



## Telecom Costs Order CRTC 2006-21

Ottawa, 22 December 2006

### **Application for costs by the BC Public Interest Advocacy Centre on behalf of the BC Old Age Pensioners' Organization, BC Coalition of People with Disabilities, Council of Senior Citizens' Organizations of BC, End Legislated Poverty, federated anti-poverty groups of BC, Tenants' Rights Action Coalition, West End Seniors' Network and Active Support Against Poverty – *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 4754-279

1. By letter dated 17 July 2006, the BC Public Interest Advocacy Centre (BCPIAC), on behalf of the BC Old Age Pensioners' Organization, BC Coalition of People with Disabilities, Council of Senior Citizens' Organizations of BC, End Legislated Poverty, federated anti-poverty groups of BC, Tenants' Rights Action Coalition, West End Seniors' Network, and Active Support Against Poverty (BCOAPO et al.), 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 18 September 2006, Rogers Communications Inc. (Rogers) filed comments in response to the application. By letter dated 21 September 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 25 September 2006, TELUS Communications Company (TCC) submitted its comments in response to this application. By letter dated 24 October 2006, the Canadian Marketing Association (CMA) submitted its comments in response to this application. The Canadian Newspaper Association (CNA) submitted its comments in response to this application by letter dated 7 November 2006.
3. BCOAPO et al. did not file a reply to the comments submitted regarding their costs application.

#### **The application**

4. BCOAPO et al. 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 represent 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.

5. BCOAPO et al. filed a bill of costs with their application, claiming a total amount of \$4,736.50, consisting of \$4,587.63 in legal fees and \$148.87 in disbursements. BCOAPO et al.'s claim included the federal Goods and Services Tax (GST).

### **Answers**

6. In answer to the Application, Rogers submitted that it did not oppose the entitlement of BCOAPO et al. to costs nor the amount of costs claimed. Rogers suggested that the appropriate costs respondents should be all participants in the proceeding who represented commercial interests, including telemarketers and prospective list operators.
7. The Companies submitted that they did not oppose the entitlement of BCOAPO et al. to costs or the amount claimed. The Companies suggested that while the appropriate costs respondents should be all telemarketers, for practical reasons they should be limited to the incumbent local exchange carriers (ILECs), cable companies and the CMA, with each group responsible for paying one third of the costs. The Companies recommended that the ILECs' one third share be apportioned among the ILECs on the basis of their respective telecommunications operating revenues (TORs). The Companies did not suggest a formula for apportioning the cable companies' share.
8. TCC did not oppose the entitlement of BCOAPO et al. to costs nor the amount claimed. TCC suggested that while the appropriate costs respondents should be all telemarketers, for practical reasons they should be limited to the ILECs (including MTS Allstream Inc.), cable companies and the CMA. TCC submitted that the costs should be divided equally between these three groups.
9. The CMA submitted that it should not be named as a costs respondent in this proceeding. The CMA 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. The CMA further 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 section 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.
10. The CNA submitted that not-for-profit organizations should not be named as costs respondents.

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

11. The Commission finds that BCOAPO et al. have satisfied the criteria for an award of costs set out in subsection 44(1) of the Rules. Specifically, the Commission finds that BCOAPO et al. 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.

12. 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. Subject to the comments below with respect to GST, the Commission finds that the total amount claimed by BCOAPO et al. was necessarily and reasonably incurred, and should be allowed.
13. The Commission notes that there is a discrepancy with regard to the amount of GST claimed by BCOAPO et al. The appropriate amount should be \$257.25 as opposed to the \$300.13 BCOAPO et al. has claimed.
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 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 Telecommunications Act (the Act) grants the Commission 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 *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, with respect to a previous telemarketing proceeding, and considers that it has the authority to do so with regard to the Public Notice 2006-4 proceeding.
17. The Commission considers that it would be an undue administrative burden on BCOAPO et al 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), Shaw and Rogers (the cable companies), and the CMA. The Commission determines that the allocation of costs be 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 BCPIAC, on behalf of BCOAPO et al., for an award of costs with respect to their 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 BCPIAC, on behalf of BCOAPO et al., at \$4,693.62.
22. The Commission directs that the costs award to BCPIAC, on behalf of BCOAPO et al., 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 17.

Secretary General

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