



## Telecom Order CRTC 2022-40

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Ottawa, 17 February 2022

*File numbers: 1011-NOC2020-0081 and 4754-645*

### **Determination of costs award with respect to the participation of the Consumers Council of Canada in the proceeding that led to Telecom and Broadcasting Decision 2022-28**

#### **Application**

1. By letter dated 21 August 2020, the Consumers Council of Canada (CCC) 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;<sup>1</sup> (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 the CCC's application for costs.
3. The CCC 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. The CCC requested that the Commission fix its costs at \$2,341.21, consisting of consultant fees, less the rebate to which the CCC is entitled in connection with a sales tax rebate. With respect to these fees, the CCC claimed 9.5 hours at the external rate of \$225.00 per hour for one senior consultant (totalling \$2,137.50). The CCC filed a bill of costs with its application.
5. The CCC submitted that the appropriate costs respondents to its application are all the telecommunications service providers that participated in the proceeding.

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<sup>1</sup> Communications service providers include telecommunications service providers and broadcasting distribution undertakings.

## **Request for information concerning costs criteria in section 68 of the Rules of Procedure**

6. In a letter dated 7 December 2020, Commission staff requested that the CCC elaborate on (i) how it represented a group or class of subscribers that had an interest in the outcome of the proceeding; (ii) the extent to which it had assisted the Commission in developing a better understanding of the matters considered; and (iii) how it had participated in the proceeding in a responsible way.
7. In its response dated 15 December 2020, the CCC submitted that it represented the interests of Canadian consumers. The CCC further submitted that it had a particular interest in the proceeding given the importance of providing Canadian consumers with choice and information, notably in the telecommunications industry. The CCC noted that it endeavours to represent consumer interest well by engaging with consumers and conducting research.
8. The CCC submitted that it had assisted the Commission in developing a better understanding of the matters considered in the proceeding by providing input gathered from Canadian consumers. The CCC specified that it offered a questionnaire about paper billing to the 440 participants in its Public Interest Network.
9. In addition, the CCC submitted that it had participated in the proceeding responsibly by providing a view that balanced the needs of consumers with the effective and efficient development of the marketplace.

## **Request for information concerning time spent on telecommunications matters**

10. In a second letter also dated 7 December 2020, Commission staff noted that the proceeding was 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.
11. 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 CCC 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.
12. In its response dated 15 December 2020, the CCC submitted that its costs should be viewed as relating to telecommunications matters, as time spent on broadcasting matters were minimal and incidental. The CCC noted that its submissions were based on issues within the telecommunications industry, given that this was the focus of its research and engagement with its Public Interest Network.

## Commission's analysis and determinations

13. 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.
14. 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 CCC has demonstrated that it meets this requirement. Specifically, the CCC represented Canadian consumers in the telecommunications industry by conducting research regarding consumer experience in that industry. Notably, the CCC consulted participants in its Public Interest Network regarding paper billing.
15. The CCC has also satisfied the remaining criteria through its participation in the proceeding. In particular, the CCC put forth several advantages and disadvantages of paperless billing and highlighted the need for consumer choice. These submissions assisted the Commission in developing a better understanding of the actions that might be appropriate moving forward.
16. Accordingly, the Commission finds that the CCC meets the criteria for an award of costs under section 68 of the Rules of Procedure.
17. The rates claimed with respect to consultant 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 the CCC was necessarily and reasonably incurred and should generally be allowed.
18. However, upon review of the CCC's costs application, the Commission found that the allowable sales tax rebate was miscalculated. Based on a claim of \$2,137.50 for consultant fees (as set out in Form III), the correct amount including HST, less the rebate to which the CCC is entitled, is \$2,221.72, rather than \$2,341.21.<sup>2</sup> Accordingly, the Commission reduces the CCC's costs claim by \$119.49, for a total of \$2,221.72.

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<sup>2</sup> As a public service body resident in Ontario, the CCC is entitled to a rebate of 50% of the federal portion and 82% of the provincial portion of its HST. Therefore, its allowable sales tax is 3.94%. For more information, see [GST/HST public service bodies' rebates](#).

19. 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.
20. The Commission accepts the CCC's submissions as they relate to the allocation of costs between telecommunications and broadcasting matters. Accordingly, the Commission determines that the CCC is entitled to the full costs related to its participation in the proceeding.
21. 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 the CCC'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.<sup>3</sup>; TekSavvy Solutions Inc.; TELUS Communications Inc. (TCI); and Xplornet Communications Inc.
22. 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).<sup>4</sup> In general, the Commission considers that TORs are indicators of the relative size and interest of the parties involved in proceedings.
23. 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.
24. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated as follows:<sup>5</sup>

<b>Company</b>	<b>Proportion</b>	<b>Amount</b>
RCCI	50.15%	\$1,114.18
TCI	49.85%	\$1,107.54

<sup>3</sup> 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.

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

<sup>5</sup> 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.

## 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 innovation (the 2019 Policy Direction).<sup>6</sup> 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, 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 CCC promotes consumer interests.

## Directions regarding costs

27. The Commission **approves** the application by the CCC 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 the CCC at \$2,221.72.
29. The Commission **directs** that the award of costs to the CCC be paid forthwith by RCCI and TCI according to the proportions set out in paragraph 24.

Secretary General

## Related documents

- *When and how communications service providers must provide paper bills*, Telecom and Broadcasting Decision CRTC 2022-28, 10 February 2022
- *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

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<sup>6</sup> *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