



Telecom Costs Order CRTC 2008-1

Ottawa, 28 March 2008

Determination of costs award with respect to the Canadian Jewish Congress' participation in the Telecom Public Notice 2007-15 proceeding

Reference: 8665-C12-200711756 and 4754-305

1. By letter dated 31 October 2007, the Canadian Jewish Congress (CJC) applied for costs with respect to its participation in the proceeding initiated by Telecom Public Notice 2007-15 (the PN 2007-15 proceeding).
2. On 6 December and 7 December 2007, Bragg Communications Inc. (EastLink) and TELUS Communications Company (TCC) filed comments in answer to the CJC's application. The CJC filed reply comments on 12 December 2007.

Application

3. The CJC 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 represents a group of subscribers that had an interest in the outcome of the PN 2007-15 proceeding, it had participated responsibly in the PN 2007-15 proceeding, and it had contributed to a better understanding of the issues by the Commission through its participation in the PN 2007-15 proceeding.
4. The CJC requested that the Commission fix its costs at \$5,724, consisting of \$1,908 for legal fees and \$3,816 for consultant fees. The CJC's claim included the Federal Goods and Services Tax on fees. The CJC filed a bill of costs with its application.
5. The CJC submitted that the appropriate respondents in this case were the telecommunications service providers (the TSPs) that participated together in the PN 2007-15 proceeding.¹

Answer

6. In answer to the application, TCC did not object to the CJC's entitlement to costs or the quantum. With respect to the appropriate costs respondents, however, TCC submitted that the Canadian Marketing Association (CMA) should also be made a costs respondent and that costs should be apportioned equally among the TSPs and the CMA.
7. In its answer, EastLink submitted that the CJC should not be awarded costs since it had a sufficient incentive to participate in the proceeding without an award of costs. In EastLink's view, the sole purpose of the CJC's participation in the proceeding was to argue that charities and other exempt entities should not be subject to the requirement to register with, and provide

¹ Bell Aliant Regional Communications, Limited Partnership; Bell Canada; Cogeco Cable Inc.; EastLink; MTS Allstream Inc.; NorthernTel, Limited Partnership; Northwestel Inc.; Quebecor Media Inc.; Rogers Communications Inc.; Saskatchewan Telecommunications; Télébec, Limited Partnership; TCC; and Virgin Mobile Canada.

information to, the National Do Not Call List (DNCL) operator and should not be required to pay fees to a third-party investigator. As such, EastLink submitted that the CJC's position in the PN 2007-15 proceeding was analogous to that of the CMA, which in two previous proceedings relating to telemarketing and the National DNCL was made a costs respondent on the basis that it represented the interests of a group of telemarketers.²

Reply

8. In reply, the CJC stated that it disagreed with EastLink's characterization of the nature of its participation in the PN 2007-15 proceeding. In the CJC's view, it has very different interests from the CMA given its not-for-profit orientation as an advocacy organization. The CJC stated that in the PN 2007-15 proceeding it was representing the interests of all not-for-profit and voluntary sector organizations with respect to the application of the telemarketing rules.

Commission's analysis and determinations

9. The Commission considers that the CJC does not meet the test for costs on the grounds that it had a sufficient interest in the PN 2007-15 proceeding to make an award of costs unnecessary.
10. The Commission notes that it is well established that costs should only be awarded where they are necessary to ensure the participation of an intervener who would not otherwise be able to participate. Thus, on several occasions the Commission has denied costs to commercial entities on the grounds that they already had a sufficient financial interest in the proceedings and therefore a costs award was unnecessary.³
11. The Commission considers that this principle may also apply to non-commercial entities in certain contexts. For example, in Telecom Costs Order 98-14 the Commission determined that Queen's University had effectively the same interests as Stentor Resource Centre Inc. and the Canada Payphone Corporation in the context of a proceeding on local pay phone competition given that Queen's was likely to be a provider of competitive local pay telephone services. The Commission has also generally denied costs to municipalities. In short, a non-commercial entity may also, in some circumstances, possess an incentive to participate in a proceeding such that there is no need for a costs award to ensure its informed participation.
12. In the Commission's view, the CJC possessed the requisite interest for it to participate in the PN 2007-15 proceeding without an award of costs. Among the issues raised in that proceeding was whether rules should be established to require all telemarketers and clients of telemarketers, including those, such as the CJC, exclusively making telecommunications that are exempt from the National DNCL Rules, to register with, and provide information to, the National DNCL operator and to pay fees that may be charged by a third-party complaints investigator. The Commission notes that the exclusive focus of the CJC's submissions was to argue that entities, such as itself, that are exempt from the National DNCL Rules should not be subject to registration and information requirements and should not be required to pay fees for investigations. As such, the Commission considers that the CJC had a direct financial interest in the outcome of the PN 2007-15 proceeding.

² Telecom Costs Order 2002-10 and Telecom Costs Order 2006-21.

³ See e.g. Telecom Costs Order 83-4; Telecom Costs Order 91-3; Telecom Costs Order 96-29; Telecom Costs Order 98-18.

13. The Commission further notes that in a previous proceeding concerning the Unsolicited Telecommunications Rules, the CJC did not request costs but was nevertheless able to participate fully.⁴
14. In light of the above, it is the Commission's view that the CJC had a sufficient incentive to participate in the PN 2007-15 proceeding and that an award of costs is unnecessary.

Direction as to costs

15. The Commission **denies** the application by the CJC for costs with respect to its participation in the PN 2007-15 proceeding.

Secretary General

Related documents

- *Proceeding to consider the delegation of the Commission's investigative powers with regard to Unsolicited Telecommunications Rules complaints, Telecom Public Notice CRTC 2007-15, 22 August 2007*
- *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, Telecom Costs Order CRTC 2006-21, 22 December 2006*
- *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, as amended by Telecom Public Notice CRTC 2006-4-1, 13 March 2006*
- *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*
- *In re: Telesat Canada – Application to Review and Vary Telecom Decision CRTC 97-17, Application for Costs by Canadian Satellite Communications Inc. (Cancom), Telecom Costs Order CRTC 98-18, 9 October 1998*

⁴ Telecom Public Notice 2006-4.

- *In re: Local Pay Telephone Competition, Telecom Public Notice CRTC 97-26, Application for Costs by Queen's University (Queen's), Telecom Costs Order CRTC 98-14, 26 May 1998*
- *In re: TELUS Communications Inc. – General Rate Increase Application, 1996-1997, Application for costs by BR Telecom, Telecom Costs Order CRTC 96-29, 27 November 1996*
- *In re: Maritime Telegraph and Telephone Company Limited – Revenue Requirement for 1990 and 1991, Application for costs by Novix Inc., Atlantic Paging Services Inc. and Novix Communications Inc. (Novix et al), Telecom Costs Order CRTC 91-3, 11 February 1991*
- *In re: British Columbia Telephone Company, General Increase in Rates, Telecom Decision CRTC 83-8, 22 June 1983, Application for costs by Independent Telephone Companies of British Columbia (ITC), Telecom Costs Order CRTC 83-4, 4 July 1983*

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