (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 Manitoba Coalition has demonstrated that it meets this requirement. Specifically, the Manitoba Coalition represented the interests of consumers in the province of Manitoba by conducting two consumer engagement sessions to collect qualitative information about the experiences and preferences of these consumers with respect to Internet use.
12. The Manitoba Coalition has also satisfied the remaining criteria through its participation in the proceeding. In particular, the Manitoba Coalition assisted the Commission in developing a better understanding of the matters that were considered by (i) demonstrating the risks that consumers currently face online, and explaining the risks that could be created by a network-level botnet blocking framework, (ii) identifying consumers' interests in enhanced online protections and the risks that such measures may pose, and (iii) identifying legal avenues by which the Commission may take action to address consumer needs. Further, the Manitoba Coalition participated in the proceeding in a responsible way.
13. The rates claimed with respect to external legal fees and in-house consultant 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. Moreover, 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.
14. In the present case, the Manitoba Coalition's disbursements associated with its two consumer engagement sessions were reasonable and were incurred in connection with its participation in the proceeding, since these sessions led to the development of a consumer engagement report that informed the Manitoba Coalition's submissions in the proceeding. Specifically, the two consumer engagement sessions, and the resulting consumer engagement report, centred on the more consumer-focused questions in Compliance and Enforcement and Telecom Notice of Consultation 2021-9, providing a distinct and unique point of view on the needs and concerns of consumers regarding a network-level blocking framework to limit botnet traffic.

15. Accordingly, the Commission finds that the total amount of costs claimed by the Manitoba Coalition was necessarily and reasonably incurred and should be allowed.
16. 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.
17. 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, since it concerned the development of a network-level blocking framework to limit botnet traffic, and participated actively in the proceeding: Bell Canada; Bragg Communications Incorporated, carrying on business as Eastlink; Cogeco Communications inc.; Distributel Communications Limited; Quebecor Media Inc., on behalf of Videotron Ltd.; Rogers Communications Canada Inc. (RCCI); Saskatchewan Telecommunications; Shaw Cablesystems G.P.; TekSavvy Solutions Inc.; TCI; and Xplornet Communications Inc. Therefore, these parties are the appropriate costs respondents to the Manitoba Coalition's application for costs.
18. 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. 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:²

Company	Proportion	Amount
Bell Canada	43.7%	\$4,559.29
TCI	28.64%	\$2,988.32
RCCI	27.66%	\$2,886.47

² In this order, the Commission has used the TORs of the costs respondents based on their most recent audited financial statements.

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).³ The Commission 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 telecommunications service providers. 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.

Directions regarding costs

22. The Commission **approves** the application by the Manitoba Coalition 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 Manitoba Coalition at \$10,434.08.
24. The Commission **directs** that the award of costs to the Manitoba Coalition be paid forthwith by Bell Canada, TCI and RCCI according to the proportions set out in paragraph 19.

Secretary General

Related documents

- *Development of a network-level blocking framework to limit botnet traffic and strengthen Canadians' online safety*, Compliance and Enforcement and Telecom Decision CRTC 2022-170, 23 June 2022
- *Call for comments – Development of a network-level blocking framework to limit botnet traffic and strengthen Canadians' online safety*, Compliance and Enforcement and Telecom Notice of Consultation CRTC 2021-9, 13 January 2021; as amended by Compliance and Enforcement and Telecom Notice of Consultation CRTC 2021-9-1, 29 June 2021

³ *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

- *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