



Telecom Costs Order CRTC 2008-3

Ottawa, 8 April 2008

Determination of costs award with respect to the participation of "97% of the People of Canada" in the Telecom Public Notice 2007-15 proceeding

Reference: 8665-C12-200711756 and 4754-306 / 4754-310

1. By letter dated 29 November 2007, Mark Obermeyer applied for costs on behalf of "97% of the People of Canada" (the Applicant) with respect to the Applicant's participation in the proceeding initiated by Telecom Public Notice 2007-15 (the Public Notice 2007-15 proceeding).
2. On 10 December 2007, Telus Communications Company (TCC) and Bragg Communications Inc. (EastLink) filed comments in response to the Applicant's application. The Applicant filed reply comments on 12 December 2007.
3. On 13 December 2007, the Applicant applied for additional costs incurred to reply to TCC's comments. On 31 January 2008, TCC filed comments in response to this supplementary costs application. The Applicant filed reply comments on 5 February 2008.

Application

4. The Applicant 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 Public Notice 2007-15 proceeding, it had participated responsibly, and it had contributed to a better understanding of the issues by the Commission through its participation in the Public Notice 2007-15 proceeding.
5. The Applicant requested that the Commission fix its costs at \$4,400 for consultant fees for the time spent by Mr. Obermeyer in preparing the Applicant's submission.
6. The Applicant submitted that the appropriate respondents in this case were the telecommunications service providers (TSPs) that participated together in the Public Notice 2007-15 proceeding.¹
7. In its supplementary costs application, the Applicant requested that the Commission fix its costs at \$6,416 in additional consultant fees for Mr. Obermeyer. Subsequently, the Applicant requested costs for a further 28 hours spent by Mr. Obermeyer at the "prevailing market rate" for preparing its reply of 5 February 2008. The Applicant submitted that the appropriate respondent for this subsequent costs application was TCC.

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.

Answer

8. In response to the main costs application, TCC objected to the Applicant's entitlement to costs on the grounds that it had not contributed to a better understanding of the issues and had not participated in a responsible manner. TCC also noted that the hourly rate being claimed exceeded the range of rates specified in the Commission's *Guidelines for the Taxation of Costs*. Furthermore, in its view, Mr. Obermeyer was acting as a subscriber, not as a consultant in the proceeding, and therefore he should only be entitled to the reasonable expenses he incurred to participate in the proceeding. With respect to the appropriate costs respondents, 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.
9. With respect to the Applicant's supplementary costs application, TCC objected to it on the grounds that it was out of process and that the Rules do not permit the recovery of any costs assumed to prepare replies to answers received regarding costs applications.
10. EastLink did not comment on the Applicant's entitlement to costs or the quantum. However, it submitted that if costs are awarded to the Applicant, the appropriate costs respondents should include all participants in the proceeding who represented commercial interests, including telemarketers and prospective National Do Not Call List operators.

Reply

11. In reply, the Applicant disputed TCC's claim that it did not participate responsibly and did not contribute to a better understanding of the issues. It also disputed TCC's claim that Mr. Obermeyer was not acting as a consultant in the Public Notice 2007-15 proceeding.
12. With respect to TCC's comments on its supplementary costs application, the Applicant stated that the Rules do not bar the recovery of costs associated with preparing a reply and that given the nature of TCC's comments, which the Applicant described as "frivolous and vexatious," an award of costs is warranted.

Commission's analysis and determinations

13. The Commission notes that TCC argued that Mr. Obermeyer was acting as a subscriber rather than as a consultant in the Public Notice 2007-15 proceeding. The Commission notes that in a previous costs award, the Commission recognized that the Applicant represented the interests of a group of subscribers, including Mr. Obermeyer, who wished to restrict the activities of telemarketing companies through a National Do Not Call List.² The Commission notes, however, that this award did not involve a claim for consultant fees and was instead restricted to Mr. Obermeyer's disbursements to participate in a proceeding as a representative of the Applicant.

² Telecom Costs Order 2006-10.

14. The Commission notes that applicants may claim costs for a consultant if he or she has acted either as an outside consultant or as an in-house employee. In the Commission's view, in either case the Commission must be satisfied that a genuine consultant relationship existed.
15. In the case of Mr. Obermeyer, the Commission considers that the evidence before it establishes that he is a leading member and driving force behind the Applicant. In the Commission's view, Mr. Obermeyer is responsible for the Applicant's day-to-day operations as well as all of its submissions and correspondence to the Commission.
16. The Commission also considers that there is no evidence that Mr. Obermeyer received fees or was paid a salary by the Applicant. The Commission considers that Mr. Obermeyer's primary motivation to participate in the Public Notice 2007-15 proceeding was to ensure that his views, and what he perceived to be the views of other subscribers represented by the Applicant, were considered by the Commission.
17. In light of the above, the Commission considers that Mr. Obermeyer was not acting either as an outside or in-house consultant in the Public Notice 2007-15 proceeding for the purpose of a costs award. The Commission is of the view that the Applicant did not hire Mr. Obermeyer to provide consulting services. Rather, the Commission considers that Mr. Obermeyer was the leading member and driving force behind the Applicant who took it upon himself to make representations to the Commission on his behalf and on behalf of others.
18. In the Commission's view, Mr. Obermeyer's position was analogous to that of an individual who makes representations before the Commission. The Commission notes that while individuals are entitled to claim expenses they incurred to participate in the proceeding, they are generally not awarded costs for time spent preparing for, and participating in, proceedings. Accordingly, while the Applicant was entitled to claim costs for Mr. Obermeyer's out-of-pocket expenses to participate in the Public Notice 2007-15 proceeding, it was not entitled to be compensated for his time spent to prepare the Applicant's submission.

Direction as to costs

19. The Commission **denies** the application by the Applicant for costs with respect to its participation in the Public Notice 2007-15 proceeding. Accordingly, the Commission also **denies** the Applicant's supplementary costs application.

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 Mr. Mark Obermeyer on behalf of "97% of the People of Canada" – 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 2006-10, 21 September 2006*

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