



## Telecom Decision CRTC 2008-90

Ottawa, 11 September 2008

### **Canadian Jewish Congress – Application to review and vary Telecom Costs Order 2008-1**

Reference: 8662-C154-200805210

*In this Decision, the Commission approves an application by the Canadian Jewish Congress (CJC) to review and vary Telecom Costs Order 2008-1 and approves in part the CJC's application for costs with respect to its participation in the proceeding initiated by Telecom Public Notice 2007-15.*

#### **Introduction**

1. The Commission received an application from the Canadian Jewish Congress (CJC), dated 3 April 2008, requesting that the Commission review and vary Telecom Costs Order 2008-1. In that Costs Order, the Commission denied an application for an award of costs to the CJC for its participation in the proceeding initiated by Telecom Public Notice 2007-15 (the proceeding), which resulted in Telecom Decision 2008-6.
2. In its application, the CJC sought a revised costs order retracting the characterization of the CJC as a telemarketer or a client of a telemarketer, and an award of costs as it had requested in its original application for costs, dated 31 October 2007.
3. The CJC submitted that in Telecom Costs Order 2008-1, the Commission had mischaracterized the CJC as a telemarketer or a client of a telemarketer because the CJC does not engage in telemarketing, either directly or indirectly. It also submitted that the Commission had made a factual error by asserting that the CJC had a direct financial interest in the outcome of the proceeding. The CJC further submitted that its interest in participating in the proceeding was to ensure, to the maximum extent possible, that charities, community groups, teams, and clubs are able to use donated funds for their good community works, unimpeded by the costs and administrative burdens of the National Do Not Call List (DNCL) regulatory regime. The CJC argued that it was advocating views on behalf of a much larger constituency, beyond registered charities that are exempt from the operation of the National DNCL.
4. The Commission did not receive any comments in response to the CJC's review and vary application. The record of this proceeding, which closed on 5 May 2008, is available on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) under "Public Proceedings."

## **Should the Commission review and vary Telecom Costs Order 2008-1 and approve the CJC's application for costs?**

5. In Telecom Public Notice 98-6, the Commission established guidelines for review and vary applications made pursuant to section 62 of the *Telecommunications Act* (the Act). The Commission indicated that in order for the Commission to exercise its discretion pursuant to section 62 of the Act, an applicant must demonstrate that there is substantial doubt as to the correctness of the original decision, for example due to:
  - i) an error in law or in fact;
  - ii) a fundamental change in circumstances or facts since the decision;
  - iii) a failure to consider a basic principle which had been raised in the original proceeding; or
  - iv) a new principle which has arisen as a result of the decision.
6. The Commission notes that in Telecom Costs Order 2008-1, it characterized the CJC as a telemarketer or a client of a telemarketer. The Commission also notes that this determination was material to its decision to deny the CJC's application for an award of costs since the Commission had relied on this fact to conclude that the CJC had a direct financial stake in the outcome of the proceeding and, therefore, had sufficient incentive to participate without an award of costs. The Commission accepts the CJC's submission that it made a factual error in this regard.
7. In light of the above, the Commission concludes that the CJC has established that there is substantial doubt as to the correctness of Telecom Costs Order 2008-1 due to an error in fact. Accordingly, the Commission **approves** the CJC's application to review and vary Telecom Costs Order 2008-1.
8. The Commission finds that the CJC has satisfied the criteria for an award of costs as set out in subsection 44(1) of the *CRTC Telecommunications Rules of Procedure*. Specifically, the Commission finds that the CJC represented a group that had an interest in the outcome of the proceeding, participated in a responsible way, and contributed to a better understanding of the issues by the Commission.

### *Amount of costs to be awarded*

9. As submitted in its original application for costs, 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 claimed six hours at a rate of \$300 per hour for outside counsel legal fees and nine hours at a rate of \$400 per hour for outside consultant fees. The CJC's claim included the Federal Goods and Services Tax (GST) on fees. The CJC filed a bill of costs with its application.

10. The Commission notes that the rates claimed by the CJC in its bill of costs in respect of consultant and legal fees are not in accordance with the rates set out in the CRTC Legal Directorate's *Guidelines for the Taxation of Costs*, revised as of 24 April 2007. The Commission notes that the rates should be \$250 per hour for an outside legal counsel with 14 completed years of practice, rather than the \$300 per hour claimed, and \$225 per hour for an outside consultant with 11 completed years of practice, rather than the \$400 claimed. The Commission otherwise finds that the amounts claimed by the CJC were necessarily and reasonably incurred and should be allowed.
11. Accordingly, the Commission finds that the appropriate costs award is \$3,736.50, which includes \$1,590 for outside legal counsel fees (six hours at \$250 per hour, plus GST) and \$2,146.50 for outside consultant fees (nine hours at \$225 per hour, plus GST). The Commission considers 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 Telecom Public Notice 2002-5.

*Respondents to the award of costs*

12. In determining the appropriate respondents to an award of costs, the Commission has generally looked at which parties are affected by the issues and have actively participated in the proceeding. The Commission notes that there were a large number of potential costs respondents who actively participated in and will be affected by the outcome of the proceeding, including telecommunications service providers (TSPs) and those representing telemarketing interests.
13. The Commission notes that in response to the CJC's original application for costs, TELUS Communications Company (TCC) submitted that the Canadian Marketing Association (CMA) should be made a costs respondent. Similarly, Bragg Communications Inc., on behalf of EastLink, submitted that the appropriate costs respondents should include all participants in the proceeding who represented commercial interests, including telemarketers and prospective list operators.
14. 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.
15. The Commission notes that in allocating costs among respondents, it has been sensitive to the fact that if too large a number of respondents are named, the applicant may have to collect small amounts from many respondents, which would result in a significant administrative burden to the applicant.
16. In light of the above and given the relatively small size of the costs award in this case, the large number of potential costs respondents, and that the CJC would be required to collect small amounts from many respondents if all potential costs respondents were retained, the Commission considers that it is appropriate, in the present circumstances, to limit the

respondents to certain large TSPs, namely, Bell Aliant Regional Communications, Limited Partnership and Bell Canada (collectively Bell Canada et al.), TCC, Rogers Communications Inc. (RCI), and MTS Allstream Inc. (MTS Allstream), as well as the CMA. The Commission determines that the allocation of costs will be as follows:

TSPs	90%
CMA	10%

17. The Commission considers that the TSPs' portion should be allocated as follows, in accordance with their telecommunications operating revenues as reported in their most recent audited financial statements: Bell Canada et al. – 48 percent, TCC – 36 percent, RCI – 7 percent, and MTS Allstream – 7 percent.
18. Consistent with its general approach articulated in Telecom Costs Order 2002-4, the Commission makes Bell Canada responsible for payment on behalf of Bell Canada et al. and leaves it to the members of Bell Canada et al. to determine the appropriate allocation of the costs among themselves.

*Direction as to costs*

19. The Commission **approves** the application by the CJC for costs with respect to its participation in the proceeding.
20. Pursuant to subsection 56(1) of the Act, the Commission fixes the costs to be paid to the CJC at \$3,736.50.
21. The Commission directs that the award of costs to the CJC be paid forthwith by Bell Canada on behalf of Bell Canada et al., TCC, RCI, MTS Allstream, and the CMA, according to the proportions set out in paragraphs 16 and 17.

Secretary General

### **Related documents**

- *Determination of costs award with respect to the Canadian Jewish Congress' participation in the Telecom Public Notice 2007-15 proceeding, Telecom Costs Order CRTC 2008-1, 28 March 2008*
- *Delegation of the Commission's investigative powers with regard to Unsolicited Telecommunications Rules complaints, Telecom Decision CRTC 2008-6, 28 January 2008*
- *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*

- *New procedure for Telecom costs awards*, Telecom Public Notice CRTC 2002-5, 7 November 2002
- *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
- *Guidelines for review and vary applications*, Telecom Public Notice CRTC 98-6, 20 March 1998

*This document is available in alternative format upon request, and may also be examined in PDF format or in HTML at the following Internet site: <http://www.crtc.gc.ca>*