



Telecom Order CRTC 2016-185

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Ottawa, 16 May 2016

File numbers: 8662-D53-201510371 and 4762-179

Determination of costs award with respect to the participation of the DiversityCanada Foundation and the National Pensioners Federation in the proceeding initiated by their application to review and vary Telecom Order 2015-240

Application

1. By letter dated 11 January 2016, the DiversityCanada Foundation (DiversityCanada), on its own behalf and on behalf of the National Pensioners Federation (NPF) [collectively, DiversityCanada/NPF or the applicants], applied for costs for their participation in the proceeding initiated by their application to review and vary Telecom Order 2015-240 (the proceeding).¹
2. On 21 January 2016, TELUS Communications Company (TCC) filed an intervention in response to DiversityCanada/NPF's application for costs. DiversityCanada/NPF filed a reply on 1 February 2016.
3. DiversityCanada/NPF submitted that they 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 they represented a group or class of subscribers that had an interest in the outcome of the proceeding, they had assisted the Commission in developing a better understanding of the matters that were considered, and they had participated in a responsible way.
4. In particular, DiversityCanada/NPF submitted that they work to protect and promote the interests of disadvantaged and vulnerable groups by providing research and legal services to telecommunications subscribers. DiversityCanada/NPF also argued that their submissions in the proceeding, namely their analyses of the reasonableness of the Commission's determinations in Telecom Order 2015-240, were helpful to the Commission and allowed it to understand a consumer perspective on the issues in the proceeding. The applicants also argued that their submissions in the proceeding provided a valuable counterbalance to TCC's positions, further enabling the Commission to better understand the matters that were considered.

¹ By letter dated 5 November 2015, DiversityCanada/NPF requested an extension of the deadline to file their costs application. They submitted that the circumstances and considerations of fairness made it appropriate to allow the extension and that no party would be prejudiced.

5. DiversityCanada/NPF requested that the Commission fix their costs at \$21,566.05, consisting of \$3,616.00 for external legal fees, and \$17,950.05 for external consultant fees. DiversityCanada/NPF's claim included the Ontario Harmonized Sales Tax on their fees. DiversityCanada/NPF filed a bill of costs with their application.
6. DiversityCanada/NPF claimed 12.8 hours at a rate of \$250 per hour for external legal fees, and 70.6 hours at a rate of \$225 per hour for external consultant fees.
7. DiversityCanada/NPF submitted that TCC should be the named costs respondent because it was the sole telecommunications service provider that participated in the proceeding.

Answer

8. In response to the application, TCC submitted that the applicants failed the test for an awards of costs, outlining the ineligibility of DiversityCanada/NPF under each criterion of section 68 of the Rules of Procedure.
9. In particular, TCC argued that DiversityCanada/NPF did not represent a group or class of subscribers by wasting their constituents' resources on repeated arguments similar to their previous applications. According to TCC, DiversityCanada/NPF did not assist the Commission in developing a better understanding of the matters considered, given that the applicants continued to raise substantially the same issues on multiple occasions that had been dismissed each time by the Commission. TCC argued that this led to the applicants acting in an irresponsible way.
10. TCC argued that an award of costs in response to this application would bring the Commission's costs procedure into disrepute, as it would encourage frivolous and meritless participation in future proceedings. TCC submitted that this would jeopardize those parties who are worthy of costs.
11. TCC submitted that DiversityCanada/NPF's application for costs should be denied. In the alternative, TCC argued that if the Commission determines that the applicants meet the criteria for an award of costs, the Commission should award a total amount of \$500, representing two hours of external legal fees. TCC submitted that this quantum of costs is reflective of the repetitive nature of DiversityCanada/NPF's costs application with other applications they have brought before the Commission.

Reply

12. In reply, DiversityCanada/NPF denied all of TCC's submissions and reiterated that they had met the test for an award of costs under section 68 of the Rules of Procedure.

Commission's analysis and determinations

13. The Commission considers that DiversityCanada/NPF's late filing did not prejudice any party and notes that TCC was able to file an answer to the application. In the circumstances, it is appropriate to consider the costs application.
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. For the reasons that follow, the Commission finds that DiversityCanada/NPF have not satisfied these criteria through their participation in the proceeding. Specifically, DiversityCanada/NPF's participation in the proceeding they initiated to review and vary Telecom Order 2015-240 did not assist the Commission in developing a better understanding of the matters that were considered.
16. The Commission finds that the applicants have not raised a genuine issue for the Commission's determination. The application to review and vary Telecom Order 2015-240 was overly repetitive, both internally and with respect to previous applications filed by DiversityCanada/NPF. For example, the applicants argued that the Commission conflates the dismissal of arguments in a substantive proceeding with failure to contribute to a better understanding of the issues under consideration, and that there is still a question as to whether prepaid wireless accounts should be treated like cash deposits. In fact, the Commission has made multiple determinations inconsistent with these positions.²
17. DiversityCanada/NPF's submissions in the proceeding were wholly without merit. The Commission recognizes that submissions with which it does not agree may still be eligible for costs. In this case, though, the submissions were bereft of any value to the Commission in its decision making. For instance, these submissions contained both bald assertions, made without providing evidentiary support, and irrelevant authorities, ostensibly cited in support of untenable positions.

² For example, in Telecom Decision 2014-101, Telecom Order 2014-220, Telecom Decision 2015-131, Telecom Order 2015-132, Telecom Decision 2015-211, and Telecom Order 2015-240.

18. The Commission has remarked in previous decisions that it appears as though DiversityCanada/NPF fundamentally misunderstands the relevant regulatory framework. The review and vary application contributed to this appearance. The Commission considers it especially illustrative that DiversityCanada/NPF's review and vary application relied, in part, on the fact that they had filed a petition to the Governor in Council dated 2 June 2014, seemingly without realizing that this petition had already been rejected.³
19. The above examples are broadly representative of the applicants' failures in respect of raising a genuine issue for the Commission's determination and contributing to a better understanding of the issues.
20. Given that the test for an award of costs is cumulative and therefore requires DiversityCanada/NPF to satisfy all three eligibility criteria set out in section 68 of the Rules of Procedure, it is not strictly necessary for the Commission to determine whether DiversityCanada/NPF participated in a responsible way or represented a group or class of subscribers that had an interest in the outcome of the proceeding.
21. Nonetheless, the Commission has made multiple previous determinations with respect to its prepaid wireless balance policies in response to applications filed by DiversityCanada/NPF. The applicants have continually attempted to question the appropriateness of these policies while misunderstanding the relevant regulatory framework. As such, the Commission considers that the applicants' attempt to bring this issue before the Commission yet again, without providing new arguments or evidence of substance, constitutes irresponsible participation in the proceeding.

Directions regarding costs

22. The Commission **denies** the application by DiversityCanada/NPF for costs with respect to their participation in the proceeding.
23. While the present application was received before the institution of the new procedure announced by the Commission in Telecom Decision 2016-183, the Commission reminds DiversityCanada/NPF that it intends to summarily return any subsequent applications it receives ultimately relating to the appropriateness of the Commission's prepaid wireless balance policies.

Secretary General

Related documents

- *The DiversityCanada Foundation and the National Pensioners Federation – Application to review and vary Telecom Order 2015-240 with respect to costs for their participation in the proceeding leading to Telecom Decision 2015-211, Telecom Decision CRTC 2016-183, 13 May 2016*

³ See Order in Council P.C. 2015-0248, dated 26 February 2015.

- *Determination of costs award with respect to the participation of the DiversityCanada Foundation in the proceeding regarding TELUS Communications Company's Large Prepaid Balance Policy, Telecom Order CRTC 2015-240, 4 June 2015*
- *The DiversityCanada Foundation and the National Pensioners Federation – Application seeking relief for wireless customers affected by TELUS Communications Company's Large Prepaid Balance Policy, Telecom Decision CRTC 2015-211, 21 May 2015*
- *Determination of costs award with respect to the participation of the DiversityCanada Foundation in the proceeding leading to Telecom Decision 2015-131, Telecom Order CRTC 2015-132, 9 April 2015*
- *DiversityCanada Foundation – Application to review and vary Telecom Order 2014-220, Telecom Decision CRTC 2015-131, 9 April 2015*
- *Wireless Code – Request by DiversityCanada Foundation to review and vary Telecom Regulatory Policy 2013-271 regarding expiry of prepaid wireless service cards, Telecom Decision CRTC 2014-101, 5 March 2014*
- *Determination of costs award with respect to the participation of the DiversityCanada Foundation in the proceeding initiated by the Foundation's application to review and vary Telecom Regulatory Policy 2013-271, Telecom Order CRTC 2014-220, 8 May 2014*