
COMMENTS

OF

TELUS COMMUNICATIONS COMPANY

DECEMBER 21, 2015
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Introduction

1. TELUS Communications Company (“TELUS”) is pleased to provide comments in relation to a Petition to the Governor in Council brought by the DiversityCanada Foundation and the National Pensioners Federation (collectively referred to as “the Petitioners”). The Petitioners ask the Governor in Council to vary the decisions (in “the Petition”) of the Canadian Radio-television and Telecommunications Commission (“CRTC” or “the Commission”) entitled Telecom Decision CRTC 2015-131 - DiversityCanada Foundation – Application to review and vary Telecom Order 2014-220 (“TD CRTC 2015-131”) and Telecom Order CRTC 2015-132 - Determination of costs award with respect to the participation of the DiversityCanada Foundation in the proceeding leading to Telecom Decision 2015-131 (“TO CRTC 2015-132”) (collectively “the Decisions”). The Petition by the Petitioners is filed pursuant to section 12 (1) of the Telecommunications Act¹ and was published in the Canada Gazette, on 21 November 2015 under the title Petition to His Excellency the Governor in Council concerning Telecom Decision CRTC 2015-131 and Telecom Order CRTC 2015-132 reference number DGTP-001-2015.

2. TELUS is a major provider of telecommunications services in Canada. In Alberta, British Columbia and Eastern Quebec TELUS offers wireline services (encompassing landline phone, broadband and television), and is a national provider of mobile wireless telecommunications services.

3. TELUS submits that the Governor in Council should reject the positions of the Petitioners in their entirety. Primarily, the Petitioners have argued that the CRTC was incorrect in the Decisions, however the statutory powers granted the CRTC allow it the discretion to decide those matters before it. When Parliament gave administrative powers to the CRTC, including the power to determine its own processes under the Telecommunications Act² (“the Act”), it did so with the intention of providing the Commission, as an administrative body, the discretion to determine the outcome of

¹ Telecommunications Act, RSC 1993, c 38, s 12 (1) [Telecommunications Act].
² Telecommunications Act, s 27 (1) and (2).
administrative proceedings considered under its constituting statutes. In costs proceedings, it is the trier of fact, in this case the Commission, that is best positioned to weigh the evidence before it and make determinations as to whether an individual party has raised facts and issues that pertinent to deliberations. The Commission uses a costs procedure that weighs a party’s participation in order to determine whether a party participated in a proceeding in a responsible way and contributed to the Commission’s understanding of the issues. As such, costs award decisions are fact-specific and, in general, provided decisions are made in a reasonable and procedurally fair manner, should withstand further scrutiny.

4. That the Petitioners do not like the outcome of the Commission’s Decisions should not upset the entirety of those administrative protections and clearly outlined processes as the Petitioners seem to wish. In the end, the Commission must be allowed to administer the Act, including decisions to order costs and to review and vary proceedings, in a manner it sees fit and consistent with its mandate as it is allowed to do by the powers granted to it by Parliament. Further, problems exist with the Petition itself as the Petitioners argue that decisions of the CRTC did not properly consider various tests and did not follow administrative processes both under the Act and the Commission’s own procedural requirements. In fact the Commission clearly followed both of these requirements in deciding proceedings against the Petitioners.

Overview of the Parties’ Petition

5. The Petition concerns two CRTC decisions:

- Telecom Order CRTC 2015-131 (a review & vary decision) - The CRTC’s decision on an application made by the Petitioners under Part 1 of the Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure\(^3\) (“CRTC Rules”) to review and vary (“R & V”) the Commission’s decision in Telecom Order CRTC 2014-220 – Determination of costs award with

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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. In Telecom Order CRTC 2014-220 the CRTC denied the costs requested by the Petitioners for their participation in another, earlier R & V proceeding.4

- Telecom Decision CRTC 2015-132 (a cost award decision) – The denial of a cost award to the Petitioners for their participation in the proceeding mentioned above, TO CRTC 2015-131.

In the CRTC proceedings at issue TELUS fully participated as an intervener, providing comments to the Commission.

6. Specifically, the Petitioners ask, at paragraph 215, that the Governor in Council issue an Order in Council to vary TD CRTC 2015-131 and TO CRTC 2015-132 so as to:

- Require that cost claims associated with the Petitioners’ participation in TD CRTC 2015-131 and TD CRTC 2015-132 are paid in full with interest; and

- The costs be apportioned as appropriate among the costs respondents including TELUS.5

7. The Petitioners ask the Governor in Council to make this order because of alleged errors made by the CRTC in the Decisions. These alleged errors include:

- In TO 2015-132, the CRTC erred in finding the Petitioners were not eligible for costs;

- In TO 2015-132, the CRTC erred in finding that the Petitioners did not offer a distinct point of view;

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5 The DiversityCanada Foundation and the National Pensioners Federation, Petition to the Governor in Council to Vary Telecom Decision CRTC 2015-131 and CRTC 2015-132, at para 215. [The Petition]
• In TO 2015-132, the CRTC inappropriately determined that the outside consultant’s fee should be reduced;

• In TD CRTC 2015-131, the CRTC misrepresented the determinations of the Supreme Court of Canada in their decisions;

• In TD 2015-131, the CRTC did not give appropriate weight to evidence;

• In TD 2015-131, the CRTC’s decision did not appropriately consider the eligibility of the Petitioners;

• In TD 2015-131, the CRTC unreasonably denied costs based on its determination of the merits of the Petitioners’ arguments; and

• In TD 2015-131, the CRTC erred in finding the Petitioners did not substantively contribute to the Commission’s deliberations.

The Petitioners allege that the administrative processes put in place by the Commission in both cost and R & V proceedings were not followed, and, thus, the Petitioners’ applications did not receive appropriate consideration by the Commission.

8. TELUS submits that the Governor in Council should reject the requests made by the Petitioners. TELUS finds substantial preliminary procedural, legal and policy grounds upon which to reject the arguments of the Petitioners. Despite the portrayal of the issues by the Petitioners, the CRTC is empowered to use its discretion in awarding costs, so that there is no basis upon which that the Petitioners may argue that the Commission erred in law or fact. The discretion afforded the CRTC necessarily means that its decisions are made independently, thus the premise of the Petitioners arguments are flawed and based upon erroneous interpretations.

9. Despite these preliminary concerns, in the comments that follow, TELUS addresses the Petitioners’ arguments made to the Governor in Council. TELUS asks that the Governor

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6 The Petition, at paras 6-16.
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in Council carefully consider and reject arguments dealing with the alleged administrative errors in the CRTC’s cost award in this instance.

Preliminary Matters: Certain Errors Made by the Petitioners

10. In their Petition, the Petitioners’ make a number of claims which are wrong and require further clarification. Namely, the Petitioners claim that: Telecom Decision CRTC 2014-101 is a live issue when it is not; and, second, the Petitioners portray the matter before the Governor in Council to be one associated with the correctness of costs decisions, when the matter more appropriately is the reasonableness of two CRTC decisions. While the former issue nullifies some of the arguments put forward by the Petitioners, the latter issue is of concern due to the positions taken by the Petitioners in support of their arguments.

11. In response to the first issue, in a previous Petition filed in 2 June 2014, the Petitioners sought Governor in Council review of Telecom Decision CDTC 2014-101. In response to this previous Petition, on 26 February 2015 the Privy Council Office released an Order in Council declining to vary or rescind portions of the Wireless Code dealing with prepaid wireless cards that were the subject of a Petition by the DiversityCanada Foundation and the National Pensioners Federation to the Governor in Council. Despite this, the Petitioners have referred to that previous Petition as a “live issue” in their current Petition.

12. Despite the portrayal of prepaid cards as a “live issue” by the Petitioners, the CRTC’s determinations from Decision 2014-101 are, in fact, final and all possible appeal avenues from that decision have now been either exhausted or are beyond the statutory time limits under the Act. Thus assertions by the Petitioners that the CRTC is being unreasonable in

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8 The Petition, para 161.
concluding that they raised invalid issues in their various R & V applications and this Petition, because a “live issue” for decision remains, this cannot be sustained when both the CRTC and the Governor in Council have determined that the applications did not raise valid arguments necessitating a change to the Wireless Code.\(^9\) The Governor in Council, also, has no authority to entertain this aspect, having already ruled on it.

13. Second, from a legal perspective, this current Petition deals with two different, but related, decisions: (1) CRTC 2015-131 deals with a R & V proceeding of a Commission order denying costs and (2) CRTC 2015-132 was a decision of the Commission where costs where denied. Therefore it is necessary to consider the separate CRTC procedures for R&V applications and the awarding costs as both of these procedures are at issue. Rules for these separate procedures are set out in various provisions of the *Telecommunications Act* and the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure*. The Petitioners at times appear to confuse the standards and rules associated with each of these proceedings leading to misleading interpretations of the applicable assessment standards of the CRTC. TELUS believes it is important to apply the appropriate set of rules to each of these in order to understand the decisions of the Commission.

14. For the above reasons, TELUS submits that the Petitioners request can be denied as they failed to understand that the issue of prepaid wireless cards is no longer a valid issue, having been rejected by the Commission and the Governor in Council, and because the Petitioners do not apply the appropriate guidelines and standards in their Petition. The fact that these clarifications are required demonstrates that the Petition before the Governor in Council is ill-framed and poorly argued, which merits its dismissal. However, should the Governor in Council wish to consider the other, related elements of their Petition TELUS will discuss these matters before the Governor in Council in its comments below. In its following comments TELUS considers: legal aspects of the Petition; public policy considerations significant to the powers of the CRTC; and, finally, conclusions.

\(^9\) For example see The Petition, paras 155-162.
The Petition Has Suspect Legal Basis

15. The Petitioners make a number of legal arguments as to both the invalidity of the decisions by the Commission and procedural fairness concerns within the proceedings undertaken by the Commission in both TO CRTC 2015-132 and TD CRTC 2015-131. TELUS will provide comments on the legal aspects of the Petitioners’ claims in the section that follows including: a review of the authority of the Governor in Council to consider the claims of the Petitioners; assessment of prior judicial decisions about the powers of the CRTC in its own proceedings; an outline of CRTC costs proceedings; and the powers of the Commission to R & V prior decision.

Authority of the Governor in Council to Review the Petition

16. Under section 12 (1) of the Telecommunications Act, the Governor in Council is given the authority to review and vary decisions of the CRTC. Through this legislative review power, the Governor in Council may review Commission decisions to ensure these are consistent with the Federal Government’s telecommunications policy objectives.

17. However, the Act also grants the ability for review to the Federal Court of Appeal in section 64 “on matters of law or jurisdiction,” so that questions of law are generally left to the Federal Court of Appeal which is empowered to investigate legal and jurisdictional matters. In their Petition, the Petitioners request that the Governor in Council vary the CRTC’s decision in TD 2015-131 and TO 2015-132 due to “an error in fact or law” and a failure to consider a basic principle in the initial proceeding. TELUS recognizes that the Governor in Council may consider matters of law, and that there are no restrictions on the

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10 Telecommunications Act, s 12 (1).
11 Telecommunications Act, s 64 (1).
12 Globalive Wireless Management Corp. v. Public Mobile Inc., 2011 FCA 194 at para. 27. [Globalive] Also see: Attorney General of Canada v Inuit Tapirisat et al., [1980] 2 SCR 735, at p. 756. [Inuit Tapirisat] In Globalive Justice Sexton notes that while the notion of jurisdictional errors used in Inuit Tapirisat has been since revised by the courts, constraint must still be exercised by the courts and the Governor in Council as guided by ss. 12 and 64 of the statute.
13 The Petition, at para. 95
matters which may be properly put before the Governor in Council. But, the Petitioners themselves admit that the Federal Court of Appeal is the most logical venue in which consideration of the issues raised in their Petition such as procedural fairness, errors of law and correcting erroneous findings by an administrative body, may take place. Thus the issues raised by the Petitioners, which form the basis of their Petition, are primarily legal in nature and do not address larger public interest and policy issues.

18. Later the Petitioners attempt to argue the public interest of their Petition by stating that varying the CRTC decisions in these proceedings “is necessary to protect the public interest since the decisions in question imperil the integrity of the CRTC’s costs awards procedures.” Yet, on matters related to procedural fairness, the Supreme Court of Canada in Dunsmuir v. New Brunswick stated that “courts have the final say” as even decisions by Ministers or the Governor in Council may be reviewed by courts. Despite the Petitioners assertions, the principle of procedural fairness is not traditionally a ground upon which parties may invoke public interest considerations before the Governor in Council.

19. Finally, the Petitioners argue that the proper “standard of review” for their Petition is reasonableness. TELUS would take no issue with the reasonableness standard had the matter been before a court, however the Petitioners appear unaware that standards of review do not apply to Petitions before the Governor in Council. Discussion of the appropriate standard of review is an entirely legal question that is customarily raised as part of a judicial review in an appeal court and not normally a consideration for the Governor in Council. This is further evidence of the Petitioners lack of understanding of the Petition process and that the issues raised within the Petition are invalid.

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15 The Petition, at para 96.
16 The Petition, at para 97.
17 Dunsmuir v. New Brunswick 2008 SCC 9, at para 129. Dunsmuir As an example of this see Globalive (above).
18 The Petition, at para 103-105.
19 For example see Bell Canada v. Consumers’ Association of Canada, [1986] 1 SCR 190 Bell Canada.
20. Despite TELUS’ concerns outlined above, should the Governor in Council find that it should decide the matters in this Petition, TELUS will provide its response to the questions of law raised by the Petitioners below, and will demonstrate why the Governor in Council should deny each of the Petitioner’s assertions.

Improper Precedent Argued

21. In their Petition the Petitioners claim that the CRTC erroneously followed the decision of the Supreme Court in *Bell Canada v Consumers’ Association of Canada et al.* (“Bell Canada”). In fact, *Bell Canada* is the authority on the issues at stake based on the substantive concerns of the Petitioners: the ability of the CRTC to award costs in proceedings.

22. In *Bell Canada*, the Supreme Court of Canada considered the powers of the Commission to award costs:

> In view, however, of the nature of the proceedings before the Commission and the financial arrangements of public interest interveners, the discretion conferred on the Commission by s. 73 must, in my opinion, include the right to take a broad view of the application of the principle of indemnification or compensation.

Of significance in the above statement is the discretion conferred on the Commission, and the need for it to take a broad view of the application under consideration. Thus in the Supreme Court’s view the CRTC is given the discretion to award costs to interveners and this power clearly falls within the Commission’s mandate.

23. Yet the Petitioners instead cite the decision of the Alberta Court of Appeal in *Kelly v Alberta* as limiting the CRTC’s discretion when awarding costs. In that decision the Court of Appeal remitted a cost decision back to the Alberta Energy Board for reconsideration. The Petitioners argue that the principles annunciated by the court in Alberta should be strictly followed by the CRTC in making decisions in costs.

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20 *Bell Canada*, at pg 207-208. [*Bell Canada*]
21 *Bell Canada*, at pg 207.
22 *Kelly v Alberta (Energy Resources Conservation Board)*, 2012 ABCA 19.
proceedings. However, the *Kelly* case dealt with a different administrative body (the Alberta Energy Board) which is governed by a different constituting statutes (the *Energy Resources Conservation Act*, *Energy Resources Conservation Act*, RSA 2000, c E-10, the Board’s *Rules of Practice* and Board Directive 031: *Guidelines for Energy Proceedings Cost Claims*) than that of the CRTC. Thus the applicability of the Alberta Court of Appeal’s decision in this case to the Commission’s decision in the case of the Petitioners’ claims is minimal: both because the holding of the Alberta court is not binding on the CRTC, and the powers given to the Alberta Energy Board are likely quite different under its constituting statutes than that of the CRTC. The *Kelly* case therefore offers no precedential value to the matters at hand, and does not provide a jurisprudential view of the role of the Commission deciding costs claims.

*The CRTC Properly Followed Its Own Cost Procedures in TO CRTC 2015-132*

24. The proceeding considered in TO CRTC 2015-132 dealt with a cost claim by the Petitioners. The Act provides the Commission with a discretionary power to award costs in proceedings to interveners. Further, additional guidance is provided to the Commission through Rules 60 to 70 of the CRTC Rules which deal with costs determinations. As discussed above, as reiterated by the Supreme Court in the *Bell Canada* decision, the CRTC has broad discretion in awarding costs to interveners. In particular when exercising its discretionary power, Rule 68 outlines the criteria by which the Commission may grant a cost award:

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;

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23 For example see The Petition, at para 121-123, 126, 131.
27 *Telecommunications Act*, at s 56.
(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. [emphasis added]  

As the CRTC stated in other decisions, 29 use of the conjunctive “and” at the end of provision (b) is indicative that this section should be read together as requiring all of these elements.

25. In Telecom Order CRTC 2010-963 the Commission also provided guidance on how it determines whether applicants for costs contributed to a better understanding of the issues. 30 The Commission’s cost assessment includes: whether the applicant filed evidence, whether the contribution was focused and structured, and whether the contribution offered a distinct point of view. 31 In reviewing these items in TO CRTC 2015-132, the Commission found that the Petitioners did not assist the Commission in developing a better understanding of the matters considered, thus failing the required criteria for costs found at Rule 68(b). 32 This was because the Petitioners “did not raise genuine issues for the Commission’s consideration” 33 and “did not offer a distinct point of view.” 34 As such, the face of TO 2015-132 shows that the Commission exercised its discretion and made a costs determination. It did not automatically award or deny costs but followed its stated criteria for assessment.

26. Despite the validity of the CRTC’s determinations, in their Petition, the Petitioners’ state that the CRTC erred in not finding them eligible for costs, 35 and for not having a distinct

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28 CRTC Rules, at Rule 68.
30 Telecom Regulatory Policy CRTC 2010-963 - Revision of CRTC costs award practices and procedures, (23 December 2010), at para 24. [TRP CRTC 2010-963]
31 TRP CRTC 2010-963, at para 24.
32 Telecom Order CRTC 2015-132 - Determination of costs award with respect to the participation of the DiversityCanada Foundation in the proceeding leading to Telecom Decision 2015-131, (9 April 2015), at para 23. [TO CRTC 2015-132]
33 TO CRTC 2015-132, at para 24.
34 TO CRTC 2015-132, at para 25.
35 The Petition, at paras 179-180.
point of view.\textsuperscript{36} On the former point, the Petitioners argue that their eligibility should instead be guided by other principles found in other sections of their Petition dealing with TD 2015-132 such as: the CRTC did not follow prior judicial determinations of their powers in \textit{Bell Canada} and \textit{Kelly}, eligibility should not be determined primarily on the merits of the arguments, and raised substantive elements.\textsuperscript{37} As TELUS previously discussed the relevance of judicial determinations in \textit{Bell Canada} and \textit{Kelly} there is no need to go into detail here, except to reiterate \textit{Kelly} is of no relevance to the CRTC’s costs procedures.

27. In any event, costs awards are discretionary under the Act, meaning that they considered on a case-by-case basis. Not only are the criteria in each costs determination assessed in each case, the receipt of awards in prior decisions does not lead to a binding precedent and does not cause an expectation that costs will always be awarded in future. In their decision the Commission outlines the considerations they undertook in determining that the Petitioners should not be awarded costs, and outlined their reasons for doing so in a clear and concise manner.

28. While the Petitioners argue that they offered a distinct point of view as “the only party which presented the point of view of consumers”\textsuperscript{38} in the costs proceeding that led to 2015-132, this is not the correct application of criteria. As will be discussed below, a series of proceedings beginning with CRTC 2014-101 led to this current proceeding. Throughout this time the Petitioners continually made the same arguments before the Commission with regard to the expiry of prepaid cards for mobile services. In fact, their arguments did not vary significantly from the proceeding which led to the development of the Wireless Code,\textsuperscript{39} to the Review and Vary of the Wireless Code argued in CRTC 2014-101.\textsuperscript{40} It was this lack of new information that ultimately led the Commission to

\textsuperscript{36} The Petition, at paras 181-189.  
\textsuperscript{37} The Petition, at para 180.  
\textsuperscript{38} The Petition, at para 187.  
\textsuperscript{40} Telecom Decision CRTC 2014-101 - \textit{Wireless Code} – Request by DiversityCanada Foundation to review and vary Telecom Regulatory Policy 2013-271 regarding expiry of prepaid wireless service cards, (5 March 2014), at paras 22-23.
find that the Petitioners did not offer a unique perspective on the issues in their various applications, as the same issues were raised continually.

29. Last, in their Petition, the Petitioners take issue with *obiter dicta* statements by the CRTC that had costs been awarded, it would have reduced the amount claimed because of concerns with the outside consultant’s fee. The Petitioners disagree with this statement by the Commission because, they claim: the Commission accepted the outside consultant’s qualifications and experience on previous occasions, and the nature of the proceeding did not require justification for hiring outside experts.

30. Yet, as noted above, the prior awarding of costs in proceedings does not guarantee the award of costs in the future. Thus, just because the Commission had accepted the outside consultant’s experience and background in a past costs award, does not mean that this must be accepted in future in costs determinations for proceedings dealing with different matters. Because Commission proceedings deal with various issues related to telecommunications, an outside expert’s knowledge and expertise might be perfectly relevant to one proceeding dealing with one particular issue, but irrelevant to another proceeding. Moreover in TD CRTC 2010-963, the Commission noted that criteria including the experience and expertise of the claimant may be used in order to evaluate whether the time claimed by an individual or group is excessive in a cost proceeding. Thus, it should come as no surprise to the Petitioners, who by their own admission have participated multiple times in CRTC proceedings and claimed costs in the past, that this criteria may be used by the Commission to evaluate any cost claims.

**CRTC Review & Vary Procedures Were Properly Followed in TD CRTC 2015-131**

31. TD CRTC 2015-131 dealt with a R & V proceeding where the Petitioners asked the Commission to review and vary CRTC Telecom Order 2014-220. In Order 2014-220, the

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41 TO CRTC 2015-132, at paras 28-29.
42 The Petition, at para 194.
43 The Petition, at paras 204 & 207-208.
44 TRP CRTC 2010-963, at paras 23.
CRTC denied the costs of the Petitioners incurred during the proceeding leading to Telecom Decision CRTC 2014-101.

32. Therefore, at the heart of the decision in TD CRTC 2015-131 are considerations associated with the CRTC’s procedures with R & V applications, and the matter being reviewed here is the manner in which the CRTC orders costs awards. As the Commission outlines in its decision, section 62 of the *Telecommunications Act* sets out the general power of the Commission to review and vary decisions in its own proceedings:

62. The Commission may, on application or on its own motion, review and rescind or vary any decision made by it or re-hear a matter before rendering a decision.\(^{45}\)

This general power is further developed through Telecom Information Bulletin CRTC 2011-214 in which the Commission outlines the procedure and applicable criteria it uses when considering R & V applications. The criteria for assessing these applications requires applicants to prove that there is substantial doubt as to the correctness of the original decision such as errors in law or fact, a fundamental change in circumstances, a failure to consider a basic principle raised, or that a new principle arose as a result of the decision.\(^{46}\) These criteria set a high bar for applicants to meet in that arguments that decisions were incorrect cannot rely on subjective arguments by applicants.

33. In their R & V application, and again in this Petition, the Petitioners argue that the CRTC erroneously chose to: inappropriately consider the Petitioners’ eligibility; consider whether there was merit to the arguments of their application; and find that the Petitioners’ did not substantively contribute to the CRTC’s decisions. However, as is outlined above in the discussion of costs, it is absolutely within the discretion of the CRTC to consider these types factors as to whether the applicant assisted the Commission

\(^{45}\) *Telecommunications Act*, s 62.

in the proceeding for which costs are claimed,\textsuperscript{47} and to consider factors such as whether the costs applicants’ contributed to a better understanding of the issues.\textsuperscript{48}

34. As the Commission outlines in TD 2015-131, the reason why costs were denied in TO CRTC 2014-220 was because the Petitioners failed to provide any arguments of merit in challenging prepaid cards provisions in the Wireless Code.\textsuperscript{49} Because of this, in considering whether costs should be awarded in the proceeding that led to TO CRTC 2014-220, the Petitioners failed to meet the criterion under Rule 68 (b), which requires that a costs recipient demonstrate that a party’s participation assist the Commission in better understanding the issues in a proceeding. Significantly to this Petition, the Governor in Council itself did not see public policy grounds upon which to vary or rescind the decision of the CRTC in TD CRTC 2014-101 when the Petitioners raised these same issues last year in their previous Petition last year.

35. The arguments of the Petitioners take issue with a determination by the CRTC that their arguments offered the Commission no substantive issues meriting the awarding of costs.\textsuperscript{50} Yet, the Petitioners failed to show that there is {{\bf substantial doubt about the correctness}} of the CRTC’s cost decision, as required in a R & V proceeding. In making their determinations in 2015-131 the Commission used the Rule 68 criteria alongside the guidance outlined by the Commission in Telecom Regulatory Policy CRTC 2010-963 in order to assess the arguments made by the Petitioners in their costs application. This is a reasonable process for the Commission to undertake as it followed it own procedures and guidance related to costs, leading to a reasonable outcome. There are no grounds to make any finding of substantial doubt as to the correctness of the TD 2015-131.

36. The only other reasons cited by the Petitioners in which they believe the Commission erred in their R&V decision, were concerns with whether the Commission misinterpreted its authority to award costs and that inappropriate weight was given to the Petitioners’

\begin{itemize}
\item[\textsuperscript{47}] See CRTC Rules, R. 68 (b).
\item[\textsuperscript{48}] See TRP CRTC 2010-963, at para 24.
\item[\textsuperscript{49}] TD CRTC 2015-131, at para 17-18.
\item[\textsuperscript{50}] The Petition, at paras 140-141, 155, 163.
\end{itemize}
evidence, which would give rise to an error of law. In raising these issues, the Petitioners once again cite authority in the *Kelly* case.

37. As TELUS has already shown, the decision in the *Kelly* case is not applicable to the Commission or its determinations. In any event, the Act is clear that costs awards are discretionary, and the Commission has set out criteria that it uses when exercising its discretion. There is no basis to claim that the Commission has erred in any way in the use of its discretion in TO CRTC 2014-220 as applicants are required to prove in R & V proceedings. Therefore, the CRTC decision on the costs award to the Petitioners was reasonable as the Act and CRTC Rules provide the Commission the discretion to award costs to parties based on the consideration of subjective criteria. As the Commission followed their own procedures, there is no argument that their decision was wrong and, thus, the decision need not be varied as the Petitioners request.

**Public Interest & Policy Considerations**

38. As mentioned at the outset of these comments, the Petitioners allege that the public interest in their Petition lies in the failure of the CRTC to follow its own guidelines in dealing with in costs proceedings. As TELUS has pointed out, at issue in the Petition are actually two sets of procedures: that of costs awards and R & V proceedings. Further, it is clear from the decisions issued by the Commission that the procedures, standards, Rules and guidelines of the CRTC were followed and are explicitly referenced in their determinations. That the CRTC followed its own, previously determined and publicly available, procedures in its consideration of applications by the Petitioners, makes it clear that none of the alleged public interest considerations raised appear to be valid concerns.

39. The Petitioners further allege that the inability to follow procedures by the CRTC may have a “chilling effect on public participation in the CRTC’s procedures.” Yet, by following its own procedures the Commission, in fact, ensures fairness, predictability and transparency so that all parties understand their decisions. That a single party’s costs award was denied, does not “imperil the integrity of the CRTC’s costs award procedures”

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51 The Petition, at para 101.
as the Petitioners allege.\textsuperscript{52} When the Commission denies or reduces a cost award to applicants, and provides its reasons for doing so thus conducting itself in a manner consistent with its procedural process, it is acting to ensure the integrity of the entire cost claim process. In this instance the Commission was clear: the Petitioners did not fulfill the requirements of applicants in order to be awarded their claimed costs.

40. Indeed, the converse, where all costs applicants always received funding, would result in more absurd outcomes than the present case. If, instead, the Commission applied no process and simply awarded costs to all claimants regardless of the merits of their claim or their participation in a hearing, as the Petitioners seem to wish, the result could be the development of meaningless participation by groups interested only in receiving funds through the grant of an automatic cost award. In creating the costs process, the Commission was explicit about their goals: “costs awards are intended to encourage the participation of individuals and groups who represent subscriber interests, rather than private interests.”\textsuperscript{53} It would actually jeopardize the meaningful participation in that all participation, irrespective of value, would be eligible for costs. The criteria in the Commission’s guidelines were developed to ensure that these goals were met. To alter the decision of the Commission in this instance would mean that the public policy goals inherent in the cost awards proceeding would not be fulfilled.

41. By granting the Petitioners’ relief, important public policy goals associated with telecommunications law and regulation would be denied. In \textit{Globalive Wireless Management Corp. v. Public Mobile Inc.},\textsuperscript{54} the Federal Court of Appeal found that, as a polycentric body, the Governor in Council may be informed by the telecommunications policy objectives outlined in section 7 of the \textit{Telecommunications Act}\textsuperscript{55} in determining Petitions. TELUS argues that various aspects of these objectives are relevant to

\textsuperscript{52} The Petition, at para 97.
\textsuperscript{53} TD 2010-963, at para 12. TELUS notes that no other public intervener has provided any supporting comments of DCF’s position about chilling effect on costs procedures, thereby showing that no other public party appears concerned that the CRTC’s decisions about DCF’s costs would somehow impugn the costs process.
\textsuperscript{54} \textit{Globalive}, at paras 45-46.
\textsuperscript{55} \textit{Telecommunications Act}, s 7.
illuminating the public interest in maintaining the costs awards process, and denying the relief sought by the Petitioners in this instance. The relevant policy objectives in this proceeding include:

- Section 7 (a) – In order to enrich and strengthen the social and economic fabric of Canada and its regions, the CRTC must ensure its proceedings are fair and open. The rules, guidelines and procedures it puts in place are created to ensure the widest possible participation. This includes costs proceedings which aim to financially reimburse those parties to proceedings whose participation helps the Commission understand the point of view of key constituent groups and increase the evidence available on the record; and

- Section 7 (h) – By encouraging broad participation, across the industry and among interested parties, the Commission may respond to the economic and social requirements of users of telecommunications. By guarding the cost proceeding against those applicants who fail to assist the Commission understand consumer concerns, or who do not raise genuine issues, the CRTC ensures the integrity of its work.

Because of these important policy considerations, the Governor in Council should reject the arguments made by the Petitioners and retain the decision by the CRTC in TD CRTC 2015-131 and TO CRTC 2015-132, and not grant the costs of the Petitioners related to these matters.

**Conclusions**

42. In its above comments TELUS has shown why the arguments raised in the Petition must be dismissed by the Governor in Council, thereby sustaining the Commission’s determinations in TD CRTC 2015-131 and TO CRTC 2015-132. In the above, TELUS presents serious questions about the appropriateness of the legal issues raised by the Petitioners in this action. It has also challenged the legal basis upon which many of the claims by the Petitioners are made. Finally, the current policy objectives outlined under
the Act make clear the consistency that maintaining the expiry of prepaid services for consumers is within the public interest.

43. Fair and just consideration of the Petitioners’ arguments were made by the CRTC in the proceedings to determine costs. In considering these arguments, alongside those of other parties, the Commission determined that the Petitioners had not assisted the Commission in understanding the issues at play, therefore failing the Rule 68 test which is applied to all Petitioners for costs. The failure of the Petitioners get a result from the Commission that satisfies its own needs, should not be held to be an unreasonable determination for all Canadians on the issues outlined in the Petition. In fact, the result that the Petitioners seek could weaken the administrative procedures and protections put in place by the Commission. This would be the result because the Petitioners seem to believe that all cost applicants should be able to receive costs simply by applying under the Commission’s regime. Should the Governor in Council endorse this view it would inevitably lead to the hollowing out of the costs process by the CRTC, or all denied applicants approaching the Governor in Council with the expectation that a failed cost application will simply be reversed. Thus, TELUS asks that the Governor in Council reject the arguments made by the Petitioners.

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