



Telecom Order CRTC 2022-34

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File numbers: 1011-NOC2020-0081 and 4754-637

Determination of costs award with respect to the participation of the CNIB Foundation in the proceeding that led to Telecom and Broadcasting Decision 2022-28

Application

1. By letter dated 12 August 2020, the Canadian National Institute for the Blind (CNIB Foundation) applied for costs with respect to its participation in the proceeding that led to Telecom and Broadcasting Decision 2022-28 (the proceeding). In the proceeding, the Commission considered (i) whether there is a need for Canadians or certain groups of Canadians to continue to receive paper bills; (ii) whether Commission intervention is appropriate and warranted with respect to the paper billing practices of communications service providers;¹ (iii) what measures, if any, the Commission should impose with respect to paper billing practices if Commission intervention is appropriate and warranted; and (iv) how and to whom any new obligations should apply.
2. Bragg Communications Inc., carrying on business as Eastlink (Eastlink), filed an answer, dated 24 August 2020, in response to the CNIB Foundation's application. The CNIB Foundation did not file a reply.
3. In its application, the CNIB Foundation 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 CNIB Foundation submitted that it represented the perspective of Canadians who are blind or partially sighted, to ensure that their communications services effectively meet their needs.
5. The CNIB Foundation highlighted that it participated in the proceeding meaningfully and responsibly by conducting online surveys and consumer engagement sessions, and subsequently preparing submissions based on its findings.

¹ Communications service providers include telecommunications service providers and broadcasting distribution undertakings.

6. The CNIB Foundation requested that the Commission fix its costs at \$15,858.00, consisting of analyst fees and disbursements. The CNIB Foundation filed a bill of costs with its application.
7. With respect to its analyst fees, the CNIB Foundation claimed 15 days at the in-house daily rate of \$470.00. Disbursements claimed included office expenses, the cost of consumer engagement surveys, honoraria for participants, and translation services for the final intervention.
8. The CNIB Foundation submitted that the appropriate costs respondents to its application should be determined based on what it referred to as the main telecommunications service providers (TSPs) that provided service to its survey respondents. Accordingly, the CNIB Foundation listed the following respondents and indicated that costs should be divided equally among them: Bell Canada; Eastlink; Cogeco Communications Inc; Quebecor Media Inc., on behalf of Videotron Ltd. (Videotron); Rogers Communications Canada Inc. (RCCI); and Shaw Cablesystems G.P.

Answer

9. In its answer dated 24 August 2020, Eastlink noted that the proceeding dealt with both telecommunications and broadcasting matters, and the Commission may only award costs based on telecommunications matters. Eastlink further submitted that the CNIB Foundation claimed 100 percent of its costs, without indicating which costs were attributable to telecommunications matters.
10. Eastlink further opposed the CNIB Foundation's proposed list of costs respondents, as well as the allocations between them. Eastlink submitted that the CNIB Foundation did not provide adequate reason for the Commission to deviate from its standard practice.

Request for information concerning time spent on telecommunications matters

11. In a letter dated 7 December 2020, Commission staff noted that the proceeding related to both telecommunications and broadcasting issues, and that the Commission may award costs related only to telecommunications under the *Telecommunications Act*. Commission staff also indicated that parties claiming costs for broadcasting matters were free to apply to the Broadcasting Participation Fund for the portion of their time in the proceeding that was dedicated to broadcasting matters.
12. In the letter, Commission staff noted that the individual costs applicants had the best knowledge of the amount of time allocated to particular issues and whether these issues were related to telecommunications or broadcasting matters. Accordingly, Commission staff requested that the CNIB Foundation provide the percentage of time spent on telecommunications matters during the proceeding, including supporting information as to how it determined the time allocated to telecommunications matters, as opposed to broadcasting ones.
13. In its response dated 15 December 2020, the CNIB Foundation submitted that 100 percent of its costs should be considered as relating to telecommunications matters. The CNIB Foundation submitted that its survey was not designed to delineate between broadcasting and

telecommunication services. Only 5 out of 591 responses specifically referenced broadcasting services.

Commission's analysis and determinations

14. 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.
15. 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 CNIB Foundation has demonstrated that it meets this requirement because its submissions were based on the results of consultation with Canadians who are blind or partially sighted. This survey garnered hundreds of responses in both official languages.
16. The CNIB Foundation has also satisfied the remaining criteria through its participation in the proceeding. In particular, the CNIB Foundation provided the Commission with a focused and evidence-based perspective informed by consumer engagement activities. These submissions assisted the Commission in developing a better understanding of the matters that were considered, especially as they related to the importance of the availability of alternate statement formats for Canadians experiencing sight loss.
17. Accordingly, the Commission finds that the CNIB Foundation meets the criteria for an award of costs under section 68 of the Rules of Procedure.
18. The rates claimed with respect to analyst fees and disbursements are in accordance with the rates established in the *Guidelines for the Assessment of Costs*, as set out in Telecom Regulatory Policy 2010-963. In particular, the Commission finds that the CNIB Foundation demonstrated that the disbursements represented out-of-pocket expenses that were necessarily and reasonably incurred to represent the perspectives of those who are blind or partially sighted.
19. As set out in Telecom Order 2017-163, the Commission generally supports innovative approaches to ensuring that the voices of a broad range of Canadians are heard in its proceedings. Although it is not always necessary, this includes compensation for research participants. In this case, the Commission considers the honoraria offered to compensate the

participants of the engagement sessions to be reasonable to ensure the meaningful participation of individuals that would likely be particularly impacted by the proceeding.

20. The Commission therefore finds that the total amount claimed by the CNIB Foundation was necessarily and reasonably incurred and should generally be allowed.
21. However, the Commission notes that the total costs claimed in the CNIB Foundation's written submissions do not correspond with the amounts recorded in its supporting documentation. Specifically, there appears to be a typographical error in the analyst fees claimed: the analyst fee is recorded as totalling \$7,520.00 in the CNIB Foundation's submissions, while it is recorded as \$7,050.00 on the CNIB Foundation's Form III. Given that the in-house daily rate for an analyst is \$470.00 and 15 days were claimed, the Commission accepts the amount recorded on Form III (\$7,050.00).
22. In addition, the total for disbursements noted in its written submissions totalled \$8,338.00, while the total noted in Exhibit A is \$8,413.97. The Commission notes that \$8,338.00 does not include the CNIB Foundation's office expenses. It therefore accepts the amount recorded in Exhibit A. Taking the aforementioned into consideration, the CNIB Foundation is entitled to \$15,463.97 for costs with respect to its participation in the proceeding.
23. 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.
24. The Commission accepts the CNIB Foundation submissions as they relate to the allocation of costs between telecommunications and broadcasting matters. Accordingly, given that reference to broadcasting matters were minimal, the Commission determines that the CNIB Foundation is entitled to its total costs incurred to participate in the proceeding.
25. 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 does not see sufficient reason to depart from this approach in this instance.
26. Despite the CNIB Foundation's assertion that the appropriate costs respondents in this case should be based on the main TSPs that provided service to its survey respondents, the Commission notes that for the most part the CNIB Foundation's submissions were general. In particular, the CNIB Foundation responded directly to the submissions of service providers that were made party to this proceeding by way of the request for information issued as part of the Notice of Consultation, even if they were not identified as a service provider to its survey respondents.
27. Finally, the proceeding considered a number of issues that would impact TSPs and their subscribers generally. Therefore, the Commission considers that all TSPs had a significant interest in the outcome of the proceeding.
28. The Commission considers that the following parties had a significant interest in the outcome of the proceeding and participated actively in the proceeding, and are therefore the appropriate costs respondents to the CNIB Foundation's application for costs: Bell Canada;

Eastlink; Distributel Communications Limited; Videotron; RCCI; Saskatchewan Telecommunications; Shaw Communications Inc.²; TekSavvy Solutions Inc.; TELUS Communications Inc. (TCI); and Xplornet Communications Inc.

29. It is also the Commission's general practice to allocate the responsibility for the payment of costs among costs respondents based on their telecommunications operating revenues (TORs).³ In general, the Commission considers that TORs are indicators of the relative size and interest of the parties involved in proceedings.
30. As set out in Telecom Order 2015-160, the Commission has previously considered that when there are multiple costs respondents, \$1,000 is 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.
31. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated as follows:⁴

Company	Proportion	Amount
RCCI	36.34%	\$5,619.23
TCI	36.12%	\$5,585.76
Bell Canada	27.54%	\$4,258.98

2019 Policy Direction

32. 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.
33. By facilitating the participation of a group that represents consumer interests relating to accessibility, 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 relating to accessibility may be affected by the outcomes of the proceedings. In light of the above, the Commission considers that its

² Shaw Communications Inc. intervened on behalf of: Freedom Mobile Inc.; Shaw Cablesystems G.P.; Shaw Cablesystems Limited; Shaw Cablesystems (VCI) Limited; and Star Choice Television Network Incorporated.

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

⁴ In this order, the Commission has used the TORs of the costs respondents based on the most recent audited financial statements available at the close of record.

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

determination to award costs to the CNIB Foundation promotes consumer interests relating to accessibility.

Directions regarding costs

34. The Commission **approves** the application by the CNIB Foundation for costs with respect to its participation in the proceeding.
35. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to the CNIB Foundation at \$15,463.97.
36. The Commission **directs** that the award of costs to the CNIB Foundation be paid forthwith by RCCI, TCI, and Bell Canada according to the proportions set out in paragraph 31.

Secretary General

Related documents

- *When and how communications service providers must provide paper bills*, Telecom and Broadcasting Decision CRTC 2022-28, 10 February 2022
- *Determination of costs award with respect to the participation of Manitoba Keewatinowi Okimakanak Inc. in the proceeding leading to Telecom Regulatory Policy 2016-496*, Telecom Order CRTC 2017-163, 19 May 2017
- *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