

The CRTC's cost-orders process in telecommunications: does a proceeding's complexity slow down costs orders?

I. Background

In mid-November 2017 the Forum described and published new empirical research about the telecom costs-application process at the CRTC, and updated this research in early December 2018. The 2017 research analyzed 135 costs orders issued by the CRTC in response to applications for costs made by public-interest participants found that from 2013 to November 10, 2017. The 2018 update analyzed the original 135 orders, adding 47 other cost orders issued by the CRTC between mid-November 2017 and the end of November 2018, for a total of 182 costs orders.

The 2018 update concluded that the "CRTC has been taking longer since 2013 to issue determinations about costs applications. In 2013 the CRTC published its decisions on cost order applications in an average of 3.7 months – in 2018, it took the CRTC just over nine and a half (9.6) months."

On 17 December 2018 the CBC published an article dealing with the problems that long delays in issuing costs orders cause for public-interest organizations. The CBC "asked the CRTC why it takes so long to make what's called a "cost award"". A spokesperson for the CRTC emailed the CBC to say that "it 'depends on the complexity of the issues in each cost application.'"¹

This research note briefly considers whether a proceeding's "complexity" is associated with the time taken by the CRTC to issue costs orders.

II. Approach

A variety of indicators could be used to measure the 'complexity' of a CRTC proceeding. For instance, proceedings in which many CRTC Commissioners are assigned to 'hear' matters may be more complex than proceedings where few Commissioners are assigned to hearing panels. In some cases, however, the CRTC considers complex matters without public hearings, such as the application by the Fairplay Coalition for the CRTC to create a website-blocking system² – no hearing was held; the CRTC relied on written submissions to reach its decision. Complexity could also be indicated by the length of a CRTC decision (in pages, paragraphs or words), although a brief CRTC determination (to decline to consider an important matter, for instance) may not necessarily reflect the subject's complexity.

The data collected by the Forum with respect to costs included several other variables that could indicate a proceeding's complexity: costs sought and number of applicants for costs. The costs incurred by individual applicants could indicate the complexity of a proceeding: higher costs tend to reflect the use

¹ Erica Johnson, "Consumer group that battles the big telcos blames CRTC for its 'dire' financial troubles", (17 December 2018, 6:00 AM EST), <https://www.cbc.ca/news/business/public-interest-advocacy-centre-at-risk-of-shutting-down-1.4946597>

² See Telecom Part 1 Application (29 January 2018) 8663-A182-201800467.

of more time to participate in a proceeding, and the use of more time suggests that a proceeding is not simple. The number of individual applicants in a proceeding could also indicate the complexity of a proceeding, in that proceedings that engage the interest of more than one applicant tend to involve more complex issues: an application by a single telecommunications service provider that has no competitive impact and affects relatively few telecommunications users, for instance, is likely to be considered less complex than a proceeding that involves a review of the entire basic telecommunications service in Canada (*Review of basic telecommunications services*, Telecom Notice of Consultation CRTC 2015-134 (Ottawa, 6 April 2015), <https://crtc.gc.ca/eng/archive/2015/2015-134.htm>).

In light of the CRTC's argument that the timing of costs orders is related to the complexity of proceedings, the Forum decided to review the data we had collected in terms of the size of costs and the number of interveners, as indirect indicators of proceeding complexity.

III. Results

The Forum's December 2018 research note had found that

The size of costs being sought by applicants does not affect the time taken by the CRTC to issue its determinations: in 2018 the CRTC took just over a year (12.1 months) to issue decisions about costs applications for amounts of between \$5,000 and \$10,000, and just under a year for costs applications involving amounts over \$100,000.

It is true that in 2013 the CRTC issued costs orders for smaller amounts – under \$10,000 – more quickly than for larger amounts – over \$10,000. Table 1 shows that in that year costs orders for less than \$1,000 were issued in 3.7 months, on average, while orders for amounts over \$10,000 were issued in 4.3 and 5.3 months, on average.

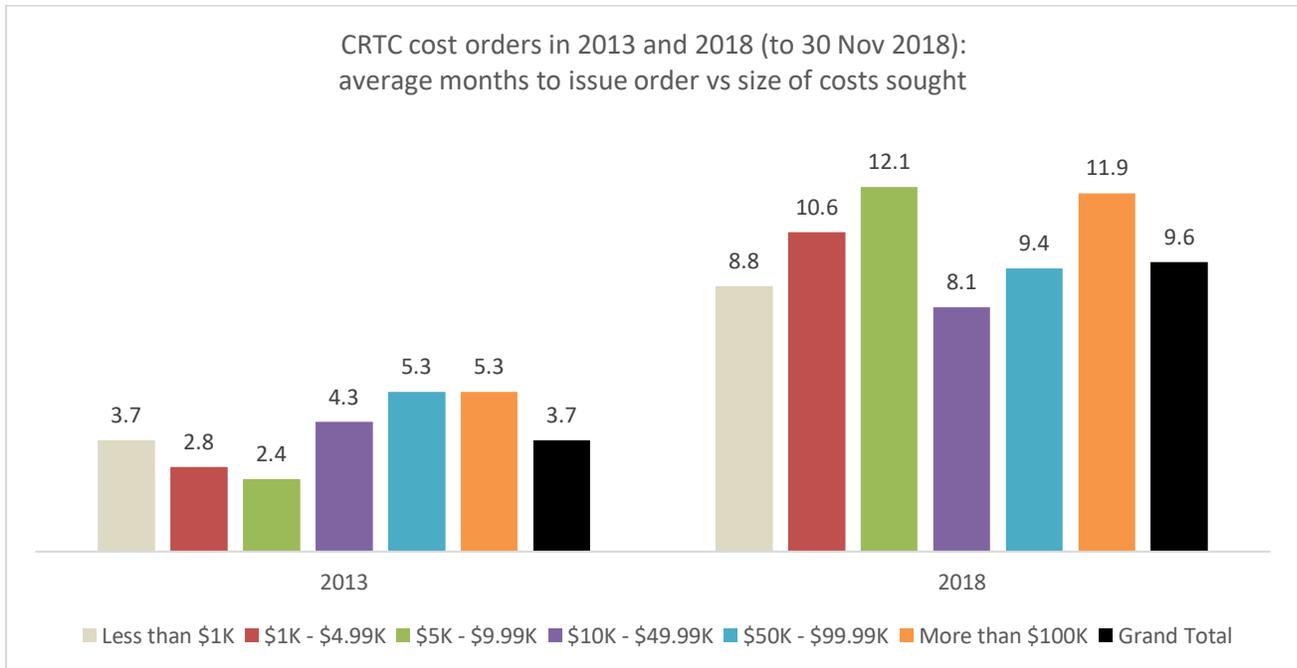
Table 1: Average number of months from date of costs application to date of CRTC costs order: January 2013 to November 2018

Average number of months from date of costs application to date of CRTC costs order: January 2013 to November 2018						
Row Labels	2013	2014	2015	2016	2017	2018
Less than \$1K	3.7	5.2		5.0	7.9	8.8
\$1K - \$4.99K	2.8	6.9	7.2	7.5	14.4	10.6
\$5K - \$9.99K	2.4	7.1	5.9	7.2	10.2	12.1
\$10K - \$49.99K	4.3	6.8	8.9	5.1	9.1	8.1
\$50K - \$99.99K	5.3	6.6	6.6		8.4	9.4
More than \$100K	5.3		6.4		9.9	11.9
Total	3.7	6.9	7.6	6.4	9.5	9.6

The relationship between cost size and time taken to issue costs orders began to disappear in 2014, however. The average time taken to issue costs orders in total grew from 3.7 months in 2013, to 6.9

months in 2014 – but as highlighted by Chart 1, below, large costs orders (for applications in excess of \$100,000) took 11.9 months to issue in 2018, while smaller costs orders (\$5,000 to \$9,990) took 12.1 months to issue. In other words, the CRTC took more time to issue orders for proceedings that required fewer resources by public interest participants, than to issue orders for proceedings requiring more resources by public interest participants.

Chart 1: CRTC cost orders in 2013 and 2018 (to 30 November 2018): average months to issue order vs size of costs sought



Results with respect to the number of parties submitting costs applications also do not show a clear relationship between the number of parties and the time taken to issue costs orders. Table 2 shows that in 2013, the CRTC took an average of 3.3 months to issue costs orders for proceedings involving 1 party, and an average of 5.5 months for proceedings involving 7 parties; in 2018, the CRTC took an average of 11.7 months for orders involving proceedings with one party, but less time – 9.4 months – for proceedings involving 5 parties.

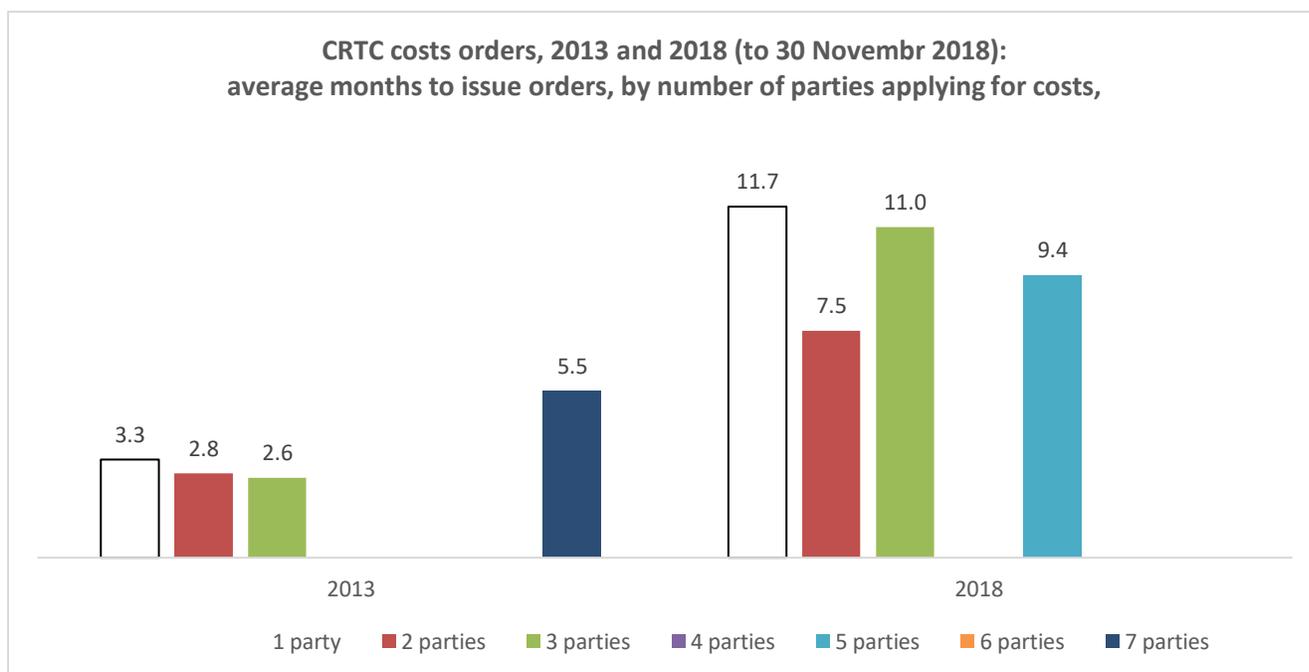
Table 2: Average number of months from date of costs application to date of CRTC costs order, by number of parties making costs applications: January 2013 to November 2018

Average number of months from date of costs application to date of CRTC costs order: January 2013 to November 2018						
Number of parties	2013	2014	2015	2016	2017	2018
1	3.3	6.8	7.6	7.3	12.3	11.7
2	2.8	7.7	7.2	6.2		7.5
3	2.6	6.6	8.2		10.2	11.0
4		9.6				

Average number of months from date of costs application to date of CRTC costs order: January 2013 to November 2018						
Number of parties	2013	2014	2015	2016	2017	2018
5						9.4
6						
7	5.5	5.2		4.5	8.1	
8					6.2	
11					10.2	
All parties	3.7	6.9	7.6	6.4	9.5	9.6

More generally, as Chart 2 shows, no direct link appears to exist between the time the CRTC takes to issue costs orders and the number of parties applying for costs. While the time taken in 2013 to issue orders rose from 3.3 months for one party, to 5.5 months for seven parties, the time taken in 2018 to issue orders *decreased* from 11.7 months for one party, to 9.4 months for five parties.

Chart 2: CRTC cost orders in 2013 and 2018 (to 30 November 2018): average months to issue order vs size of costs sought



IV. Conclusions

The CRTC has said that the complexity of its proceedings accounts for the growing time that the Commission is taking issue decisions on costs applications. Analysis of the timing of costs order decisions in relation to two measures of complexity – total costs sought, and total parties seeking costs reimbursement – shows that while complexity may have been a factor related to the time taken by the CRTC to issue costs orders in 2013, complexity has not played an obvious role in cost-order timing since

2014. More briefly, the time taken by the CRTC to issue decisions about public-interest participants' requests to have their costs of participation reimbursed is not related to the size of costs or number of parties involved.

As the CRTC has not published any descriptions of its costs decision-making process, or set any guidelines about the time it will take to issue decisions, the specific factors that have led to growing delays in issuing costs order decisions are as yet unknown – except that complexity is not among these factors.

* * * End of note * * *