



Telecom Order CRTC 2023-57

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Determination of costs award with respect to the participation of the Deaf Wireless Canada Consultative Committee in the proceeding initiated by Telecom Notice of Consultation 2020-178

Application

1. By letter dated 8 April 2022, the Deaf Wireless Canada Consultative Committee (DWCC) applied for costs with respect to its participation in the proceeding initiated by Telecom Notice of Consultation 2020-178 (the proceeding). In the proceeding, the Commission examined a number of questions relating to the accessibility of mobile wireless services (wireless services). These included (i) how wireless service providers are complying with the Commission's existing regulatory framework and whether differences exist between primary and flanker brands in how they comply with that regulatory framework; (ii) whether the plans currently offered and promoted are sufficient to meet the needs of Canadians with various disabilities; and (iii) whether additional regulatory measures are required and, if so, the nature of measures required to ensure that Canadians with various disabilities have access to plans that meet their needs and enable them to participate more fully in Canada's digital economy.
2. Rogers Communications Canada Inc. (RCCI) and TELUS Communications Inc. (TCI) filed interventions, dated 18 April 2022, in response to the DWCC's application.
3. The DWCC 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 had assisted the Commission in developing a better understanding of the matters that were considered, and it had participated in a responsible way.
4. In particular, the DWCC submitted that it represents a particular group of Canadians with respect to a particular issue, specifically wireless accessibility for Deaf, deaf-blind and hard of hearing (DDBHH) Canadians. The DWCC also submitted that it filed two comprehensive research reports, based on surveys of DDBHH Canadians that it conducted. Furthermore, the DWCC indicated that the outcome of the proceeding would impact DDBHH Canadians, and that their distinct points of view were therefore valuable.

5. The DWCC requested that the Commission fix its costs at \$176,432.10, consisting of \$141,412.00 for three senior consultants at a rate of \$225 per hour and four junior consultants at a rate of \$110 per hour, \$7,260.00 for one junior analyst at a rate of \$110 per hour, and \$27,760.10 in disbursements.
6. With respect to its surveys, two of the DWCC's senior consultants and their junior analyst conducted all of the consulting and analyst work claimed for the surveys and associated reports. Specifically, for one of its consultants, the DWCC claimed \$103,050.00 at the senior consultant rate of \$225 per hour, of which \$63,000.00 related to the above-noted surveys. For another of its consultants, the DWCC claimed \$22,725.00 at the senior consultant rate of \$225 per hour, of which \$15,975.00 related to the surveys. For its analyst fees, the DWCC claimed \$7,260.00 at the junior analyst rate of \$110 per hour, all of which related to the surveys. In total, \$86,235.00 of the fees claimed by the DWCC related to these surveys.
7. The DWCC submitted that the telecommunications service providers, especially those that provide wireless services and that participated in the proceeding, are the appropriate parties to be required to pay any costs awarded by the Commission based on their telecommunications operating revenues (TORs).

Answer

8. RCCI and TCI both requested that any costs awarded in this proceeding be allocated on the basis of wireless service revenues.
9. With respect to the DWCC's application, TCI submitted that the majority of work completed by the DWCC was performed by senior consultants. TCI submitted that much of the work conducted by senior consultants should have been delegated to junior or intermediate consultants as a means to control the DWCC's costs.
10. TCI submitted that the Commission set out, in Telecom Regulatory Policy 2010-963 (the Guidelines), that "costs applicants should rely on articling students or junior counsel to the greatest extent possible to avoid incurring excessive costs." In TCI's view, this principle, which ensures that costs are controlled and comply with subsection 70(2) of the Rules of procedure, should apply equally to the use of intermediate and junior consultants.
11. TCI requested that the Commission consider whether the DWCC's reliance on senior consultant resources and the extent of its incurred disbursements comply with the Rules of procedure, including subsection 70(2), which requires that costs shall not exceed those necessarily and reasonably incurred.

Reply

12. On 29 April 2022, the DWCC filed a procedural request asking the Commission to extend the deadline to file a reply. On 9 May 2022, the Commission's staff granted the request for an extension. On 18 May 2022, the DWCC filed an additional procedural letter to request that the Commission order the production of additional

information from parties. Canadian Association of the Deaf-Association des Sourds du Canada (CAD-ASC), the Canada Deaf Grassroots Movement, and the Deaf and Hard of Hearing Coalition opposed the DWCC's procedural request. On 26 May 2022, the DWCC withdrew their request for additional information. The DWCC filed their reply on 1 June 2022.

13. The DWCC submitted that recruiting and retaining consultants and analysts who can communicate and produce high quality work in the primary languages of ASL and LSQ has been challenging.
14. As a result, the DWCC argued that much of the work was accomplished by senior consultants due to the fact that there were no junior consultants available before and during the intervention phase of the proceeding. New consultants were hired after the intervention phase, and required training and instructions. Once new consultants were trained, senior consultants delegated many tasks to them, as can be seen in the time sheets filed by the DWCC.

Commission's analysis

Eligibility

15. 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.
16. 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. The DWCC's members are Deaf, hard-of-hearing, and deaf-blind community members across Canada. Through the DWCC's interaction with this community, and its internal expertise and experience as a result of its previous participation in Commission proceedings, the DWCC ensured that this community was represented in the positions it advanced in the proceeding. Accordingly, the DWCC has demonstrated that it meets the first criterion.

17. The DWCC has also satisfied the remaining criteria through its participation in the proceeding. It collaborated with joint interveners to present a distinct perspective.¹ Specifically, the DWCC highlighted concerns about how easily accessibility plans can be found as well as with the actual process of subscribing to them, which assisted the Commission in understanding the issues in the proceeding. Accordingly, the Commission finds that the applicant meets the criteria for an award of costs under section 68 of the Rules of Procedure.

Rates and amounts

18. The Guidelines outline the considerations that the Commission will generally take into account for evaluating whether the time expended by a applicant is excessive under the circumstances. Those factors include

- The extent of the applicant’s participation, the degree of complexity of the issues to which that participation related, and the amount of documentation involved in the proceeding;
- The degree of responsibility assumed by the applicant;
- The duplication of substantive submissions among applicants; and
- The experience and expertise of the applicant.

19. Most of the time claimed by the DWCC’s senior consultants related to the surveys and associated reports. Regarding the extent of those costs, it is generally open to the DWCC, and other parties, to choose the manner in which they (i) demonstrate that they represent a group or class of subscribers that has an interest in a proceeding; and (ii) wish to make submissions to assist the Commission in developing a better understanding of the matters under consideration.

20. In Telecom Orders 2018-437, 2018-438, and 2021-144, and Telecom Decision 2018-439, the Commission indicated that surveys will not always be necessary for an applicant to demonstrate that it represents a group or class of subscribers. The Commission also stated that when determining whether specific survey costs have been reasonably and necessarily incurred, it may take into account the scope of the survey and the proceeding in question, the value of the survey, and any accessibility considerations, among other factors.

21. The proceeding concerned the DWCC’s core area of advocacy, namely the accessibility of wireless services. In the proceeding, the Commission examined a broad and complex range of issues related to this. In this case, given that the proceeding concerned issues of such central importance to the DWCC and the group it represents, the lived experiences of these Canadians were highly relevant to these

¹ The DWCC collaborated with the CAD-ASC and the Canadian National Society of the Deaf-Blind, Inc.

issues, and it was reasonable, in the circumstances, for the DWCC to take the steps it did to place these perspectives on the record.

22. In this case, the DWCC conducted two surveys in four languages (English, ASL, French, and LSQ), to ensure accessibility and filed associated reports on the public record. Specifically, *Unlocking the Mystery Shopping Experiences of Deaf, Deaf-Blind and Hard of Hearing Canadians in Wireless Service Retail Stores* reported on the experiences of 30 secret shoppers across 100 store visits. The research report *A Stark Reality: Wireless Accessibility Issues and Challenges for Deaf, Deaf-Blind, and Hard of Hearing Canadians* exposed the findings of the DWCC through 76 survey questions asked to 606 DDBHH participants. The surveys and associated reports filed by the DWCC were within the scope of the proceeding and offered interesting and relevant qualitative insights into the needs and usage patterns of DDBHH Canadians. The Commission acknowledges the amount of time and resources required to conduct accessible surveys, and their value in reflecting the perspectives of persons with disabilities.
23. The DWCC explained that this proceeding was the most extensive effort expended by their organization in participating in a Commission proceeding to date. The DWCC submitted 42 documents throughout the proceeding, representing hundreds of pages of evidence and argument. The DWCC was an important intervener in the proceeding and made valuable and extensive contributions to the record, including in their surveys and reports.
24. The DWCC participated jointly with the CAD-ASC and the Canadian National Society of the Deaf-Blind, Inc. and presented their views within the same substantive submissions, which avoided duplication. The DWCC was the leading organization within its partners, having the most significant responsibility and contributing the most hours. Further, as an advocacy group focusing on wireless accessibility issues, the DWCC assumed a high degree of responsibility in their participation to the proceeding.
25. The DWCC is an experienced organization having participated in multiple Commission proceedings to represent the interests of DDBHH Canadians. The DWCC's leading consultant has over 14 years of experience and has participated in 16 proceedings and written 10 survey analysis reports. The DWCC has significant expertise in the issues examined in the proceeding, and engaged with the DDBHH community to further gather feedback and perspectives from Canadians with lived experiences of the matters considered.
26. The Commission notes that the DWCC relied heavily on senior resources to conduct the surveys and associated reports. While it is incumbent upon applicants to rely on junior resources to the greatest extent possible to avoid incurring excessive costs, in this case, the Commission finds reasonable the DWCC's explanations regarding the challenges of identifying and retaining qualified junior consultants on accessibility-related issues.

27. Accordingly, the Commission finds that the rates claimed with respect to consultant and analyst fees, as well as disbursements, are in accordance with the rates established in the Guidelines. In particular, the Commission finds that the DWCC demonstrated that the disbursements represented out-of-pocket expenses that were necessary and reasonably incurred to represent the perspectives of DDBHH Canadians.
28. 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 proceedings. The DWCC offered three smartphones as prizes to encourage participation in one survey and offered an honorarium of \$150 to participants in the other survey. The Commission considers that, in the circumstances, this helped ensure meaningful participation of individuals that would likely be particularly impacted by the proceeding.
29. In light of the above, the Commission finds that the total amount claimed by the DWCC was necessarily and reasonably incurred and should be allowed. The Commission fixes the DWCC's total costs for its participation in the proceeding at \$176,432.10.
30. 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.
31. 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 proceedings and participated actively in the proceedings:
Bell Mobility Inc. (Bell Mobility); Brooke Telecom Co-operative Ltd.;
Bruce Telecom Ontario Inc.; Bragg Communications Incorporated, carrying on business as Eastlink; Execulink Telecom Inc.; Freedom Mobile Inc. (Freedom Mobile); Hay Communications Co-operative Limited; Huron Telecommunications Co-operative Limited; Ice Wireless Inc.; Mornington Communications Co-operative Limited; Petro Canada Mobility; Quadro Communications Co-operative Inc.; RCCI; Saskatchewan Telecommunications (SaskTel); Sogetel Mobilité inc.; TBayTel; TCI; Tuckersmith Communications Co-operative Limited; Videotron Ltd. (Videotron); Wightman Communications Ltd; and Xplore Mobile Inc.
32. It is also the Commission's general practice to allocate the responsibility for the 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.
33. However, allocating responsibility for the payment of costs based on TORs would not be appropriate in this case given that the proceedings related solely to wireless services. The Guidelines set out the key principles that the Commission seeks to implement through its costs regime. These include ensuring that the process has the flexibility to take into account particular circumstances where they are relevant and

that the approach taken is fair, efficient, and effective. Accordingly, given that the focus of the proceedings was restricted to the wireless service industry, wireless service providers, and consumers of wireless services, it would be appropriate to allocate costs among the costs respondents based on wireless revenue market share. These shares are publicly available, compiled as part of the Commission’s annual *Communications Monitoring Report*, and represent an appropriate indicator of the relative size and interest of the costs respondents in the circumstances.²

34. 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.
35. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated as follows:

Company	Proportion	Amount
RCCI	31.0%	\$54,693.95
Bell Mobility	30.6%	\$53,988.22
TCI	28.7%	\$50,636.01
Freedom Mobile	4.2%	\$7,410.15
Videotron	3.3%	\$5,822.26
SaskTel	2.2%	\$3,881.51

Directions regarding costs

36. The Commission **approves** the application by the DWCC for costs with respect to its participation in the proceeding.
37. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to the DWCC at \$176,432.10.

² In this order, the Commission has used the wireless revenue market share data of the cost respondents based on the 2020 [Communications Monitoring Report](#) and the underlying data supporting that report (under Data – Retail Mobile [Application] on [Open Data](#), see Tab MB-S1 of Supplementary Table 1 – Retail Mobile revenue and subscriber market share by service provider, 2013-2020), which were the most current figures available at the time the application was filed.

38. The Commission **directs** that the award of costs to the DWCC be paid forthwith by RCCI, Bell Mobility, TCI, Freedom Mobile, Videotron, and SaskTel according to the proportions set out in paragraph 35.

Secretary General

Related documents

- *Determination of costs award with respect to the participation of the Manitoba Coalition in the proceeding that led to Telecom Regulatory Policy 2021-130, Telecom Order CRTC 2021-144, 30 April 2021*
- *Call for comments – Accessibility – Mobile wireless service plans that meet the needs of Canadians with various disabilities, Telecom Notice of Consultation CRTC 2020-178, 1 June 2020; as amended by Telecom Notices of Consultation CRTC 2020-178-1, 26 August 2020; 2020-178-2, 29 September 2020; 2020-178-3, 23 March 2021; 2020-178-4, 21 May 2021; and 2020-178-5, 29 June 2021*
- *Deaf Wireless Canada Consultative Committee – Application to review and vary Telecom Order 2018-66, Telecom Decision CRTC 2018-439, 28 November 2018*
- *Determination of costs award with respect to the participation of the Canadian National Society of the Deaf-Blind, Inc. in the Telecom Notice of Consultation 2017-33 proceeding, Telecom Order CRTC 2018-438, 28 November 2018*
- *Determination of costs award with respect to the participation of the Deaf Wireless Canada Consultative Committee in the Telecom Notice of Consultation 2017-33 proceeding, Telecom Order CRTC 2018-437, 28 November 2018*
- *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