



Telecom Order CRTC 2022-35

PDF version

Ottawa, 17 February 2022

File numbers: 1011-NOC2020-0081 and 4754-642

Determination of costs award with respect to the participation of the Canadian Association of the Deaf-Association des Sourds du Canada in the proceeding that led to Telecom and Broadcasting Decision 2022-28

Application

1. By letter dated 10 August 2020, the Canadian Association of the Deaf-Association des Sourds du Canada (CAD-ASC) 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. The Commission did not receive any interventions in response to CAD-ASC's application for costs.
3. CAD-ASC 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, CAD-ASC submitted that it is composed of, and represented the interests of, Deaf Canadians. CAD-ASC indicated that broadcasting and telecommunications services are generally inaccessible for those who cannot hear. Therefore, Deaf Canadians have a particular interest in sharing their perspective to inform solutions and recommendations on accessibility issues in relation to the provision of paper bills by communications service providers.

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

5. CAD-ASC requested that the Commission fix its costs at \$3,080.00, consisting of consultant fees at the external rate of \$110.00 per hour for a total of 28 hours. CAD-ASC filed a bill of costs with its application.
6. CAD-ASC submitted that the appropriate costs respondents to its application are all the telecommunications service providers that participated in the proceeding.

Request for information concerning time spent on telecommunications matters

7. In a letter dated 6 January 2021, 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.
8. 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 related to telecommunications or broadcasting matters. Accordingly, Commission staff requested that CAD-ASC provide the percentage of time spent on telecommunications matters during the proceeding, including supporting information as to how they determined the time allocated to telecommunications as opposed to broadcasting matters.
9. In its response dated 14 January 2021, CAD-ASC submitted that 100 percent of its costs should be viewed as relating to telecommunications matters, given that its submissions were focused almost exclusively on paper billing issues in the telecommunications context.

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, CAD-ASC has demonstrated that it meets this requirement. In particular, it is a charitable organization that advocates for Deaf Canadians, who have unique needs in accessing telecommunications services.

12. CAD-ASC has also satisfied the remaining criteria through its participation in the proceeding. CAD-ASC collaborated with joint interveners in order to present a distinct and focused perspective.² Notably, CAD-ASC assisted the Commission in developing a better understanding of the matters that were considered, including billing format options that should be offered to meet the diverse needs of the Deaf community in Canada.
13. Accordingly, the Commission finds that the applicant meets the criteria for an award of costs under section 68 of the Rules of Procedure.
14. The Commission also finds that the total amount claimed by CAD-ASC was necessarily and reasonably incurred and should be allowed.
15. The Commission accepts CAD-ASC's submissions as they relate to the allocation of costs between telecommunications and broadcasting matters. Accordingly, the Commission determines that CAD-ASC is entitled to the full costs it incurred to participate in the proceeding.
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 and participated actively in the proceeding, and are therefore the appropriate costs respondents to CAD-ASC's application for costs: Bell Canada; Bragg Communications Incorporated, carrying on business as Eastlink; Distributel Communications Limited; Quebecor Media Inc., on behalf of Videotron Ltd.; Rogers Communications Canada Inc. (RCCI); Saskatchewan Telecommunications; Shaw Communications Inc.³; TekSavvy Solutions Inc.; TELUS Communications Inc. (TCI); and Xplornet Communications Inc.
18. 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).⁴ In general, the Commission considers that TORs are indicators of the relative size and interest of the parties involved in proceedings.
19. 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

² CAD-ASC collaborated with the Canadian National Society of the Deaf-Blind, the Deafness Advocacy Association Nova Scotia, and the Deaf Wireless Canada Consultative Committee.

³ 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.

⁴ TORs consist of Canadian telecommunications revenues from local and access, long distance, data, private line, Internet, and wireless services.

respondent should be required to pay, due to the administrative burden that small costs awards impose on both the applicant and costs respondents.

20. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated as follows:⁵

Company	Proportion	Amount
RCCI	50.15%	\$1,544.60
TCI	49.85%	\$1,535.40

Consultant fees

21. The Commission notes that CAD-ASC claimed fees consistent with the rate for an external consultant rather than fees consistent with the rate for an internal consultant (listed in the *Guidelines for the Assessment of Costs*, as set out in Telecom Regulatory Policy 2010-963) for the President of its Board of Directors, who prepared the organization's submissions.
22. The costs that can be reasonably claimed for external consultants are higher than those for in-house consultants. This is because it is generally presumed that in-house consultants are part of the organization and provide services as part of their regular duties, the costs for which are covered by the organization's regular operating costs. However, external consultants are presumed to be charging the organization industry rates for specific expertise.
23. Nevertheless, in Telecom Order 2017-129, the Commission permitted recovery at the external rate for the President of CAD-ASC's Board of Directors, who likewise prepared the organization's submissions. In that case, the Commission concluded that it was unlikely that non-profit organizations with a volunteer Board of Directors would otherwise be able to participate in Commission proceedings. As such, the work of the President was considered as time spent as a consultant rather than as a director.
24. In the present case, it would be consistent with that past case to apply similar rationale. Therefore, CAD-ASC's President should be considered to have participated directly in the development of the organization's submissions as a consultant rather than as a director, and costs should be awarded at the external rate.

2019 Policy Direction

25. 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

⁵ 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.

innovation (the 2019 Policy Direction).⁶ The Commission considers that the awarding of costs in this instance is consistent with subparagraph 1(a)(iv) of the 2019 Policy Direction.

26. 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 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 relating to accessibility may be affected by the outcomes of the proceedings. In light of the above, the Commission considers that its determination to award costs to CAD-ASC promotes consumer interests relating to accessibility.

Directions regarding costs

27. The Commission **approves** the application by CAD-ASC for costs with respect to its participation in the proceeding.
28. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to CAD-ASC at \$3,080.00.
29. The Commission **directs** that the award of costs to CAD-ASC be paid forthwith by RCCI and TCI according to the proportions set out in paragraph 20.

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 the Canadian Association of the Deaf in the proceeding leading to Telecom Regulatory Policy 2016-496*, Telecom Order CRTC 2017-129, 3 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

⁶ *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

- *New procedure for Telecom costs awards*, Telecom Public Notice CRTC 2002-5, 7 November 2002