



Telecom Order CRTC 2014-248

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Determination of costs award with respect to the participation of the Canadian Association of the Deaf in the proceeding initiated by Telecom Notice of Consultation 2013-155

1. The Canadian Association of the Deaf (CAD) submitted documents to the Commission dated 22 November 2013 and 13 December 2013 in support of its application for costs with respect to its participation in the proceeding initiated by Telecom Notice of Consultation 2013-155 (the proceeding).
2. By letter dated 19 December 2013, CAD advised the Commission that it wished to submit additional documentation to complete its application. CAD stated that the holiday season might complicate its efforts to do so, but that it would submit the additional documents, one of which would need to be sworn or affirmed before a commissioner for the taking of affidavits, between 17 and 31 January 2014. On 31 January 2014, CAD submitted the additional documentation.
3. The Commission did not receive any interventions in response to the application.

Application

4. In its letter dated 19 December, CAD noted that its application, once complete, could be considered to be filed beyond the deadline for submissions of costs applications in the proceeding. CAD submitted that a late filing would not, in this case, prejudice any interested parties. In its 31 January 2014 filing, CAD further submitted that the Commission should accept and consider its application since CAD is a registered charitable organization without the resources to finance its participation in Commission proceedings. CAD also noted that it found the process of applying for costs to be overly complex.
5. CAD submitted that it had met the criteria for an award of costs set out in section 68 of the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (the Rules of Procedure) because it represented a group or class of subscribers that had an interest in the outcome of the proceeding, it had assisted the Commission in developing a better understanding of the matters that were considered, and it had participated in a responsible way.
6. In particular, CAD submitted that it is a national organization representing and composed of Deaf people, many of whom are currently users of telecommunications services and who would constitute the potential users of a Canadian video relay

service (VRS). CAD also submitted that it provided concrete recommendations to the Commission during the public hearing that took place in October 2013, and that it prepared a model request for proposals (RFP) for a potential Canadian VRS system as requested by the Commission at the public hearing.

7. CAD requested that the Commission fix its costs at \$31,826.16, consisting of \$30,490 for consultant fees and \$1,336.16 for disbursements. CAD filed a bill of costs with its application.
8. CAD made no submission as to the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents).
9. CAD indicated that if costs were awarded to it, one costs respondent should be designated as the payor on behalf of all costs respondents to maximize the administrative efficiency with which it may collect any such award.

Commission's analysis and determinations

10. The Commission considers that this is an appropriate case in which to vary the Rules of Procedure in order to accept and consider CAD's application for costs. The Commission notes that CAD did file documentation in support of its application for costs before the deadline prescribed by section 65 of the Rules of Procedure had elapsed. CAD was also in communication with Commission staff, both before and after the deadline, regarding its intention to file a complete application. CAD provided the Commission with a proposed timeline for filing its application, which it honoured.
11. With respect to CAD's comment that it found the process of applying for costs to be overly complex, the Commission notes that a costs applicant may, in fact, claim costs related to the preparation of its costs application by legal counsel. In ordinary circumstances, the Commission would recommend that a costs applicant that is unable to file a costs application in a timely manner retain the services of an expert to do so on its behalf. However, since the Commission received no interventions in relation to this application, the Commission notes that no interested party appears to have suffered any prejudice as a result of the filings that took place after the submission deadline. Consequently, in the particular circumstances of this case, the Commission is satisfied that considerations of fairness and the public interest weigh in favour of accepting and considering the merits of CAD's application for costs.
12. The Commission finds that CAD has satisfied the criteria for an award of costs set out in section 68 of the Rules of Procedure. For the reasons set out below, the Commission finds that CAD represented a group or class of subscribers that had an interest in the outcome of the proceeding, it assisted the Commission in developing a better understanding of the matters that were considered, and it participated in the proceeding in a responsible way.

13. The Commission accepts CAD's position that it represents members of the Canadian Deaf community, who would constitute the potential users of VRS in Canada. These Deaf Canadians will be directly affected by the Commission's determinations in the proceeding. The Commission considers that CAD's submissions in the proceeding actively contributed to a fuller understanding of the issues before the Commission. Specifically, the Commission notes the usefulness of CAD's comments on its preferred governance model and on the technological aspects of the feasibility of VRS. Moreover, the Commission notes the contribution CAD made by submitting the model RFP pursuant to an undertaking given at the public hearing. This RFP provided the Commission with valuable insight into the priorities of the subscribers represented by CAD, especially regarding the quality of service of any potential Canadian VRS. In light of the foregoing, the Commission considers that CAD participated responsibly in the proceeding.
14. The Commission notes that the rates claimed in respect of consultant fees and disbursements are in accordance with the rates established in the Commission's *Guidelines for the Assessment of Costs*, as set out in Telecom Regulatory Policy 2010-963. The Commission finds that the total amount claimed by CAD was necessarily and reasonably incurred and should be allowed.
15. 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.
16. In determining the appropriate costs respondents, the Commission has generally considered which parties are affected by the issues and have actively participated in the proceeding. The Commission notes, in this regard, that the following parties actively participated in the proceeding by appearing at the public hearing and had a significant interest in its outcome: Bell Aliant Regional Communications, Limited Partnership (Bell Aliant); Bell Canada; Bell Mobility Inc.; KMTS; NorthernTel, Limited Partnership; and Télébec, Limited Partnership (collectively, Bell Canada et al.); Bragg Communications Inc., operating as Eastlink (Eastlink); Cogeco Cable Inc. (Cogeco); MTS Inc. (MTS) and Allstream Inc. (collectively, MTS Allstream); Northwestel Inc. (Northwestel); Quebecor Media Inc., on behalf of its affiliate Videotron G.P. (Videotron); Rogers Communications Inc. (RCI); Saskatchewan Telecommunications (SaskTel); Shaw Communications Inc. (Shaw); and TELUS Communications Company (TCC).
17. The Commission notes that it generally allocates the responsibility for payment of costs among costs respondents based on their telecommunications operating revenues (TORs)¹ 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 to apportion the costs among the costs respondents in proportion to their TORs, based on their most recent audited financial statements.

¹ TORs consist of Canadian telecommunications revenues from local and access, long distance, data, private line, Internet, and wireless services.

Accordingly the Commission finds that the responsibility for payment of costs should be allocated as follows:

Bell Canada et al.:	37.7%
TCC:	23.0%
RCI:	22.6%
Shaw:	4.0%
MTS Allstream:	3.8%
Videotron:	3.7%
SaskTel:	2.4%
Cogeco:	1.5%
Eastlink:	0.8%
Northwestel:	0.5%

18. The Commission notes that Bell Aliant filed submissions in the proceeding on behalf of Bell Canada et al., and that MTS Allstream filed joint submissions. Consistent with its general approach articulated in Telecom Costs Order 2002-4, the Commission makes Bell Aliant responsible for payment on behalf of Bell Canada et al., makes MTS responsible for payment on behalf of MTS Allstream, and leaves it to the respective members of Bell Canada et al. and MTS Allstream to determine the appropriate allocation of the costs among themselves.
19. The Commission further notes CAD's submission that only one payor should be designated from amongst the costs respondents. The Commission considers that all of the costs respondents in the present case have extensive experience in paying awards of costs to applicants. The Commission expects that these costs respondents will disperse the funds awarded according to the allocation set out above in a prompt and efficient manner, minimizing the burden on CAD to collect its award.

Directions regarding costs

20. The Commission **approves** the application by CAD for costs with respect to its participation in the proceeding.
21. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to CAD at \$31,826.16.
22. The Commission **directs** that the award of costs to CAD be paid forthwith by Bell Aliant on behalf of Bell Canada et al., by TCC, by RCI, by Shaw, by MTS on behalf of MTS Allstream, by Videotron, by SaskTel, by Cogeco, by Eastlink, and by Northwestel, according to the proportions set out in paragraph 17.

Secretary General

Related documents

- *Issues related to the feasibility of establishing a video relay service*, Telecom Notice of Consultation CRTC 2013-155, 27 March 2013, as amended by Telecom Notice of Consultation CRTC 2013-155-1, 16 May 2013
- *Revision of CRTC costs award practices and procedures*, Telecom Regulatory Policy CRTC 2010-963, 23 December 2010
- *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