



Telecom Costs Order CRTC 2006-20

Ottawa, 22 December 2006

Application for costs by Public Interest Law Centre on behalf of Consumers' Association of Canada (Manitoba Branch) and Manitoba Society of Seniors – *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 4754-275

1. By letter dated 17 July 2006, Public Interest Law Centre (PILC), on behalf of Consumers' Association of Canada (Manitoba Branch) and Manitoba Society of Seniors (CAC/MSOS), applied for costs with respect to their 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 24 July 2006, Rogers Communications Inc. (Rogers) filed comments in response to CAC/MSOS' costs application. By letter dated 25 July 2006, Bell Aliant Regional Communications, Limited Partnership; Bell Canada; NorthernTel, Limited Partnership; Northwestel Inc.; Saskatchewan Telecommunications, and Société en commandite Télébec (collectively, the Companies) filed comments in response to the application. By letter dated 26 July 2006, TELUS Communications Company (TCC) filed comments in response to CAC/MSOS' costs application. By letter received 8 August 2006, Shaw Communications Inc. (Shaw) filed comments in response to CAC/MSOS' costs application. By letter dated 24 October 2006, the Canadian Marketing Association (CMA) filed comments in response to the application. By letter dated 7 November 2006, the Canadian Newspaper Association (CNA) filed comments in response to the application.

The application

3. CAC/MSOS submitted that they 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 they represented a group of subscribers that had an interest in the outcome of the Public Notice 2006-4 proceeding, they had participated responsibly in the Public Notice 2006-4 proceeding, and they had contributed to a better understanding of the issues by the Commission.
4. CAC/MSOS requested that the Commission fix their costs at \$11,592, consisting of legal fees.
5. CAC/MSOS did not take a position as to the appropriate costs respondents.

Answers

6. The Companies submitted that they did not object to CAC/MSOS' entitlement to costs, nor to the amount claimed. The Companies submitted that the allocation of costs should reflect the importance of telemarketing activities to the costs respondents' businesses rather than their telecommunications operating revenues (TORs).
7. TCC submitted that it did not oppose CAC/MSOS' costs application nor the amount claimed. TCC stated that while, in principle, all telemarketers should be responsible for paying the consumer organizations' costs, it is neither reasonable nor practical to burden CAC/MSOS with the administrative task of collecting their 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 Rogers and Shaw (the cable companies), with the ILECs' portion allocated according to their TORs. TCC did not suggest how the cable companies' share should be allocated.
8. Rogers stated that it did not oppose CAC/MSOS' costs application nor the amount claimed. Rogers suggested that all participants in the proceeding who represented commercial interests, including telemarketers and prospective Do Not Call List (DNCL) operators, should be costs respondents. 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 CRTC 2002-10, 13 September 2002 (Costs Order 2002-10). However, Rogers acknowledged that this approach would place an administrative burden on CAC/MSOS, since they would be collecting small amounts from a multitude of telemarketing parties. Therefore, 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 CAC/MSOS' costs application nor the amount claimed. Shaw stated that it supported Rogers' proposal noted above.
10. The CMA submitted that it should not be named as a costs respondent. The CMA submitted 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 itself. 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. 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.
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 CAC/MSOS have satisfied the criteria for a costs award set out in subsection 44(1) of the Rules. Specifically, the Commission finds that CAC/MSOS are representative of a group or class of subscribers that has an interest in the outcome of the proceeding, have participated in a responsible way, and have 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 finds that the total amount claimed by CAC/MSOS was necessarily and reasonably incurred, and should be allowed.
14. The Commission is of the view 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 *New procedure for Telecom costs awards*, Telecom Public Notice CRTC 2002-5, 7 November 2002.
15. The Commission notes that there are a large number of potential costs respondents who actively participated in and are affected by the outcome of the proceeding, including ILECs, the cable companies, and those representing telemarketing interests.
16. The Commission notes Rogers' suggestion that, once selected, the DNCL operator should pay CAC/MSOS the costs awarded them 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 CAC/MSOS.
17. 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 the proceeding. The Commission is of the view that subsection 56(2) of the Act grants it a broad discretion to identify appropriate costs respondents. The Commission has availed itself of this discretionary power to name 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.
18. The Commission considers that it would be an undue administrative burden on CAC/MSOS if they 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 responsibility for the payment of costs should be allocated as follows:

ILECs	60%
Cable Companies	30%
CMA	10%

19. 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%. The Commission directs that the cable companies' portion be paid as follows: 50 percent by Shaw and 50 percent by Rogers.
20. 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

21. The Commission **approves** the application by PILC, on behalf of CAC/MSOS, for an award of costs with respect to their participation in the Public Notice 2006-4 proceeding.
22. Pursuant to subsection 56(1) of the Act, the Commission fixes the costs to be paid to PILC, on behalf of CAC/MSOS, at \$11,592.
23. The Commission directs that the costs award to PILC, on behalf of CAC/MSOS, be paid forthwith by Bell Canada on behalf of the Companies, TCC, MTS Allstream Inc., Rogers, Shaw, and the CMA according to the proportions set out in paragraph 18.

Secretary General

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