



## Telecom Costs Order CRTC 2006-18

Ottawa, 22 December 2006

### ***Application for costs by l'Union des consommateurs – Proceeding to establish a national do not call list framework and to review the telemarketing rules, Telecom Public Notice CRTC 2006-4***

Reference: 8665-C12-200601626 and 4754-269

1. By letter dated 26 June 2006, l'Union des consommateurs (l'Union) applied for costs with respect to its participation in the proceeding initiated by *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 (the Public Notice 2006-4 proceeding).
2. By letter dated 17 July 2006, Bell Canada filed comments on behalf of Bell Aliant Regional Communications, Limited Partnership; Bell Canada; NorthernTel, Limited Partnership; Northwestel Inc.; Saskatchewan Telecommunications; and Société en commandite Télébec (collectively, the Companies). By letter dated 24 July 2006, Rogers Communications Inc. (Rogers) filed comments. By letter dated 26 July 2006, TELUS Communications Company (TCC) filed comments. By letter dated 8 August 2006, Shaw Communications Inc. (Shaw) filed comments. By letter dated 24 October 2006, the Canadian Marketing Association (CMA) filed comments. By letter dated 7 November 2006, the Canadian Newspaper Association (CNA) filed comments.
3. L'Union did not file a reply to the comments submitted regarding its costs application.

#### **The application**

4. L'Union 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 represented a group of subscribers that had an interest in the outcome of the Public Notice 2006-4 proceeding, it participated responsibly in the Public Notice 2006-4 proceeding, and it contributed to a better understanding of the issues by the Commission.
5. L'Union filed a bill of costs with its application, claiming a total amount of \$9,523.60 in legal fees. L'Union's claim included the federal Goods and Services Tax (GST) on fees less the rebate to which l'Union is entitled in connection with the GST. L'Union did not name any costs respondents or take any position as to the allocation of its costs.

#### **Answers**

6. The Companies indicated that they did not oppose l'Union's entitlement to costs nor the amount claimed. The Companies submitted that the allocation of costs should reflect the importance of telemarketing activities to the costs respondents' businesses as opposed to their telecommunications operating revenues (TORs).

7. TCC stated that it did not oppose l'Union's costs application nor the amount claimed. TCC submitted that while, in principle, all telemarketers should be responsible for paying the costs of organizations that represent the views of consumers, it was neither reasonable nor practical to burden l'Union with the administrative task of collecting its costs from the multitude of parties who participated in the proceeding. Therefore, TCC considered that the costs should be shared equally between the incumbent local exchange carriers (ILECs) and the cable companies, and that the ILECs' portion should be allocated according to their TORs.
8. Rogers stated that it did not oppose l'Union's costs application nor the amount claimed. Rogers submitted that the appropriate costs respondents were those participants in the proceeding representing commercial interests, including telemarketers and prospective Do Not Call List (DNCL) operators. Rogers noted that, pursuant to subsection 56(2) of the *Telecommunications Act* (the Act), the Commission had assigned liability for costs to unregulated entities such as the CMA in the past, notably in *Action Réseau Consommateur, Fédération des Associations Coopératives d'économie familiale, and the Public Interest Advocacy Centre application for costs – Public Notice CRTC 2001-34, Telecom Costs Order 2002-10, 13 September 2002* (Costs Order 2002-10). However, Rogers acknowledged that this approach would place an administrative burden on l'Union, since it would be collecting small amounts from a multitude of telemarketing parties. In light of the above, Rogers submitted that the appropriate solution to this administrative burden was the recovery of costs from the DNCL operator, who could collect the costs through the tabulation of overall costs to be recovered by the DNCL operator from costs respondent telemarketers. Rogers therefore submitted that the recovery of costs be delayed until the DNCL operator was awarded a contract.
9. Shaw stated that it did not oppose l'Union's costs application nor the amounts claimed, and supported Rogers' proposal.
10. The CMA submitted that it should not be named as a costs respondent, and 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. According to the CMA, 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 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.
11. The CNA submitted that not-for-profit organizations should not be named as costs respondents.

### **Commission's analysis and determination**

12. The Commission finds that l'Union has satisfied the criteria for an award of costs set out in subsection 44(1) of the Rules. Specifically, the Commission finds that l'Union 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.

13. The Commission notes that the rates claimed in respect of legal fees are in accordance with the rates set out in the Legal Directorate's *Guidelines for the Taxation of Costs*, revised as of 15 May 1998. The Commission also finds that the total amount claimed by l'Union was necessarily and reasonably incurred, and should be allowed.
14. With respect to the issue of the appropriate respondents, the Commission notes that there are many potential costs respondents, including ILECs, cable companies and telemarketers, who participated actively in the proceeding and will be affected by its outcome.
15. The Commission notes Rogers' suggestion that, once selected, the DNCL operator should pay l'Union the costs awarded it and, as part of the tabulation of the operator's overall costs, recover the costs from telemarketers. The Commission considers that this would cause undue delay and hardship for l'Union.
16. The Commission notes that the CMA actively participated in the proceeding on behalf of many telemarketers and that its members will be affected by the outcome of this proceeding. The Commission is of the view that subsection 56(2) of the Act grants the Commission broad discretion to identify appropriate costs respondents. The Commission notes that it named the CMA as a costs respondent in Costs Order 2002-10, with respect to a previous telemarketing proceeding, and considers that it has the authority to do so in this proceeding.
17. The Commission considers that it would be an undue administrative burden on l'Union if it were required to collect small amounts from a multitude of costs respondents. Therefore, in the Commission's view, it is appropriate to limit the costs respondents to the Companies, TCC and MTS Allstream Inc. (the ILECs), Rogers and Shaw (the cable companies), and the CMA. The Commission finds that the payment of costs should be allocated as follows:

ILECs	60%
Cable companies	30%
CMA	10%

18. The Commission is of the view that the ILECs' portion should be allocated as follows, in accordance with their current TORs, as reported in their most recent audited financial statements: the Companies 66 percent, TCC 24 percent and MTS Allstream Inc. 10 percent. The Commission directs that the cable companies' portion be paid as follows: 50 percent by Shaw and 50 percent by Rogers.
19. Consistent with its general approach articulated in *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*, the Commission makes Bell Canada responsible for payment on behalf of the Companies and leaves it to the Companies to determine the appropriate allocation of the costs among themselves.

### **Direction as to costs**

20. The Commission **approves** the application by l'Union for an award of costs with respect to its participation in the Public Notice 2006-4 proceeding.
21. Pursuant to subsection 56(1) of the Act, the Commission fixes the costs to be paid to l'Union at \$9,523.60.
22. The Commission directs that the costs award to l'Union be paid forthwith by Bell Canada on behalf of the Companies, TCC, MTS Allstream Inc., Shaw, Rogers, and the CMA, according to the proportions set out in paragraph 17.

Secretary General

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