



Telecom Order CRTC 2009-397

Ottawa, 30 June 2009

Determination of costs award with respect to the participation of the Coalition of Canadian Consumers in the Telecom Public Notice 2008-14 proceeding

File number: 8665-C12-200814021 and 4754-339

1. By letter dated 28 January 2009, the Coalition of Canadian Consumers (the Coalition) applied for costs with respect to its participation in the proceeding initiated by Telecom Public Notice 2008-14 (the Public Notice 2008-14 proceeding).
2. On 2 February 2009, the Canadian Marketing Association (CMA) filed comments in response to the application by the Coalition. On 6 February 2009, TELUS Communications Company (TCC) filed comments in response to the application by the Coalition. On 9 February 2009, Bell Canada on behalf of itself, Bell Aliant Regional Communications, Limited Partnership, Saskatchewan Telecommunications, and Télébec, Limited Partnership (collectively, the Companies) filed comments in response to the application by the Coalition. On 10 February 2009, the Coalition filed reply comments.

Application

3. The Coalition submitted that it had met the criteria for an award of costs set out in subsection 44(1) of the *CRTC Telecommunications Rules of Procedure* (the Rules), as it represents a group of subscribers that had an interest in the outcome of the Public Notice 2008-14 proceeding, it participated responsibly, and it contributed to a better understanding of the issues by the Commission through its participation in the Public Notice 2008-14 proceeding.
4. The Coalition requested that the Commission fix its costs at \$5,630.63, consisting of legal fees and the federal Goods and Services Tax (GST) on fees.
5. The Coalition claimed 32.5 hours at a rate of \$165 per hour for legal fees associated with outside legal counsel.
6. The Coalition made no submission as to the appropriate costs respondents.

Answer

7. In response to the application, the Companies, TCC, and the CMA stated that they had no objection to the amounts claimed by the Coalition. The CMA further stated that it had no objection to the Coalition's eligibility for costs. However, both TCC and the Companies asked the Commission, before awarding costs, to determine whether the Coalition legitimately represents a significant body of subscribers as required by subsection 44(1) of the Rules.

8. TCC submitted that the Commission should make a determination as to the Coalition's status, raised in TCC's reply to the Coalition's application for costs for participation in the proceeding initiated by Telecom Public Notice 2008-15, before awarding costs to the Coalition for its participation in the Public Notice 2008-14 proceeding.
9. The Companies argued that the Commission has very rarely awarded costs to individuals, yet it is unclear to Bell Canada whether the Coalition represents more than a few individuals. The Companies also noted that the Coalition is not incorporated, arguing that incorporation, with a mission statement which makes clear that the organization represents a significant body of subscribers, would militate in favour of finding that a costs applicant represents a significant body of subscribers. Further, the Companies requested that the Commission confirm that the Coalition is not receiving funding from other sources in association with its participation in the Public Notice 2008-14 proceeding.
10. The Companies submitted that any costs awarded should be allocated among telecommunications service providers (the Companies, Primus Telecommunications Canada Inc. (Primus), and Rogers Communications Inc. (RCI)) and the CMA in a manner similar to that determined by the Commission in the proceeding initiated by Telecom Public Notice 2006-4.
11. In its response, the CMA submitted that it should not be named as a costs respondent in this proceeding. The CMA argued that the Commission does not have the authority to name it as a costs respondent since it does not fall under the definition of a regulated company found in subsection 44(1) of the Rules. The CMA further argued that it would be inappropriate to assign costs to any interested parties that did not enjoy the benefits of a regulated marketplace, particularly not-for-profit organizations such as the CMA. Finally, the CMA considered that if the Commission intends to allocate costs against unregulated interveners, it should, at the commencement of each proceeding, notify all respondents with commercial interests that costs may be awarded against them.

Reply

12. The Coalition submitted that the Commission has awarded costs in the past to organizations without a formal relationship with the subscribers they represent (e.g. the Canadian Internet Policy and Public Interest Clinic in Telecom Costs Order 2008-5) and to unincorporated organizations (e.g. Campaign for Democratic Media in Telecom Costs Order 2008-23). The Coalition further submitted that requiring a formal relationship or incorporation as a pre-requisite for the award of costs may restrict access to Commission proceedings. The Coalition also submitted that the Commission has awarded costs to new organizations whose constituency cannot be specifically ascertained (i.e. Mr. Mark Obermeyer on behalf of "97% of the People of Canada" in Telecom Costs Order 2006-10).
13. The Coalition confirmed that it has not received, nor will it receive, any financial assistance from any other source in connection with its participation in any Commission proceeding.
14. The Coalition submitted that if costs are not awarded, the Coalition will be unable to continue

participating in future Commission proceedings.

Commission's analysis and determinations

15. The Commission has previously awarded costs to individuals and parties that did not represent a body of subscribers with whom the parties had a formal relationship, unincorporated organizations, and organizations whose constituency could not be easily ascertained. The Commission also notes that its general objective in awarding costs is to encourage the informed participation of individuals and organizations who otherwise could not participate in Commission proceedings in order to permit the greatest variety of voices to be considered by the Commission in making its decisions.
16. As noted in Telecom Order 2009-317, the Coalition has advised the Commission that it is an unincorporated coalition of organized and unorganized groups, including consumer advocates and professionals across Canada.
17. The Commission finds that the Coalition has satisfied the criteria for an award of costs set out in subsection 44(1) of the Rules. Specifically, the Commission finds that the Coalition is representative of a group or class of subscribers that has an interest in the outcome of the proceeding, has participated in a responsible way, and has contributed to a better understanding of the issues by the Commission.
18. The Commission notes that the rates claimed in respect of outside legal counsel are in accordance with the rates set out in the Legal Directorate's *Guidelines for the Taxation of Costs*, revised as of 24 April 2007. The Commission also finds that the total amount claimed by the Coalition was necessarily and reasonably incurred and should be allowed.
19. The Commission considers that this is an appropriate case in which to fix the costs and dispense with taxation, in accordance with the streamlined procedure set out in Telecom Public Notice 2002-5.
20. In determining the appropriate respondents to an award of costs, the Commission has generally looked at which parties are affected by the issues and have actively participated in the proceeding.
21. The Commission further notes, however, that in allocating costs among respondents, it has also been sensitive to the fact that if too large a number of respondents are named, the applicant may have to collect small amounts from many respondents, resulting in a significant administrative burden to the applicant.
22. The Commission notes the CMA's submission that the Commission does not have the authority to name it as a costs respondent. The Commission does not agree. In this regard, the Commission notes that subsection 56(2) of the *Telecommunications Act* (the Act) provides it with broad discretionary powers to determine by whom costs are to be paid.
23. The Commission also notes the CMA's submission that it would be inappropriate to name it as a costs respondent because it is not a regulated company and it is a not-for-profit organization. The Commission disagrees. In this regard, the Commission notes that the CMA is an industry

association which represents for-profit as well as not-for-profit interests, and that the CMA actively participated in the Public Notice 2008-14 proceeding on behalf of its many telemarketer members who will be affected by the outcome of the proceeding.

24. The Commission notes in passing that the CMA made similar submissions in previous costs proceedings and that the Commission included the CMA as a costs respondent in those proceedings.
25. In light of the above and given the relatively small size of the costs award in this case, the large number of potential costs respondents, and the result that if all potential costs respondents were retained the Coalition would be required to collect small amounts from certain respondents, the Commission considers that it is appropriate, in the present circumstances, to limit the respondents to the Companies, MTS Allstream Inc. (MTS Allstream), TCC, RCI, and the CMA. Although Primus is affected by the issues and actively participated in the proceeding, the Commission considers that it is appropriate not to include it among the costs respondents because its share would be too small, resulting in an administrative burden if the applicant would have to collect from Primus.
26. The Commission notes that it has, in previous decisions, allocated the responsibility for the payment of costs among respondents on the basis of the respondents' telecommunications operating revenues (TORs), as an indicator of the relative size and interest of the parties involved in the proceeding. The Commission considers that, in the present circumstances, it is appropriate, except for the CMA, to apportion the costs among the respondents in proportion to their TORs, as reported in their most recent audited financial statements. Accordingly, the Commission finds that the responsibility for the payment of costs should be allocated as follows:

The Companies and MTS Allstream	53%
TCC	32%
CMA	10%
RCI	5%

27. The Commission notes that Bell Canada filed submissions in the Public Notice 2008-14 proceeding on behalf of the Companies and MTS Allstream. Consistent with its general approach articulated in Telecom Costs Order 2002-4, the Commission makes Bell Canada responsible for payment on behalf of the Companies and MTS Allstream, and leaves it to the members of the Companies and MTS Allstream to determine the appropriate allocation of the costs among the Companies and MTS Allstream.

Direction as to costs

28. The Commission **approves** the application by the Coalition for costs with respect to its participation in the Public Notice 2008-14 proceeding.

29. Pursuant to subsection 56(1) of the Act, the Commission fixes the costs to be paid to the Coalition at \$5,630.63.
30. The Commission directs that the award of costs to the Coalition be paid forthwith by Bell Canada on behalf of the Companies and MTS Allstream, TCC, the CMA, and RCI according to the proportions set out in paragraph 26.

Secretary General

Related documents

- *Determination of costs award with respect to the participation of the Coalition of Communication Consumers in the Telecom Public Notice 2008-16 proceeding*, Telecom Order CRTC 2009-317, 29 May 2009
- *Determination of costs award with respect to the participation of the Campaign for Democratic Media in the proceeding initiated by the Canadian Association of Internet Providers' Part VII application*, Telecom Costs Order CRTC 2008-23, 22 December 2008
- *Review of the regulatory requirements pertaining to the monitoring and reporting of certain data*, Telecom Public Notice CRTC 2008-15, 27 October 2008
- *Call for comments on potential modifications to some Unsolicited Telecommunications Rules*, Telecom Public Notice CRTC 2008-14, 20 October 2008, as amended by Telecom Public Notice CRTC 2008-14-1, 25 November 2008
- *Determination of costs award with respect to the participation of the Canadian Internet Policy and Public Interest Clinic in the Telecom Public Notice CRTC 2007-16 proceeding*, Telecom Costs Order CRTC 2008-5, 30 May 2008
- *Application for costs by Mr. Mark Obermeyer on behalf of "97% of the People of Canada"* - Proceeding to establish a national do not call list framework and to review the telemarketing rules, Telecom Public Notice CRTC 2006-4, Telecom Costs Order CRTC 2006-10, 21 September 2006
- *Proceeding to establish a national do not call list framework and to review the telemarketing rules*, Telecom Public Notice CRTC 2006-4, 20 February 2006, as amended by Telecom Public Notice CRTC 2006-4-1, 13 March 2006
- *New procedure for Telecom costs awards*, Telecom Public Notice CRTC 2002-5, 7 November 2002
- *Action Réseau Consommateur, the Consumers' Association of Canada, Fédération des associations coopératives d'économie familiale and the*

National Anti-Poverty Organization application for costs – Public Notice
CRTC 2001-60, Telecom Costs Order CRTC 2002-4, 24 April 2002

This document is available in alternative format upon request, and may also be examined in PDF format or in HTML at the following Internet site: <http://www.crtc.gc.ca>