

The CRTC's cost-orders process in telecommunications: a year later

I. Introduction

In mid-November 2017 the Forum described and published new empirical [research](#) about the telecom costs-application process at the CRTC.

An analysis of 135 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 time between the filing of costs applications and the CRTC's publication of costs orders more than doubled, from an average of 3.7 months in 2013, to an average of 8.6 months in 2017. In 2016 the CRTC issued costs orders on average less than a month (0.8 months) after issuing its determinations in proceedings; in 2017 it issued the orders 4.6 months later.

This note updates that research, by including information about costs orders issued since the end of 2017, to the end of November 2018.

The remainder of this section briefly describes the rationale for reimbursing public-interest participation costs in CRTC telecommunications proceedings, the CRTC's statutory authority to reimburse public-interest costs, and the CRTC's current requirements for costs applications.

A Reimbursing public-interest participants' costs

By way of background, public-interest participants in CRTC telecommunications proceedings have been able to apply the CRTC for the reimbursement of some of the costs of their participation since the mid- to late 1970s.

Reimbursing public-interest interveners in this way permits informed public participation in CRTC proceedings that, on its telecom side, often tend to be complex and requiring specialized knowledge and, due to the many legal issues arising in these proceedings, legal expertise.¹ Third-party public-interest participation in the CRTC's proceedings also permits it to implement Parliament's policy for telecommunications without challenges related to conflicts of interest, by enabling it to receive evidence and argument from more than one point of view.

As the current *Telecommunications Act* requires the CRTC to balance "the interests of consumers, carriers and competitors in the context of the Canadian telecommunications industry",² public-interest parties'

¹ In 2016, the Federal Court of Appeal commented in *Bell Canada v. 7262591 Canada Ltd. (Gusto TV)*, 2016 FCA 123 (CanLII), at para. 15, that, ... past proceedings and regulatory experience can form part of the data the administrative decision-maker can draw upon in making a decision. Accordingly, parts of that data, identified by the parties as matters that the administrative decision-maker drew upon in making its decision, can form part of the evidentiary record before the reviewing court. ...

² *Bell Canada v. Bell Aliant Regional Communications*, [2009] 2 SCR 764, 2009 SCC 40 (CanLII), Abella J. for the Court, at para. 1.

participation arguably permits the CRTC to evaluate and make determinations about competing views of the same issue without having to defend the public interest in particular.

B CRTC authority to reimburse public-interest participants' costs

The CRTC's authority to grant or deny costs applications in telecommunications proceedings flows from its enabling statute. Until 1993, section 73 of the *National Transportation Act*,³ allows the CRTC to order payment of costs of, and incidental to, telecommunications proceedings:

(1) The costs of and incidental to any proceeding before the Commission, except as herein otherwise provided, are in the discretion of the Commission, and may be fixed in any case at a sum certain, or may be taxed.

(2) The Commission may order by whom and to whom any costs are to be paid, and by whom they are to be taxed and allowed.

(Parliament also defined "costs" in the statute, as including [meaning, not limited to] "fees, counsel fees and expenses".⁴)

In 1993 Parliament enacted the current *Telecommunications Act*, and Parliament repeated and clarified the CRTC's authority, by permitting it to award interim as well as final costs, and to establish a scale of costs. Section 56 provides as follows:

(1) The Commission may award interim or final costs of and incidental to proceedings before it and may fix the amount of the costs or direct that the amount be taxed.

(2) The Commission may order by whom and to whom any costs are to be paid and by whom they are to be taxed and may establish a scale for the taxation of costs.

As set out in the Forum's November 2017 note, the CRTC's current costs-application process, described below, is twenty years old:

Until 1997 the CRTC issued determinations about costs applications in two stages. The CRTC would order a taxation officer to determine costs in a taxation process, and the taxation officer would then award costs.⁵ In 1998, however, the CRTC stopped using the taxation process in response to public-interest organizations' comments that the growing number of paper-based CRTC proceedings was making the costs-application burdensome. It began to set costs itself⁶ in 'costs orders', concluding in 2002 that this 'streamlined' approach was more 'expeditious' and reduced the burden on all parties.⁷

³ Then R.S.C. 1970, c. N 17.

⁴ S. 43 of the *National Transportation Act* defined "costs" as having the same meaning as "costs" in the 1970 *Railway Act*; the latter defined "costs" in s 2(1): "'costs' includes fees, counsel fees and expenses", implying through the use of 'includes', that costs could include something other than fees, counsel fees and expenses.

⁵ *New procedure for Telecom costs awards*, Telecom Public Notice CRTC 2002-5 (Ottawa, 7 November 2002), <http://www.crtc.gc.ca/eng/archive/2002/pt2002-5.htm>, at para 2.

⁶ *NEW PROCEDURE FOR TELECOM COSTS AWARDS*, Telecom Public Notice CRTC 98-11 (Ottawa, 15 May 1998), <http://www.crtc.gc.ca/eng/archive/1998/PT98-11.HTM>.

⁷ *New procedure for Telecom costs awards*, Telecom Public Notice CRTC 2002-5 (Ottawa, 7 November 2002), <http://www.crtc.gc.ca/eng/archive/2002/pt2002-5.htm>, at para. 6.

C *CRTC's current requirements for costs applicants*

In 2010 the CRTC updated its procedural rules,⁸ setting out requirements for costs applications. Under sections 60 and 61 of the *Rules* parties seeking interim costs must

1. demonstrate that
 - a. they represent subscribers with an interest in the proceeding's outcome
 - b. are able to help the CRTC develop a better understanding of the matters that will be considered, and
 - c. lack "sufficient financial resources to participate effectively in the proceeding"
2. agree "to participate in the proceeding in a responsible way"
3. indicate "the amount of costs requested, with receipts or detailed estimates"
4. identify who should pay the costs,
5. serve their applications "on all other parties" and
6. apply for final costs.

Other parties then have ten days to answer (s. 62); the *Rules* do not include any other guidance about timing with respect to interim costs applications.

Parties that apply for final costs must, under sections 65 and 66 of the *Rules*

1. file their application "no later than 30 days after the date fixed" by the CRTC "for the filing of final representations with it"
2. demonstrate that they
 - a. "have, or represent a group or a class of subscribers that has, an interest in the outcome of the proceeding"
 - b. "assisted the Commission in developing a better understanding of the matters that were considered"
 - c. "participated in the proceeding in a responsible way"
3. "identify the respondents that should pay the costs"
4. if they received interim costs explain "any difference between those interim costs and the final costs for which they are applying"
5. complete and submit "the appropriate taxation forms listed in Broadcasting and Telecom Information Bulletin CRTC 2010-453, as amended from time to time", and.
6. "serve the application on all other parties".

The most recent Taxation Order found through the CRTC's search engine in November 2017 was: *Costs awarded to Action Réseau Consommateur et al. - Public Notice CRTC 2001-36*, Telecom Taxation Order CRTC 2003-1 (Ottawa, 16 May 2003), <http://www.crtc.gc.ca/eng/archive/2003/to2003-1.htm>.

⁸ *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (SOR/2010-277).

The CRTC's six "taxation forms" (available at: https://crtc.gc.ca/eng/forms/form_300.htm) include five summaries of legal fees, expert witness fees, consultant/analyst fees, disbursements and a summary of fees and disbursements, and a notarized affidavit of disbursements.

The *Rules* do not provide any other guidance about the timing of costs applications, and the CRTC has not published any guidance saying how long it will (generally) take to issue determinations on costs applications. In denying an interim costs application in 2016, however, the CRTC said that it intended "to dispose of final costs applications prior to the release of its decision flowing from the proceeding ... to minimize the time that applicants would need to wait" to receive final costs, given the proceeding's length and complexity.⁹

Since the Forum's November 2017 note on CRTC costs awards, the CRTC has made additional statements that bear on costs awards, and in particular survey research.

Some applicants, including the Forum, have commissioned surveys whose results have been included in their interventions or submissions to the CRTC in telecommunications. In the Forum's case, this research has been undertaken for two reasons: to provide evidentiary support for its arguments, and to address the requirements set out by the CRTC in 2016, in *Guidance for costs award applicants regarding representation of a group or a class of subscribers*.¹⁰ This Bulletin addressed "the type of information that will generally assist [the CRTC] in its consideration of the costs award eligibility criterion applicable to costs applicants who submit that they represent a group or a class of subscribers that has an interest in the outcome of a proceeding".¹¹

The core concern of the 2016 Bulletin is that cost applicants were merely asserting that they represented subscribers. The CRTC explained that mere "[b]lanket statements that a costs applicant represents a group or a class of subscribers, without further elaboration, will generally not be sufficient for the Commission to conclude that a costs applicant satisfies this criterion."¹²

The CRTC identified several types of information that costs applicants ought to provide: "the specific demographic or socio-economic features of the members of the group or class of subscribers",¹³ information "on the region or regions of Canada in which the group or class members are located"¹⁴

⁹ Determination of interim costs award with respect to the participation of the Affordable Access Coalition in the proceeding initiated by Telecom Notice of Consultation 2015-134 concerning the Commission's review of basic telecommunications services, Telecom Order CRTC 2016-132 (Ottawa, 13 April 2016), <http://www.crtc.gc.ca/eng/archive/2016/2016-132.htm>.

¹⁰ Telecom Information Bulletin 2016-188, (Ottawa, 17 May 2016), <https://crtc.gc.ca/eng/archive/2016/2016-188.htm>.

¹¹ *Guidance for costs award applicants regarding representation of a group or a class of subscribers*, (Ottawa, 17 May 2016), <https://crtc.gc.ca/eng/archive/2016/2016-188.htm>.

¹² *Ibid.*, at para. 9.

¹³ *Ibid.*, at para. 10.

¹⁴ *Ibid.*, at para. 11.

and/or, in the case of applicants representing other smaller organizations, the identity of “these member organizations.”¹⁵

The CRTC also mentioned surveys, specifically, and other research, in general, that organizations undertook themselves or commissioned from others. The CRTC said that costs applications could also “include details, if available, of the number of individuals making up the group or class of subscribers being represented”¹⁶ and “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”:¹⁷ applicants could obtain this information “by consulting directly with or surveying its members.”¹⁸ It said,

[t]his could be through direct consultation with its members or otherwise. For instance, the costs applicant may have conducted a formal or informal poll of the subscribers who are its members, constituents, or stakeholders, or may have solicited feedback on a matter, for instance, through its website, through social media or other forms of digital communications, via telephone, or through in-person or online meetings.

If a costs applicant did not consult “members of the group or class of subscribers it purports to represent”, the CRTC added, costs applicants “should nonetheless address and explain how its positions reflect the interests of that group or class of subscribers. For instance, the costs applicant may provide evidence of research it has conducted or commissioned.”¹⁹ In October 2017 the CRTC then added – in a costs order, however, rather than an Information Bulletin – that surveys submitted in support of applicants’ costs applications must be completed before a CRTC proceeding is “already well underway”, and in any event before an applicant submits its views on the matters under consideration to the CRTC.²⁰

Since 2017 the CRTC has published new criteria for survey research undertaken by costs applicants. In February 2018 the CRTC said that “care must be taken to ensure that the amount claimed for such activity is proportionate to what is reasonable in the circumstances”: it reduced by half the costs of the national survey of “Deaf, hard-of-hearing, and deaf-blind Canadians” undertaken in 2107 on issues related to next-gen 9-1-1 service.²¹ While it is unclear what “proportionate to what is reasonable in the circumstances” means, the CRTC added in November 2018 that “there is nothing inherent in a survey that would make the time claimed by the DWCC with respect to the survey incomparable with the time claimed by a similar applicant for work associated with other types of submissions”.²²

¹⁵ *Ibid.*, at para. 12.

¹⁶ *Ibid.*, at para. 13.

¹⁷ *Ibid.*, at para. 14.

¹⁸ *Ibid.*, at para. 15.

¹⁹ *Ibid.*, at para. 16.

²⁰ Telecom Cost Order 2017-362, at para. 23.

²¹ *Deaf Wireless Canada Consultative Committee – Application to review and vary Telecom Order 2018-66*, Telecom Decision CRTC 2018-439 (Ottawa, 28 November 2018), <https://crtc.gc.ca/eng/archive/2018/2018-439.htm>, at para. 2.

²² *Ibid.*, at para. 23.

The CRTC also said in November 2018 that surveys undertaken by costs participants may only deal with issues that the CRTC has defined as being within scope. The CRTC found that “portions of the [DWCC’s 2017] survey and report discussing TTY-to-TTY calls were outside” the scope of its *Review of the regulatory framework for text-based message relay services* proceeding, and therefore did not assist the Commission in developing a better understanding of the matters that it considered.²³

The CRTC went on to say in the same November 2018 decision that Telecom Information Bulletin 2016-188 does not require costs applicants to perform formal surveys in all proceedings, to be eligible for a costs award, and added that “it has not been the Commission’s practice, either before or since the publication of the Bulletin, to require this.”

II. Cost orders issued by the CRTC from 2013 to November 2018

The purpose of this research note is, as noted above, to determine whether the CRTC’s costs-application process changed in the past year.

A Research method

To answer this question the Forum collected information from the CRTC’s search engine about CRTC costs orders issued from January 1, 2013, to November 30, 2018. The following data were collected about each order:

- Date on which order was issued
- The applicant’s name
- The date of the application
- Number of parties that commented adversely on the application²⁴
- The proceeding in relation to which costs were being sought and a brief description of the proceeding²⁵
- The date on which the proceeding began (the date on which an application was filed, the date of a public notice)
- The type of proceeding – whether a CRTC policy proceeding, or one triggered by an application
- The date on which the proceeding’s record closed for public-interest participants²⁶ (ie, the deadline for interventions, for final argument, or for final reply)
- The CRTC determination resulting from the proceeding²⁷

²³ *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 2018-437, (Ottawa, <https://crtc.gc.ca/eng/archive/2018/2018-437.htm>), at para. 24.

²⁴ In some cases parties submitted comments that either supported the application, or made submissions solely as to the parties that should pay the order; as they did not bear directly on the substance of the CRTC’s decision to grant or deny cost applications, these comments were not included in the analysis.

²⁵ E.g., ‘Wireless Code’, ‘Last payphone’.

²⁶ Meaning that costs for any work beyond that date on the proceeding could not be sought.

²⁷ Regulatory Policy, Decision, Order or other document issued by the CRTC.

- The date of the CRTC determination
- The amount that the party applied for, and the
- The amount granted by the CRTC's cost order (if any)

The Forum also collected data about costs applications that have been made, but have not yet been granted.

B Data

The Forum identified 182 cost orders issued by the CRTC from 1 January 2013, to 28 November 2018, and published on the CRTC's website, meaning that the CRTC has issued 34 costs orders since our November 2017 research note.

2013 –28 November 2018: 182 CRTC cost orders					
2013	2014	2015	2016	2017	2018
2013-119	2014-220	2015-129	2016-137	2017-125	2018-10
2013-185	2014-242	2015-130	2016-138	2017-126	2018-115
2013-245	2014-243	2015-132	2016-153	2017-127	2018-116
2013-281	2014-244	2015-160	2016-154	2017-128	2018-124
2013-323	2014-245	2015-161	2016-155	2017-129	2018-125
2013-520	2014-246	2015-19	2016-156	2017-130	2018-126
2013-521	2014-247	2015-194	2016-157	2017-131	2018-156
2013-522	2014-248	2015-213	2016-158	2017-137	2018-157
2013-523	2014-308	2015-240	2016-185	2017-163	2018-34
2013-524	2014-309	2015-252	2016-186	2017-164	2018-346
2013-525	2014-350	2015-264	2016-19	2017-165	2018-348
2013-526	2014-351	2015-265	2016-203	2017-18	2018-349
2013-569	2014-366	2015-340	2016-210	2017-25	2018-350
2013-679	2014-407	2015-341	2016-221	2017-276	2018-351
2013-724	2014-408	2015-342	2016-222	2017-277	2018-401
2013-725	2014-409	2015-358	2016-254	2017-362	2018-41
2013-726	2014-428	2015-393	2016-255	2017-363	2018-42
2013-727	2014-433	2015-441	2016-256	2017-364	2018-43
2013-728	2014-437	2015-442	2016-257	2017-374	2018-437
2013-729	2014-439	2015-460	2016-309	2017-376	2018-438
2013-730	2014-443	2015-463	2016-325	2017-378	2018-47
2013-731	2014-494	2015-464	2016-361	2017-379	2018-66
2013-732	2014-495	2015-510	2016-362	2017-380	2018-67
	2014-496	2015-511	2016-369	2017-403	2018-68
	2014-512	2015-512	2016-371	2017-411	2018-69
	2014-548	2015-565	2016-378	2017-412	2018-74
	2014-559	2015-566	2016-411	2017-424	2018-75
	2014-560	2015-567	2016-413	2017-425	2018-77

2013 –28 November 2018: 182 CRTC cost orders					
2013	2014	2015	2016	2017	2018
				2017-426	2018-8
				2017-95	2018-87
					2018-88
					2018-89
23 cost orders	28 orders	28 orders	28 orders	30 orders	32 orders

Note: in replicating our November 2017 analysis, we found three orders had been entered twice (rather than once); the second entries have been removed for this analysis.

The 182 costs orders were sought with respect to 98 different CRTC telecommunications proceedings:

CRTC telecom proceeding, showing number of costs orders, and year in which order issued							
CRTC proceeding	2013	2014	2015	2016	2017	2018	Total
2011-348	1						1
2012-0046-9	2						2
2012-557	7						7
2012-669	1						1
2013-140	1						1
2013-155		7					7
2013-337		1	2				3
2013-338		4					4
2013-527		1					1
2013-549		1					1
2013-551			3				3
2013-685		1					1
2014-1056-3			1				1
2014-188			1				1
2014-44			2				2
2014-76			2				2
2015-134					11		11
2015-239				6	1		7
2015-305				1			1
2015-548				1			1
2015-554				1			1
2015-66			2				2
2015-67			2				2
2016-103					1		1
2016-115					1		1
2016-116						1	1
2016-117						5	5
2016-192				2	3		5
2016-256				1			1

CRTC telecom proceeding, showing number of costs orders, and year in which order issued							
CRTC proceeding	2013	2014	2015	2016	2017	2018	Total
2016-293					8		8
2016-333					1		1
2016-431					1		1
2017-112						5	5
2017-259						2	2
2017-33						3	3
2017-450						1	1
2017-49						2	2
2017-92						2	2
2018-05-01						1	1
2018-98						6	6
8620-J106-201601633				2			2
8620-J64-201215989	1						1
8620-P8-201400845		1					1
8620-P8-201405606			1				1
8622-B75-201513945				1			1
8622-P8-201400142, 00134		1					1
8622-Q15-201310508	2						2
8622-Q15-20131050812	1						1
8633-R28-201310320	3						3
8633-R28-201501586			1	1			2
8633-T66-201310812	2						2
8633-T66-201401827		1					1
8638-S22-201310515	1						1
8638-T102-201607657						1	1
8638-T66-201607433						1	1
8640-B2-201601253					1		1
8640-B2-201602326					1		1
8640-B2-2016606245						1	1
8640-B2-201702200						1	1
8640-T66-201608408						1	1
8640-T66-201608606						2	2
8644-C282-201806986						1	1
8650-P8-201215913		1					1
8661-B54-201408930			1				1
8661-N1-201207720	1						1
8661-N1-201413137			1				1
8661-P8-201314012		1					1
8661-T69-201507287				1			1
8662-B2-201512161				1			1
8662-B54201305178		1					1

CRTC telecom proceeding, showing number of costs orders, and year in which order issued							
CRTC proceeding	2013	2014	2015	2016	2017	2018	Total
8662-C182-201508235				2			2
8662-D53-201312321		1					1
8662-D53-201407536			1				1
8662-D53-201509077				1			1
8662-D53-201510371				1			1
8662-N1-201401091		1					1
8662-N1-201505629				1			1
8662-P8-201702853						1	1
8662-R28-201411694			1				1
8663-A182-201800467						4	4
8663-B2-201514050				1			1
8663-C182-201702598						1	1
8663-N1-201401406			1				1
8663-P8-201607186					1		1
8663-S119-201500645			1				1
8663-T117-201513325				1			1
8665-B2-201413343			3				3
8665-B38-201306829		1					1
8665-D53-201406877			1				1
8665-E17-201312389		2					2
8665-P8-201400762			1				1
8665-T66-201507667				1			1
8665-T66-201710708						2	2
8665-T8-201707259						1	1
8678-T66-201306845		1					1
8678-T66-201402891		1					1
8698-P8-201505992				1			1
8698-T66-201503996				1			1
Total orders	23	28	28	28	30	45	182
Total proceedings	12	18	19	20	11	22	98

We also identified five proceedings in which applications have been submitted, but for which the CRTC has not yet issued any costs orders: 2017-450, 2018-5, 2018-98, 8644-C282-201806986 and 8663-A182-201800467.

Proceeding	Date public process component ended	Number of costs applicants
2018-98	23 October 2018	6
8644-C282-201806986	15 October 2018	1
2017-450	20 April 2018	1
8663-A182-201800467	29 March 2018	4

Proceeding	Date public process component ended	Number of costs applicants
2018-5	9 March 2018	1
Total		13

None of the costs orders in the period studied related to interim costs; the most recent interim costs order that we located using the CRTC's search engine is ten years old, from November 2008.²⁸

C Results from analysis of data

The main question for this research note is how long it takes the CRTC to issue costs orders.

The Forum's November 2017 research note found that the time taken by the CRTC to issue costs orders had doubled from an average of 3.7 months after applications were filed in 2013, to 8.6 months when filed in 2017 (130% increase). The cost-order data for the period from 2013 to November 28th 2018 show that the time taken by the CRTC to issue decisions about costs applications in 2018 remains significantly higher than the time taken in 2013, and slightly higher than in 2017. In 2013, for example, the CRTC issued costs orders an average of 3.7 months after applicants submitted their costs applications; in 2018, orders were issued an average of 9.6 months after the applications were filed.

Average number of months to CRTC's issuance of cost orders						
Orders and reference dates	2013	2014	2015	2016	2017**	2018***
Number of orders	23	28	28	30	30	45
Number of proceedings	12	18	19	20	11	22
Months from launch of proceeding	9.5	12.2	13.2	10.5	18.8	16.2
Months from end of proceeding record*	5.3	8.4	8.0	5.1	10.4	10.9
Months from date of CRTC outcome in proceeding	1.5	1.6	-0.5	0.6	5.0	2.6
Months from date that cost application is filed	3.7	6.9	7.6	6.4	9.5	9.6
* Being the deadline for public organizations to make their last submission in a proceeding						
** Previous 2017 results described 26 costs orders from January to mid-November; the CRTC issued 4 other orders in the remaining few weeks of the year, for a total of 30 orders						
*** January 1 st to November 30 th 2018						

We then considered the timing of the CRTC's costs orders in terms of its 2013 performance. In 2013 the CRTC issued decisions on costs orders, on average, 3.7 months after the applications were filed. While longer than other invoicing approaches (many companies require bills to be paid within 30, 60 or 90 days, to avoid penalties), a three-month period nevertheless provided some certainty to applicants. We

²⁸ *Determination of award for interim costs with respect to the participation of the Canadian Hearing Society in the Broadcasting Notice of Public Hearing/Telecom Public Notice 2008-8 proceeding, Telecom Costs Order CRTC 2008-21 (Ottawa, 7 November 2008), <https://crtc.gc.ca/eng/archive/2008/co2008-21.htm>. The Canadian Hearing Society sought \$2,145 to pay for travel expenses and the costs of interpretation of one day of a CRTC telecommunications hearing.*

therefore grouped the applications in terms of the time taken by the CRTC to issue costs determinations, in 3-month increments.

In 2013 nearly half (48%) of the CRTC's costs determinations were issued within 3 months of the applications' being filed, and the remaining determinations were issued within 6 months of filing. In 2014, the CRTC issued determinations within six months for just over half (54%) of the applications it received. Since 2017 more than four-fifths (81% or more) of CRTC determinations have been issued more than six months after it received the related costs applications.

Change in time taken to issue cost orders, 2013-2018							
Time from date of application to issue orders	2013	2014	2015	2016	2017	2018 (to Nov 30)	Total
Less than 3 months	11	1				1	13
3-5.9 months	12	14	8	18	2	5	59
6-8.9 months		7	15	6	9	10	47
9-11.9 months		4		1	15	10	30
Year or more		2	5	3	4	6	20
Total	23	28	28	28	30	32	169
3 months or less	48%	4%	0%	0%	0%	2%	7%
6 months or less	100%	54%	29%	64%	7%	19%	43%
6 months or more	0%	46%	71%	36%	93%	81%	57%
12 months or more	0%	7%	18%	1%	13%	19%	12%

The CRTC's costs orders do not address (and therefore do not explain) the time taken by the CRTC to issue the orders. The size of the amount sought by applicants is unrelated to the time that the CRTC takes to issue an order; as shown in the following chart, it generally took longer to issue orders in 2018 than in other years, regardless of the size of the order – except that the time to issue orders for costs of between \$1,000 and \$5,000, and for costs of between \$10,000 and \$50,000 decreased by 3.8 and by 1 month, respectively. In 2018 the CRTC took just over a year (12.1 months) to issue decisions about cost orders for amounts between \$5,000 and \$10,000. Overall, it took the CRTC two and a half times (2.6 times) as long to issue costs orders in 2018, as it did in 2013.

Average number of months between costs application and CRTC order							
Size of costs sought	2013	2014	2015	2016	2017	2018	2018 to 2013
Less than \$1K	3.7	5.2		5.0	7.9	8.8	2.4
\$1K - \$4.99K	2.8	6.9	7.2	7.5	14.4	10.6	3.8
\$5K - \$9.99K	2.4	7.1	5.9	7.2	10.2	12.1	5.0
\$10K - \$49.99K	4.3	6.8	8.9	5.1	9.1	8.1	1.9
\$50K - \$99.99K	5.3	6.6	6.6		8.4	9.4	1.8
More than \$100K	5.3		6.4		9.9	11.9	2.3
Total	3.7	6.9	7.6	6.4	9.5	9.6	2.6

In its 2017 research note the Forum speculated that the number of costs applications in a given proceeding might account for some of the differences in time taken for the CRTC to issue a cost order. As shown below, the length of time taken by the CRTC to issue orders has increased regardless of the number of parties involved in any proceeding:

Average number of months from date of filing cost application, to CRTC order						
Number of costs applicants	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				
5						9.4
6						
7	5.5	5.2		4.5	8.1	
8					6.2	
11					10.2	
Average, all applicants	3.7	6.9	7.6	6.4	9.5	9.6

In this research note we also considered whether the time between the date on which a cost application is made and the date of the CRTC cost order determination, might be affected by the CRTC's familiarity with cost applicants. For instance, parties that participate frequently in CRTC proceedings may obtain decisions with respect to their applications more quickly than applicants with which the CRTC is unfamiliar.

Familiarity with costs applicants does not appear to affect the timing of CRTC costs orders. The time taken by the CRTC to issue cost orders with respect to the two parties that filed cost applications in each year since 2013 (PIAC and Union des consommateurs), doubled or tripled by 2018, and was as high or higher than the time required to issue cost orders for less-frequent public-interest participants.

Cost applicant	# of years in which applications filed	2013	2014	2015	2016	2017	2018
PIAC et al	6	3.4	7.2	7.8	7.5	11.8	10.2
Union des consommateurs	6	3.4	10.1	6.8	6.2	8.2	5.2
Media Access Canada	5	5.4		7.6	4.9	7.9	9.7
Consumers Council of Canada	4	4.5	9.8		4.4	7.2	
Diversity Canada et al	4	5.9	7.8	8.5	4.2		
OpenMedia.ca	4			6.4	5.7	9.7	6.9
CIPPIC et al	3	3.2			4.4	9.3	
CNIB	3			7.5		8.1	11.3
First Mile Connectivity Consortium	3			12.1		10.3	7.0
Neil Squire Society	3		4.1	7.6			12.2
Canadian Association of the Deaf	2		3.6			9.3	
Canadian Hearing Society	2		5.3			12.2	

Cost applicant	# of years in which applications filed	2013	2014	2015	2016	2017	2018
FRPC	2				4.4	8.0	
Ontario Video Relay Service Committee	2		5.3	5.6			
BC Video Relay Services Committee	1		5.2				
Bradley Nickel	1					5.7	
CAD	1						11.7
CNSDB	1						11.3
Deaf Wireless Canada	1					8.3	
DWCC	1						11.7
Dww	1						11.9
J-F Mezei	1	5.4					
Manitoba Keewatinowi Okimakanak	1					10.3	
Maple Communications	1						9.4
McLaughlin Educational Consulting Services	1		6.1				
Ryan Adams	1					7.8	
Sonny Access Consulting	1		5.5				
Toronto Association of the deaf	1		5.2				
Public Interest Law Centre Manitoba	0						
Average, all parties		3.7	6.9	7.6	6.4	9.5	9.6

In reviewing the average time taken by the CRTC to issue cost orders to individual applicants, we noticed differences with respect to PIAC and other applicants. We identified 25 proceedings from 2013 to November 28, 2018 in which PIAC was one of two or more cost applicants. Overall, the CRTC issued cost orders at the same time in 4 of the 25 proceedings, issued PIAC's orders more quickly (than other orders) in 10 of the 25 proceedings, and issued PIAC's orders more slowly (than other orders) in 11 of the 25 proceedings. This may be a recent phenomenon: in 10 of the 13 proceedings from 2013 to 2015, the CRTC issued cost orders for PIAC in the same or less time than for other orders; in 8 of the 12 proceedings from 2016 to 2018, the CRTC issued costs orders for PIAC more slowly than for other orders.

Months to issue CRTC cost orders from time of application to issuance of cost order: proceedings involving PIAC and one or more other applicants							
Proceedings	2013	2014	2015	2016	2017	2018	Total
Proceedings with more than one cost applicant, including PIAC	4	3	6	3	3	6	25
Same time taken for all	1		2	1			4
Less time	2	3	2		1	2	10
More time	1		2	2	2	4	11
'More time' as % of total	25%	0%	33%	67%	67%	67%	
Average months for non-PIAC orders	4.3	9.5	7.9	4.4	8.6	8.0	

Months to issue CRTC cost orders from time of application to issuance of cost order: proceedings involving PIAC and one or more other applicants							
Proceedings	2013	2014	2015	2016	2017	2018	Total
Average months for PIAC orders	3.7	7.4	7.2	8.2	9.4	9.1	

Differences in the CRTC's timing of cost orders for PIAC and other applicants are not related to the size of the amounts requested: in 2018 the CRTC took fourteen months to issue orders related to PIAC for amounts under \$5,000, while taking a little under 8 months for similar-sized orders for other applicants. Similarly, the CRTC took just over a year (13.6 months) to issue PIAC cost orders for amounts between \$5,000 and \$10,000, while issuing orders to other applications for those amounts in 10.5 months.

Average months form date of application, to date of order							
Application amount	2013	2014	2015	2016	2017	2018	Average, all years
Less than \$1K							
Not PIAC	3.7	5.2			7.4		5.7
PIAC				5.0	9.7	8.8	7.9
\$1K - \$4.99K							
Not PIAC	2.4	7.6	7.1	5.9		7.8	6.3
PIAC	3.1	6.1	7.4	8.6	14.4	14.1	8.8
\$5K - \$9.99K							
Not PIAC		5.4	6.6		10.2	10.5	7.8
PIAC	2.4	7.8	3.0	7.2		13.6	7.7
\$10K - \$49.99K							
Not PIAC	4.8	6.0	8.8	4.3	8.8	9.0	7.1
PIAC	3.5	7.7	9.0	7.1	10.9	6.9	7.6
\$50K - \$99.99K							
Not PIAC	5.7				8.1	9.4	7.7
PIAC	4.2	6.6	6.6		9.2		7.2
More than \$100K							
Not PIAC					10.1	11.9	10.7
PIAC	5.3		6.4		9.5		7.1
Total	3.7	6.9	7.6	6.4	9.5	9.6	7.5

Finally, we briefly reviewed the data related to 13 costs applications for which the CRTC has not yet issued determinations. Six of these applications were filed before June 2018, and relate to a total of \$158,298 in costs that the applicants incurred for CRTC matters in which the public participation component ended by 20 April 2018. The remaining \$235,013 in costs relate to seven costs applications totalling \$393,310, with respect to proceeding that ended this month (November 2018).

CRTC proceeding	Date public process ended	Earliest date cost application filed	Number of applicants	Total costs submitted by applicants
2018-5	09-Mar-18	09-Apr-18	1	\$ 995
2017-450	20-Apr-18	08-May-18	1	\$ 3,776
8663-A182-201800467	29-Mar-18	11-May-18	4	\$ 153,527
Subtotal				\$158,298
2018-98	23-Oct-18	09-Nov-18	6	\$ 232,010
8644-C282-201806986	15-Oct-18	23-Nov-08	1	\$ 3,003
Total	5 proceedings		13	\$ 393,310

III. Conclusions and recommendations

A Conclusions

A number of conclusions emerge from this updated analysis of the CRTC's costs orders.

1 Time CRTC takes to issue costs orders continues to grow

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. 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.

If efficiency is measured by the time taken by the CRTC to render decisions about costs applications, the CRTC's costs-application process is becoming less efficient. In 2013 the CRTC issued costs determinations for 48% of applications, within 3 months of receiving them – in 2018 the CRTC took six months or more to issue determinations for 81% (26) of the (32) applications it received, and for 19% of applications, took a year or more to issue a decision. It is unclear why the CRTC's costs-order process is becoming less efficient.

2 Applicants' identity may affect cost-order timing

Cost applicants' identity may affect the time it takes the CRTC to issue cost-order determinations. In 8 out of 12 proceedings involving PIAC and other applicants from 2016 to 2018, the CRTC issued costs orders for PIAC more slowly than it issued other costs orders. It is unclear why the identity of public-interest participants would affect timing in an impartial and transparent costs-order process..

3 Delays in cost-order decisions reduce predictability

The CRTC has from time to time made statements suggesting its desire to minimize uncertainty with respect to the telecommunications matters within its jurisdiction:

CRTC Forecast 2019-2020: The CRTC Forecast 2019-20 supplements the CRTC Departmental Plan 2018-19. Together, these publications help foster a predictable regulatory environment by providing advance public notice of the CRTC's activities over the next two fiscal years (each running from 1 April to 31 March).²⁹

Telecom Decision CRTC 2018-97: ... Providing certainty to wireless carriers is essential to their investment decisions and, in the case of competitors, solidifying their competitive positions. ...³⁰

Telecom Regulatory Policy 2017-104: ...In the context of evaluating whether a differential pricing practice is compliant with subsection 27(2) of the Act, the Commission has established evaluation criteria that will provide all stakeholders, particularly ISPs, with a degree of predictability. ...³¹

Telecom Decision CRTC 2016-11: ... The status quo approach is therefore burdensome for all stakeholders involved, and results in significant rate uncertainty, since rates remain interim for extended periods of time, which is detrimental to both the wholesale HSA service providers and their customers (i.e. the Competitors). ... The expedited disposition of tariff applications would reduce rate uncertainty, to the benefit of all stakeholders. ...³²

Telecom Regulatory Policy CRTC 2015-326: The Commission's framework for determining whether wholesale services should be mandated should be predictable and practical for the industry and should constitute an efficient regulatory regime that provides a high degree of regulatory certainty to both incumbent carriers and competitors. ...³³

Information Session on Canada's Anti-Spam Legislation, 2014: Purpose To offer as much predictability and transparency as we can, within the limit of our confidentiality obligations. This will also enable us to be effective in the discharge of our enforcement mandate.³⁴

The absence of a transparent process with clear dates for issuing decisions creates uncertainty for public-interest organizations that rely on Parliament's decision to permit them to recover their participation costs in telecommunications proceedings. Applicants who submitted costs applications to the CRTC between April and May 2018 are still waiting for the CRTC's determinations about those applications. Based on the timing of CRTC cost orders from January to November 2018, they may not obtain a decision about those applications until January 2019, for costs amounting to \$158,298. As applicants do not receive payment for applications that the CRTC has approved until the parties that the CRTC has identified as being responsible for the costs, actually remit payment, applicants may not receive payment for the costs they incurred in spring 2018, until the spring of 2019.

²⁹ See <https://crtc.gc.ca/eng/backgrnd/vis2018.htm>.

³⁰ *Reconsideration of Telecom Decision 2017-56 regarding final terms and conditions for wholesale mobile wireless roaming service*, Telecom Decision CRTC 2018-97, (Ottawa, 22 March 2018), <https://crtc.gc.ca/eng/archive/2018/2018-97.htm>, at para. 57.

³¹ *Framework for assessing the differential pricing practices of Internet service providers*, Telecom Regulatory Policy 2017-104, (Ottawa, 20 April 2017), <https://crtc.gc.ca/eng/archive/2017/2017-104.htm>, at para. 126.

³² *Review of costing inputs and the application process for wholesale high-speed access services*, Telecom Decision CRTC 2016-117 (Ottawa, 31 March 2016), <https://crtc.gc.ca/eng/archive/2016/2016-117.htm>, at paras. 19 and 25.

³³ *Review of wholesale wireline services and associated policies*, Telecom Regulatory Policy 2015-326 (Ottawa, 22 July 2015), <https://crtc.gc.ca/eng/archive/2015/2015-326.htm>, at para. 24.

³⁴ CRTC, *Canada's Anti-Spam Legislation: Information Session, 2014*, <https://crtc.gc.ca/eng/com500/info2014.pdf>, at 3.

It is unclear how uncertainty and unpredictability in a costs-order process designed to ensure effective representation of the public interest in complex proceedings, serve the public interest. Does unpredictability in dealing with costs applications maintain, or encourage, strong public-interest participation? Does uncertainty maintain, or encourage public-interest participation if public-interest organizations cannot pay invoices related to CRTC proceedings in a timely fashion? If the CRTC relies on public-interest organizations to provide useful and relevant research, economic studies or financial analysis, what should these organizations say to witnesses about the possibility that they may not be paid for 9 and a half months or more?

4 CRTC does not make use of Parliament's interim-costs power

In 1993 Parliament gave the CRTC the discretion to issue costs awards, including the discretion to grant applications for interim costs. The CRTC has not approved any applications for interim costs since January 2013, and to the best of our knowledge, issued the most recent interim costs order in 2008, or a decade ago.

It is true that the wording in the *Telecommunications Act* clearly makes the granting of any costs order by the CRTC a matter for its discretion, but apart from the impact that the loss of an interim costs process has had, or may have had, on public-interest participants, the concern exists that the CRTC appears to have terminated access to a process established by Parliament, and that it did so without notice and without public consultation. It is unclear why the CRTC appears to have tacitly permitted the interim-costs procedure to fall into disuse.

5 Retroactive and closed-door decision-making

The CRTC last reviewed its costs process in a public process that began in 2009.³⁵ It subsequently issued *Guidance for costs award applicants regarding representation of a group or a class of subscribers* in 2016 without public consultation, has announced changes to costs application requirements without prior notice, and has applied these changes to costs applications submitted before it announced the changes.

In terms of retroactivity, the CRTC has set out three new requirements for public-interest participants to reflect subscriber interests, and applied each requirement to applications for costs in proceedings that had already begun or had concluded before the requirements were published:

- the CRTC established that survey results must be submitted with costs applicants' written interventions (or comments) in October 2017,³⁶ and applied this requirement to a proceeding

³⁵ *Call for comments – Review of CRTC costs award practices and procedures*, (Ottawa, 23 November 2009), <https://crtc.gc.ca/eng/archive/2009/2009-716.htm>.

³⁶ *Determination of costs award with respect to the participation of the Forum for Research and Policy in Communications in the proceeding that led to Telecom Regulatory Policy 2017-200*, Telecom Order 2017-362 (Ottawa, 16 October 2017), <https://crtc.gc.ca/eng/archive/2017/2017-362.htm>.

that began in July 2016³⁷ and ended in June 2017,³⁸ reducing the costs sought by \$10,170.

- the CRTC decided that “care must be taken to ensure that the amount claimed for [the use of a survey to gather and report on the views of deaf, hard-of-hearing, and deaf-blind communities] is proportionate to what is reasonable in the circumstances” in February 2018,³⁹ and applied this requirement to a public proceeding that began in March 2016⁴⁰ and ended in June 2017,⁴¹ reducing the costs sought by \$28,524.
- the CRTC first required that applicants’ surveys not ask questions about issues outside the scope of the CRTC proceeding in November 2018,⁴² and applied this requirement to a proceeding that began in February 2017,⁴³ reducing the costs for the survey by 50%, or as much as \$60,000.⁴⁴

Apart from the lack of certainty about timing, costs applicants must now also assume that the CRTC may arbitrarily change its approach to costs orders after they have already incurred costs that they believed met the CRTC’s costs criteria at that time. How does this uncertainty maintain or strengthen public interest participation?

³⁷ *Review of the Wireless Code*, Telecom Notice of Consultation CRTC 2016-293 (Ottawa, 28 July 2016), <https://crtc.gc.ca/eng/archive/2016/2016-293.htm>.

³⁸ *Review of the Wireless Code*, Telecom Regulatory Policy 2017-200, (Ottawa, 15 June 2017), <https://crtc.gc.ca/eng/archive/2017/2017-200.htm>.

³⁹ *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 2018-66*, (Ottawa, 16 February 2018), <https://crtc.gc.ca/eng/archive/2018/2018-66.htm>.

⁴⁰ *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://crtc.gc.ca/eng/archive/2016/2016-116.htm>.

⁴¹ *Next-generation 9-1-1 – Modernizing 9-1-1 networks to meet the public safety needs of Canadians*, Telecom Regulatory Policy 2017-182, (Ottawa, 1 June 2017), <https://crtc.gc.ca/eng/archive/2017/2017-182.htm>.

⁴² *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 2018-437, (Ottawa, 28 November 2018), <https://crtc.gc.ca/eng/archive/2018/2018-437.htm>, at para 24.

⁴³ *Review of the regulatory framework for text-based message relay services*, Telecom Notice of Consultation CRTC 2017-33 (Ottawa, 2 February 2017), <https://crtc.gc.ca/eng/archive/2017/2017-33.htm>.

⁴⁴ Telecom Order 2018-437 reduced the total costs sought (\$127,901) to \$62,102, or by \$65,798 in total. The Order states at paragraph 25 that it reduced “the DWCC’s costs associated with the survey and report by 50%”, but does not state the dollar value represented by this percentage.

DWCC had also included 27 hours of time by error, however, and used an incorrect hourly rate for one of its analysts; the Order did not quantify the dollar amount of these errors, making it difficult to determine precisely how much of the original and correct cost order was for DWCC’s survey, and how much of the final order was for the survey. Piecing the figures in the order together, we estimated that the survey cost at least \$60,000.

6 Whose interests are served by the time taken by the CRTC to issue cost-order decisions?

It remains unclear why the CRTC's costs-application process takes so long to complete, from the time applicants file their costs applications, to the time the CRTC actually issues a determination. In 1998 the CRTC said it wanted to streamline its process for dealing with costs, to simplify and expedite it, make it less burdensome, and to make it more "user friendly":

There was general agreement amongst the parties that the taxation process could be further streamlined. The members of the Legal Directorate have adopted a number of amendments to reflect the comments raised while keeping in mind that the taxation process should not represent a burdensome process and should be fair to all parties concerned. The required taxation Forms have been substantially revised and simplified. The end result should be to reduce the workload in the preparation of Bills of Costs. The Legal Directorate expects that, consistent with the Commission's Vision, the revised Guidelines and the simplified Forms will assist in expediting the process for both the Commission and the parties, as well as making the process more user friendly.⁴⁵

In 2018 parties that submitted costs applications to the CRTC waited for decisions on the applications for an average of 9.6 months, with 81% waiting more than six months and 19% waiting more than a year, after filing. The time taken for the CRTC to issue decisions on costs orders suggests that the CRTC's costs process no longer meets its own objectives of streamlining, simplification, ease (vs burden) and user friendliness.

It is unknown why the CRTC's approach to costs applications has changed. Perhaps the CRTC – being the full-time members or Commissioners of the CRTC (rather than its staff) – has formally or informally delegated the costs-application process to individual members of its telecommunications staff, who operate without clear direction as to timing, or supervision. Perhaps the CRTC and its staff, in the absence of a clear process to deal with applications, simply forget that public interest participants have applied for costs.

Whether the CRTC lacks a systematic costs-application process, has delegated authority over this process to staff or has become forgetful – the result is arbitrariness: decisions on costs determined or based on factors other than fixed rules or procedures.

B Recommendations

We conclude our updated research note with two recommendations.

1) The CRTC should revise its costs application process, in consultation with the public.

The CRTC's current process for issuing costs orders lacks transparency and is inefficient. Costs applicants file their applications with the CRTC, and in 2018 waited 9.6 months or more for a determination. It is

⁴⁵ General Counsel, Telecommunications, CRTC, *Reference Letter regarding Guidelines for the Taxation of Costs*, (Ottawa, 1 May 1998), https://crtc.gc.ca/eng/forms/form_302.htm.

unclear why the CRTC takes longer to issue decisions about some applications than it does with others, and it is unclear why applications from specific applicants sometimes take longer than others.

The absence of transparency in the costs-application process raises concerns that the CRTC is exercising its authority over costs applications in an arbitrary way. As the 1947 case of *Minister of National Revenue v. Wrights' Canadian Ropes*⁴⁶ explains, however, arbitrary exercises of power lead to vague and irregular outcomes not based on reason and justice:

...the power given to the Minister is not an arbitrary one to be exercised according to his fancy. To quote the language of Lord Halsbury in *Sharp v. Wakefield* [1891] A.C. 173, 179, he must act 'according to the rules of reason and justice, not according to private opinion ... according to law, and not humour. It is to be, not arbitrary, vague and fanciful, but legal and regular.'⁴⁷

The CRTC's enabling statutes are currently under review by the Senate Standing Committee on Transportation and the Broadcasting and Telecommunications Legislative Review Panel – but legislative change may only happen, at the earliest, by 2022 – by which time, based on the number of cost orders issued annual by the CRTC on average since 2013 (28), the CRTC might have issued another 113 costs orders – many of which may only have issued eight or more months after applicants submitted their applications.

The CRTC should launch a review of its costs-application process in early 2019, to invite public comment on, among other things, whether the CRTC should establish a formal process for reviewing costs applications, to ensure that applicants receive a decision within 3 to 6 months of the date when they filed the applications.

2) The CRTC should announce changes in its costs-application requirements through Information Bulletins; these changes should apply prospectively.

As noted in the Forum's November 2017 and this research note, the CRTC has issued important guidance about cost application requirements in Orders dealing with applications related to proceedings that took place months or years before the Orders were issued.

As a general rule laws in Canada apply on a prospective basis: that is, they apply to new events after the time the laws come into effect. Retroactive law-making is discouraged on the theory that it is difficult for people to follow the law at any time, if lawmakers in the future decide to change the law or its application in the past.

The CRTC has changed its costs application requirements retroactively: it has applied new criteria to events that took place in the past, and to applications submitted before the change were made

⁴⁶ [1947] A.C. 109.

⁴⁷ *Ibid.*, per Lord Greene M.R. at pp. 122-123.

Given that the CRTC has said that amounts as low as \$6,236 are significant in the context of costs applications,⁴⁸ the CRTC's retroactive changes to its cost requirements have had significant consequences for applicants: two 2018 decisions involving DWCC, for instance, denied \$94,323 worth of the costs it declared for participating in CRTC proceedings. This amount is likely significant to DWCC.

The CRTC has at times justified retroactive regulation as being necessary to serve the public interest. When it introduced the *Wireless Code* in June 2013, for example, it introduced a two-year limit on wireless contracts to take effect on 3 June 2015, even if a contract had been signed before June 2013. The CRTC explained that "it was in the best interests of consumers" that the *Code* be implemented as quickly as possible.⁴⁹

Whose interests have been served by the CRTC's retroactive changes to its costs application requirements, which have affected significant costs amounts? If the effect of its changes has been to limit or impair public interest organizations' ability to intervene on behalf of the public interest, the CRTC's changes have been contrary to the public interest. What evidence demonstrates that the CRTC's retroactive changes to the costs process have strengthened public-interest participation in its proceedings?

To ensure that all parties understand the CRTC's requirements, and as the CRTC need not review its costs application process publicly every year, the CRTC should publish requirements related to the costs application process in Information Bulletins – and ensure that the requirements apply on a going-forward basis, or prospectively.

* * * End of note * * *

⁴⁸ In Telecom Order 2015-342, <https://crtc.gc.ca/eng/archive/2015/2015-342.htm>, the CRTC wrote at para. 20 as follows:

The Commission is concerned that PIAC/CAC withdrew their invoice for the Environics Research Group survey only after TCC raised the issue, especially given the significant sum (\$6,236.40). The Commission expects applicants to exercise due diligence when submitting their bill of costs. The Commission reduces PIAC/CAC's disbursement claim by \$6,236.40,

⁴⁹ See *Bell Canada v. Amtelecom Limited Partnership*, [2016] 1 FCR 29, 2015 FCA 126 (CanLII), at para.13.