



Telecom Order CRTC 2014-351

PDF version

Ottawa, 3 July 2014

File numbers: 8665-E17-201312389 and 4754-440

Determination of costs award with respect to the participation of the DiversityCanada Foundation in the proceeding initiated by the application of Bragg Communications Inc., operating as EastLink, regarding 30-day notice requirements for service cancellations

1. By letter dated 9 November 2013, the DiversityCanada Foundation (DiversityCanada), on behalf of itself and the National Pensioners and Senior Citizens Federation, applied for costs with respect to its participation in the proceeding initiated by the application of Bragg Communications Inc., operating as Eastlink (Eastlink), regarding 30-day notice requirements for service cancellations (the proceeding).
2. On 20 November 2013, TELUS Communications Company (TCC) filed general comments in response to DiversityCanada's application regarding DiversityCanada's eligibility to receive costs. DiversityCanada filed a reply on 2 December 2013.

Application

3. DiversityCanada 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.
4. DiversityCanada requested that the Commission fix its costs at \$1,759.41, consisting entirely of consultant fees. DiversityCanada's claim included the Ontario Harmonized Sales Tax (HST). DiversityCanada filed a bill of costs with its application.
5. DiversityCanada claimed 6.92 hours at a rate of \$225 per hour for outside consultant fees for consulting services provided by Raknas Inc. (Raknas).
6. DiversityCanada made no submission as to the apportionment of payment. However, DiversityCanada noted that Eastlink initiated the proceeding, and that other corporate parties participated, including Bell Aliant Regional Communications, Limited Partnership (Bell Aliant) and Bell Canada (collectively, the Bell companies), Quebecor Media Inc. (QMI), Rogers Communications Partnership

(RCP), Saskatchewan Telecommunications (SaskTel), and TCC (the costs respondents).

Request for further information

7. By letter dated 24 January 2014, Commission staff noted that there appeared to be connections between DiversityCanada and Raknas, and requested information from DiversityCanada in order to assess its application. Commission staff asked DiversityCanada to explain the relationship between DiversityCanada and Raknas, to provide the name(s) of the consultant(s) who provided their services, and to explain why the fees should be calculated at the rates for an outside consultant.
8. By letter dated 28 January 2014, DiversityCanada responded that Ms. Celia Sankar founded DiversityCanada and Raknas, and is active in both entities. DiversityCanada also indicated that (i) it did not contract with Ms. Sankar for her services, (ii) Ms. Sankar has not acted as an in-house consultant, and (iii) DiversityCanada does not own any part of Raknas.

Commission's analysis and determinations

Eligibility for costs

9. The Commission notes that costs applicants that meet the criteria set out in section 68 of the Rules of Procedure in each case may be eligible to receive costs. If DiversityCanada, similar to other costs applicants, meets the criteria in the circumstances, then it is eligible to receive costs. The Commission notes that it has awarded costs to DiversityCanada in the past.
10. In the present circumstances, the Commission finds that DiversityCanada has satisfied the criteria for an award of costs set out in section 68 of the Rules of Procedure. Specifically, the Commission finds that DiversityCanada 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 a responsible way.

Rates

11. The Commission notes that the rates claimed by DiversityCanada in respect of consultant fees reflect the rates established in the Commission's *Guidelines for the Assessment of Costs*, as set out in Telecom Regulatory Policy 2010-963.
12. However, the Commission notes that to determine if a costs applicant can claim outside or in-house consultant rates, it is reasonable to consider whether the consultant is independent from the costs applicant. In assessing independence, the Commission intends to consider the degree of control that one person or entity may have over another when determining whether outside or in-house rates are appropriate. The factors that the Commission may consider include the following:
 - whether one entity owns the other entity;

- which entity pays the salary of the individual doing the work;
 - whether the consultant has any clients other than the costs applicant;
 - whether the same individual or a similar group of individuals actively manage(s) the day-to-day operations of both; and
 - whether the consultant pays for the tools, equipment, and training of the person doing the work, as opposed to the costs applicant.
13. The Commission expects costs applicants to provide information regarding their independence from individuals or persons providing consulting services. Questions about independence or situations where an individual appears to seek personal gain could result in the adjustment or denial of costs or rates claimed.
 14. The Commission notes that the connections between DiversityCanada and Raknas raise questions of independence, and whether DiversityCanada is eligible to receive costs at in-house or outside rates. However, based on the record of this application, the Commission notes that the National Pensioners and Senior Citizens Federation is independent from DiversityCanada and Raknas. Accordingly, the Commission finds that DiversityCanada can claim outside rates for consultant fees in relation to this application.
 15. In light of all the above, the Commission finds that the total amount claimed by DiversityCanada was necessarily and reasonably incurred and should be allowed.
 16. 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.

Costs allocation

17. The Commission finds that the appropriate costs respondents to DiversityCanada's costs application are the Bell companies, Eastlink, QMI, RCP, SaskTel, and TCC.
18. 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. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated as follows:

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

Bell companies:	31.0%
TCC:	29.8%
RCP:	29.3%
QMI:	4.7%
SaskTel:	3.1%
Eastlink:	2.1%

19. The Commission notes that Bell Aliant filed submissions in the proceeding on behalf of the Bell companies. Consistent with its general approach articulated in Telecom Costs Order 2002-4, the Commission makes Bell Aliant responsible for payment on behalf of the Bell companies, and leaves it to the Bell companies to determine the appropriate allocation of the costs among themselves.

Directions regarding costs

20. The Commission **approves** the application by DiversityCanada 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 DiversityCanada at \$1,759.41.
22. The Commission **directs** that the award of costs to DiversityCanada be paid forthwith by Bell Aliant on behalf of the Bell companies, by TCC, by RCP, by QMI, by SaskTel, and by Eastlink according to the proportions set out in paragraph 18.

Secretary General

Related documents

- *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