



22 June 2018

Filed online

Mr. Claude Doucet
Secretary General
CRTC
Ottawa, ON K1A 0N2

Dear Secretary General,

Re: 8662-D78-201803461 - Application to Review and Vary Telecom Order 2018-66 by Deaf Wireless Canada Consultative Committee (DWCC)

- 1 The Forum for Research and Policy in Communications (FRPC) is a non-profit and non-partisan organization established to undertake research and policy analysis about communications, including telecommunications. We are writing in support of the application by the Deaf Wireless Canada Consultative Committee (DWCC) asking the CRTC to review and vary *Determination of costs award with respect to the participation of the Deaf Wireless Canada Committee in the proceeding that led to Telecom Regulatory Policy 2017-182*, Telecom Order CRTC 2018-66 (Ottawa, 16 February 2018) (Order 2018-66).

Telecom Information Bulletin CRTC 2016-188

- 2 In 2016 the CRTC advised parties planning to apply for costs in telecommunications proceedings that they

...should ... explain the specific method or methods by which the costs applicant represents the group or class of subscribers. In other words, a costs applicant should describe how it determined that the positions it put forward in the substantive proceeding for which costs are being claimed reflected the interests of the group or class of subscribers it claims to represent.¹

- 3 The CRTC then explained that,

If an applicant for interim or final costs does not provide sufficient explanation of the group or class of subscribers it represents, and of how the interests of this group or class of subscribers will be or were represented, the Commission

¹ *Guidance for costs award applicants regarding representation of a group or a class of subscribers*, Telecom Information Bulletin CRTC 2016-188, (Ottawa, 17 May 2016), <https://crtc.gc.ca/eng/archive/2016/2016-188.htm>, at ¶14.

may not be able to conclude that the criterion set out in paragraph 63(a) or 68(a), respectively, of the Rules of Procedure, has been satisfied.²

- 4 The Forum notes that section 63(a) of the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* addresses interim costs,³ while section 68(a) addresses ‘final’ costs, the costs for which (as we understand, DWCC applied in March 2016):

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;

....

Telecom Order CRTC 2018-66

- 5 DWCC applied for \$73,629.99 in costs for the 2017-182 proceeding (Next-Generation 911) on 2 March 2016, which included the costs of a survey. Order 2018-66 denied “half the DWCC’s costs associated with”⁴ a survey undertaken by DWCC, and granted DWCC \$45,105.52 in costs – leaving \$28,524.47, presumably, for DWCC to pay on its own behalf.
- 6 In denying one-half of DWCC’ survey costs, Order 2018-66 did not refer to the degree to which DWCC was representative of a group or class of subscribers with an interest in the Next-Generation 911 proceeding, but to the reasonableness of DWCC’ costs, and the comparability of its costs with those of other interveners. In fact, the CRTC said that DWCC had assisted the Commission “in developing a better understanding of the matters that were considered through its valuable and unique perspective on how the issues under consideration could affect Deaf, hard-of-hearing, and deaf-blind Canadians who require accessible telecommunications services.”⁵
- 7 Despite the ‘better understanding’ – based in part on DWCC’ survey results – the CRTC then said that while it “appreciates the use of the survey to gather and report on the views of Deaf, hard-of-hearing and deaf-blind communities”,

... care must be taken to ensure that the amount claimed for such activity is proportionate to what is reasonable in the circumstances. In the present case, the costs claimed by the DWCC solely for developing and conducting the

² *Ibid.*, ¶17.

³ “63 The Commission must determine whether to award interim costs and the amount that is to be awarded on the basis of the following criteria:

(a) whether the applicant has, or is the representative of a group or a class of subscribers that has, an interest in the outcome of the proceeding;

....”

⁴ Telecom Order CRTC 2018-66, at ¶19.

⁵ *Ibid.*, at ¶17.

survey and producing an associated report were greater than the total costs claimed by any other costs applicant in the proceeding. While the survey and the associated report did assist the Commission in developing a better understanding of the matters that were considered, the level of assistance provided to the Commission is not proportionate to the amount of time and costs spent by the DWCC. ...⁶

- 8 It is unclear what, exactly, led the CRTC to determine that DWCC' costs were disproportionate. Order 2018-66 does not say, for instance, that DWCC' survey could have been undertaken on a more economical basis – and in any event, the Forum (having undertaken surveys of its own) is aware that the costs of conducting survey research in DDBHH communities are necessarily and significantly different than those of surveys conducted in hearing communities. An article in the December 2011 *American Journal of Public Health* described some of the steps required to undertake a health survey that was accessible to those relying on American Sign Language, which included: collaborative work between researchers and the Deaf community; adaptation of existing survey questions; translation; back translation; in-depth interviews, and recruitment via posters, e-mail and community events. The article describes the survey method for a Deaf survey as follows:

METHODS

Deaf and hearing researchers and community members worked collaboratively to develop a linguistically and culturally appropriate survey based on the Behavioral Risk Factor Surveillance System (BRFSS). We worked with community members to prioritize health survey topics and developed items to measure important deaf-related demographic information (e.g., age at onset of deafness). We adapted existing English-language survey items through a process that included translation, back-translation, and in-depth individual cognitive interviews. A computer interface was used to present survey items in sign language (via video) and written English on a touch-screen kiosk. ...

We recruited deaf individuals through deaf community organizations, via e-mail and posters, and face-to-face during community events; 339 deaf adults from the Rochester metropolitan statistical area completed the survey over a period of 6 months in 2008. Results were compared with BRFSS data collected via random-digit dialing in the Rochester community in 2006.⁹ We used SAS version 9.2 survey procedures to adjust for possible biases introduced by telephone survey methodology. The Rochester deaf community contributed to interpretation of the survey findings and identified health inequities in need of future research and intervention.⁷

- 9 The CRTC's introduction of 'proportionality' as a criterion for evaluating the costs of DWCC' survey is therefore confusing, as it suggests that surveys of Canadian DDBHH communities should be no different than surveys of Canadian Hearing communities.

⁶ Telecom Order CRTC 2018-66, at ¶19 (bold font added).

⁷ Steven Barnett, MD *et al.*, "Community Participatory Research With Deaf Sign Language Users to Identify Health Inequities" *Am J Public Health* 101(12) (December 2011) 2235-2238, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3222424/>.

- 10 While the Forum appreciates the existence of a costs-application process in the telecommunications sector which permits public-interest organizations such as DWCC (and the Forum) to participate in its proceedings to ensure that the CRTC's public record is complete, we respectfully submit that the reasons provided by the CRTC with respect to the 'proportionality' of DWCC' costs application are not based in fact, and as a result, DWCC' application to Review and Vary Telecom Order 2018-66 should be granted.

No rationale provided for ignoring costs requirements set out in Bulletin 2016-188

- 11 In denying half of DWCC' survey costs because the CRTC concluded that these costs were not "proportionate to what is reasonable in the circumstances", Telecom Order 2018-66 appears to ignore the requirements set out by the CRTC in Telecom Information Bulletin 2016-188. These establish that interveners such as DWCC must submit evidence to show that they are representative of a group or class of subscribers in a given telecommunications proceeding.
- 12 DWCC' survey provided the CRTC not just with evidence about matters in the Next-Generation 911 proceeding, but with the evidence demonstrating DWCC' representativeness of the DDBHH as a group of subscribers with an interest in the proceeding. In denying DWCC a significant amount (half, or \$28,524.47) of its survey costs Telecom Order 2018-66 conflicts with the guidance provided by Telecom Information Bulletin 2016-188, that parties are to provide the Commission with evidence that they are representative of a group or class of subscribers in a telecommunications proceeding.
- 13 While Information Bulletins do not have the same standing as CRTC regulations, the Forum respectfully submits that the CRTC's costs orders should reflect the requirements of the Information Bulletins that costs applicants follow, rather than contradicting or conflict with them.

No clear evidentiary basis for CRTC's conclusion about reasonable proportionality

- 14 Telecom Order CRTC 2018-66 is also flawed due to missing evidence, as it is based in part on the CRTC's position that DWCC' costs "were greater than the total costs claimed by any other costs applicant in the proceeding".
- 15 While it is true that DWCC' costs were higher than those of any other costs applicant in this proceeding, DWCC was also the only one of the 57 interveners in the Next-Generation 911 proceeding⁸ to provide a survey at all. In fact, while Intervener 37 (Media Access Canada) mentioned results from a survey conducted in the United States,⁹ DDBHH was the only party to undertake and provide a contemporary survey of

⁸ *Establishment of a regulatory framework for next-generation 9-1-1 in Canada*, Telecom Notice of Consultation CRTC 2016-116 (Ottawa, 29 March 2016), <https://services.crtc.gc.ca/pub/instances-proceedings/Default-Default.aspx?lang=eng&YA=2016&S=C&PA=t&PT=nc&PST=a#2016-116>.

⁹ At ¶16: "As text messaging has become main stream more people prefer sending text

DDBHH telecommunications users in Canada with specific relevance for the CRTC's Next-Generation 911 proceeding.

- 16 Indeed, only 10% [six] of 57 interveners in the proceeding even referred to any of the DDBHH communities in their interventions:¹⁰ Rogers,¹¹ Bell,¹² E-Comm 9-1-1,¹³ Telus,¹⁴ Ontario (Intervention 55)¹⁵ and Ontario (Intervention 57).¹⁶

messages to making a phone calls. While equivalent data does not exist in Canada, Canadian often have similar preference to American. A study in the United States shows that one third of people prefer sending a text message to making a phone call.”

¹⁰ Communication Interoperability Technology Interest Group (CITIG) et al, made presentation at hearing, but did not submit written intervention.

¹¹ At ¶15: “Being actively involved at the industry level, Rogers has worked closely with the CISC ESWG to develop and implement a text with 9-1-1 solution (T9-1-1) for the deaf, hard of hearing and speech impaired community.”

¹² At p. 7 of 31: “...Furthermore, methods of communication that are to be supported by NG9-1-1 should consider the specific needs of the deaf, the hard of hearing and the speech impaired to ensure that they too will benefit from NG9-1-1 and continue to be accommodated throughout and after the transition.”

¹³ At ¶13: “a) Text or SMS: Text with 9-1-1 is currently available for the Deaf, Hard of Hearing and Speech Impaired (“DHHSI”) community in Canada. However, this contact capability might eventually be available to the general population by way of a text call directly to the PSAP for those rare circumstances where a voice call is not at all possible.”

At ¶14: “b) Multimedia channels (i.e. Skype, MSN Messenger, perhaps Facebook, Instagram and other forms of social media), real-time and one-way video calling features are already currently available but are not currently accessible by PSAPs. The ability to see the caller (without the caller having/being able to see the PSAP operator) as well as video relay for the DHHSI community, will become the future equivalent of today’s “basic telecommunications service obligation.” Protocols and system improvements will be required to enable PSAPs to receive, triage and respond to these calls for emergency services.”

At p. 5: “Multimedia channels (i.e. Skype, MSN Messenger, perhaps Facebook, Instagram and other forms of social media), real-time and one-way video calling features are already currently available but are not currently accessible by PSAPs. The ability to see the caller (without the caller having/being able to see the PSAP operator) as well as video relay for the DHHSI community, will become the future equivalent of today’s “basic telecommunications service obligation.”

¹⁴ At ¶23: “23. In Canada, since the Commission-mandated text-with-9-1-1 services, deaf, hard of hearing and speech-impaired customers have the ability to communicate with PSAPs via text messaging after connecting originally via a voice call placed to 9-1-1. This means that these customers, who might have difficulty conducting a two-way voice communication, have the reliability of the voice call and the 9-1-1 network to provide ALI and ANI to the PSAP, but also can communicate with the PSAP via text. This combines the text messaging service for customers who cannot communicate via voice with the reliability of the existing 9-1-1 network.”

At ¶90: “...In that timeframe, incredible advancements have been made to these networks including, creation of the enhanced 9-1-1 (“E9-1-1”) service automated PSAP routing with ALI and ANI delivery to the PSAP, inclusion in wireline call data, Phase 1 and Phase 2 E9-1-1 wireless location data, In Call Location Update (“ICLU”) for wireless callers, Text-with-9-1-1 for deaf and hard of hearing customers and various updates to each of these services. ...”

- ¹⁵ P. 4: “As per the CRTC requirement for telecommunications providers to transition from analog to digital as a precursor to introducing mandatory text-with-9-1-1 services for

- 17 The absence of any other survey of Canada’s DDBHH communities in Next-Generation 911 proceeding makes it difficult to know and understand how the CRTC formed conclusions about ‘the proportionality of the costs that were reasonable in the circumstances’, as proportionality necessarily implies some kind of comparison. Since the only source of contemporary empirical evidence about the views of Canada’s DDBHH telecommunications users was the survey submitted by DWCC, no comparison to establish costs proportionality about survey research of DDBHH exists other than DWCC’ survey. Comparing DWCC’ costs to those of the other applicants would therefore be like comparing an apple with no apple: as none of the other costs applicants in the proceeding undertook a survey, their costs would necessarily be quite different from those of a party that did undertake a survey – DWCC.
- 18 Given the absence of a similar cost (or of any other survey) by any other applicant in the Next-Generation 911 proceeding, and the consequent absence of evidence for proportionality, the Forum respectfully submits that DWCC’ Review and Vary application should be granted.

CRTC’s imposition of \$28,524.47 in costs on DWCC raises troubling concerns

- 19 Apart from the absence of clear evidentiary support for the CRTC’s conclusions in Telcom Order 2018-66, the Forum respectfully takes this opportunity to note that the Order raises another, troubling concern, having to do with the decision to impose more than \$28,000 in costs on a public-interest intervener advocating on behalf of greater accessibility in telecommunications for Canada’s DDBHH communities.

the deaf, hard of hearing or speech impaired community text with 911 (T911) is currently available throughout Ontario

- o In addition, all OPP PSAPs are now equipped to receive texts from registered deaf, hard of hearing or speech impaired individuals, and most other primary PSAPs in Ontario have already converted from analog to digital technology.”

P. 5: “o The province continues to be focused on ensuring 9-1-1 services are meeting the necessary expectations of direct and equal access to 9-1-1 services for people who are deaf, hard of hearing or speech impaired.”

¹⁶ P. 5: “The CRTC required telecommunications providers to transition from analog to digital technology by January 24, 2014, as a precursor to introducing mandatory text-with-9-1-1 services for the deaf, hard of hearing or speech impaired community. Bell completed its analog to digital transition at the end of 2015. All OPP PSAPs are now equipped to receive texts from registered deaf, hard of hearing or speech impaired individuals, and most other primary PSAPs in Ontario have already converted from analog to digital technology. According to the Canadian Wireless Telecommunications Association, approximately 500 communities in Ontario (both municipalities and First Nations) offer text-with-9-1-1 for the deaf, hard of hearing or speech impaired community who register for the service through their wireless service provider. Text-with-9-1-1 is not available to the broader public at this time.

“Leveraging the lessons from the recent roll out of Text with 9-1-1 for Canadians who are deaf, hard of hearing, speech impaired, or who have a communication disability, the province is focused on ensuring 9-1-1 services are meeting the necessary expectations of direct and equal access to 9-1-1 services for people with disabilities.”

20 To the best of our knowledge, the CRTC has undertaken little or no empirical survey research of its own of the telecommunications needs and wants of Canada’s DDBHH communities.¹⁷ It is then all the more puzzling that the CRTC would effectively penalize DWCC – whose survey provided the Commission with current empirical evidence which the CRTC said it ‘appreciated’¹⁸ – by imposing on it \$28,524.47 in costs for the same survey.

21 While it is true that the Commission has jurisdiction to grant, partially grant, or deny applicants’ costs applications, it must surely do so in a fair and equitable manner. After all, the *Canadian Human Rights Act*¹⁹ prohibits discriminatory practices in providing services (such as the service provided by the CRTC in reviewing costs applications):

Prohibited grounds of discrimination

3 (1) For all purposes of this Act, the prohibited grounds of discrimination are race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, disability and conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered.

...

5 It is a discriminatory practice in the provision of ... services ... customarily available to the general public

...

(b) to differentiate adversely in relation to any individual, on a prohibited ground of discrimination.

22 As noted above, no other party in the Next-Generation 911 proceeding submitted survey research, meaning in turn that the CRTC imposed \$28,524.47 in additional costs on the only party submitting empirical evidence on behalf of accessibility for Canada’s DDBHH communities. The Forum is concerned that denying DWCC’ Review and Vary application will leave the quite unintended perception that the CRTC is submitting DDBHH communities and their representative public-interest organizations to a different standard than that imposed on others. While the appearance of inequitable treatment in a federal tribunal’s costs-application process should not be determinative, the Forum respectfully submits that it at least warrants consideration, on the grounds that all government agencies bear a duty to ensure that their practices, decisions and orders do not just meet, but exceed, the requirements imposed by Canada’s human-rights legislation.

¹⁷ In the case of virtual relay services, the CRTC in 2013 relied on a study by Bell Canada, which “forecast the number of VRS users by applying American estimates as a proxy”, and a then 7-year old report from Statistics Canada: *Issues related to the feasibility of establishing a video relay service*, Telecom Notice of Consultation CRTC 2013-155 (Ottawa, 27 March 2013), <https://crtc.gc.ca/eng/archive/2013/2013-155.htm>, at Appendix B.

¹⁸ Telecom Order 2018-66, ¶19.

¹⁹ R.S.C., 1985, c. H-6.

- 23 For the reasons noted above, the Forum respectfully submits that the CRTC should grant DWCC' Review and Vary application and approve its requests for full payment of the survey research submitted to the Commission in the Next-Generation 911 proceeding.

Sincerely yours,



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