



Telecom Order CRTC 2022-41

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Ottawa, 17 February 2022

File numbers: 1011-NOC2020-0081 and 4754-641

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

Application

1. By letter dated 21 August 2020, the Manitoba Coalition¹ 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;² (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 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 the Manitoba Branch of the Consumers' Association of Canada is a volunteer, non-profit, independent organization working to represent, inform, and empower consumers in Manitoba. The Aboriginal Council of Winnipeg is an Indigenous organization representing First Nations, Inuit and Metis living in Winnipeg. The Winnipeg Harvest is a non-profit, community-based organization representing the interests of Manitoba consumers at risk of poverty. Overall, the Manitoba Coalition submitted that it represented the perspective of Manitoba consumers, especially

¹ The coalition is comprised of the Manitoba Branch of the Consumer's Association of Canada, the Aboriginal Council of Winnipeg and Winnipeg Harvest.

² Communications service providers include telecommunications service providers and broadcasting distribution undertakings.

low-income and vulnerable consumers, to ensure that their communications services effectively meet their needs.

5. The Manitoba Coalition highlighted that it participated in the proceeding meaningfully and responsibly by conducting online surveys and consumer engagement sessions, and subsequently preparing submissions based on their findings that were responsive to the record.
6. The Manitoba Coalition requested that the Commission fix its costs at \$13,611.00, consisting of legal fees for an external legal counsel, in-house consultant fees, and disbursements related to consumer engagement exercises and hearing attendance. The Manitoba Coalition filed a bill of costs with its application.
7. With respect to its legal fees, the Manitoba Coalition claimed 39.1 hours at the external legal counsel rate of \$135 (totalling \$5,278.50). The Manitoba Coalition also claimed 3.5 days at the in-house daily rate of \$280 for its consultant (totalling \$980.00). Disbursements claimed included the cost of consumer engagement recordings, engagement of a research firm to conduct online surveys and prepare reports, as well as honorariums for the participants of its two consumer engagement sessions (totalling \$7,352.50).
8. The Manitoba Coalition submitted that the appropriate costs respondents to its application are the dominant telecommunications service providers that participated in the proceeding. The Manitoba Coalition submitted that costs, if granted, should be payable to the Manitoba Branch of the Consumers' Association of Canada on its behalf.

Request for information concerning time spent on telecommunications matters

9. In a letter 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.
10. 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 the Manitoba Coalition 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.
11. In its response dated 15 December 2020, the Manitoba Coalition submitted that its costs should be viewed as relating more to telecommunications matters, as the focus groups it conducted exclusively discussed telecommunications services, and its submissions focused more on the comments of telecommunications service providers. The Manitoba Coalition also submitted two detailed charts summarizing the division of costs between telecommunications and broadcasting matters, including the legal counsel's time and the

disbursements incurred. Accordingly, the Manitoba Coalition put forth that 58% of its costs were incurred in relation to telecommunication matters.

Commission's analysis and determinations

12. 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.
13. 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 because it is composed of interest groups that advocate for low-income consumers in Manitoba in regards to their access to communications services, and it actively canvassed interested and potentially affected individuals when formulating its positions.
14. The Manitoba Coalition has also satisfied the remaining criteria through its participation in the proceeding. In particular, the Manitoba Coalition brought together consumer groups to provide the Commission with a focused and unique perspective informed by consumer engagement activities in Manitoba. These submissions assisted the Commission in developing a better understanding of the matters that were considered, especially as they related to the ongoing demand for paper billing.
15. Accordingly, the Commission finds that the Manitoba Coalition meets the criteria for an award of costs under section 68 of the Rules of Procedure.
16. The rates claimed with respect to legal fees, consultant 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 Manitoba Coalition demonstrated that the disbursements represented out-of-pocket expenses that were necessarily and reasonably incurred to represent the views of Manitobans.
17. 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 were reasonable to ensure the meaningful participation of individuals that would likely be particularly impacted by the proceeding.

18. The Commission therefore finds that the total amount claimed by the Manitoba Coalition was necessarily and reasonably incurred and should generally be allowed.
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 Manitoba Coalition's submissions as they relate to the allocation of costs between telecommunications and broadcasting matters. Accordingly, the Commission determines that the Manitoba Coalition's total costs claim (\$13,611.00) should be reduced by 42% (\$5,716.62) to account for the work undertaken in the proceeding that was related to broadcasting matters. Therefore, the Manitoba Coalition would be entitled to \$7,894.38. As noted in Commission staff's letter, it would be open to the applicant to seek funding from the Broadcasting Participation Fund with respect to the remainder of its claim.
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 Manitoba Coalition'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.
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).⁴ 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:⁵

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.

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.

Company	Proportion	Amount
RCCI	36.34%	\$2,868.63
TCI	36.12%	\$2,851.54
Bell Canada	27.54%	\$2,174.21

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).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, 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

27. The Commission **approves** the application by the Manitoba Coalition 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 Manitoba Coalition at \$7,894.38.
29. The Commission **directs** that the award of costs be paid forthwith by RCCI, TCI, and Bell Canada to the Manitoba Branch of the Consumers' Association of Canada for the Manitoba Coalition 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

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

- *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*