



Telecom Order CRTC 2009-447

Ottawa, 24 July 2009

Determination of costs award with respect to the participation of the Coalition of Communication Consumers in the Telecom Public Notice 2008-18 proceeding

File number: 8640-C12-200814980 and 4754-346

1. By letter dated 3 March 2009, the Coalition of Communication Consumers (the Coalition) applied for costs with respect to its participation in the proceeding initiated by Telecom Public Notice 2008-18 (the Public Notice 2008-18 proceeding).
2. On 13 March 2009, Bell Canada, on behalf of itself and Bell Aliant Regional Communications, Limited Partnership (collectively, the Companies), filed comments in response to the application by the Coalition. On 16 March 2009, Telus Communications Company (TCC) also filed comments in response to the application by the Coalition.

Application

3. The Coalition 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 2008-18 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 2008-18 proceeding.
4. The Coalition requested that the Commission fix its costs at \$2,035.69, consisting of legal fees and the federal Goods and Services Tax (GST) on fees. The Coalition filed a bill of costs with its application.
5. The Coalition claimed 11.75 hours at a rate of \$165 per hour for legal fees associated with outside legal counsel.
6. The Coalition made no submission as to the appropriate costs respondents.

Answer

7. In response to the application, both the Companies and TCC argued that they had no objection to the amounts claimed by the Coalition. However, both respondents asked the Commission, before awarding costs, to determine whether the Coalition legitimately represents a significant body of subscribers as required by subsection 44(1) of the Rules.
8. The Companies submitted that any costs awarded should be allocated among the telecommunications service providers who participated in the Public Notice 2008-18 proceeding in proportion to their relative share of telecommunications operating revenues (TORs).

9. TCC submitted that the apportionment of costs should be done in a manner that reflects the fact that it is the small incumbent local exchange carriers (SILECs) that have a direct interest in the matter and, therefore, should bear the majority of the costs.

Commission's analysis and determinations

10. The Commission has previously awarded costs to individuals, parties that did not represent a body of subscribers with whom the parties had a formal relationship, unincorporated organizations, and organizations whose constituency could not be easily ascertained. The Commission also notes that its general objective in awarding costs is to encourage the informed participation of individuals and organizations that otherwise could not participate in Commission proceedings, in order to permit the greatest variety of voices to be considered by the Commission in making its decisions. As noted in Telecom Order 2009-316, the Coalition has advised the Commission that it is an unincorporated coalition of organized and unorganized groups, including consumers, advocates, and professionals across Canada. The Commission also notes that in Telecom Order 2009-316, the Coalition was awarded costs for its participation in the proceeding initiated by Telecom Public Notice 2008-16.
11. The Commission finds that the Coalition has satisfied the criteria for an award of costs set out in subsection 44(1) of the Rules. Specifically, the Commission finds that the Coalition is representative of a group or class of subscribers that has an interest in the outcome of the proceeding, it has participated in a responsible way and it has contributed to a better understanding of the issues by the Commission.
12. The Commission notes that the rates claimed in respect of outside legal counsel are in accordance with the rates set out in the Legal Directorate's *Guidelines for the Taxation of Costs*, revised as of 24 April 2007. The Commission also finds that the total amount claimed by the Coalition was necessarily and reasonably incurred and should be allowed.
13. 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.
14. 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, however, that in allocating costs among respondents, it has also been sensitive to the fact that if too large a number of respondents are named, the applicant may have to collect small amounts from certain respondents, resulting in a significant administrative burden to the applicant.
15. In light of the above and given the size of the costs award in this case, and the result that if all potential costs respondents were retained the Coalition would be required to collect small amounts from certain respondents, the Commission considers that it is appropriate, in the present circumstances, to limit the respondents to the Canadian Independent Telephone Company Joint Task Force (CITC-JTF), the Companies, and TCC.

16. The Commission notes that it has often allocated the responsibility for the payment of costs among respondents based on the respondents' TORs, as reported in their most recent audited financial statements. However, the Commission also notes that it has departed from this approach to make collection of an award easier for applicants or to reflect situations where issues may be of greater importance to certain respondents. The Commission finds that as the purpose of the Public Notice 2008-18 proceeding was to determine the appropriate framework for forbearance from the regulation of retail local exchange services in the serving territories of the SILECs, the SILECs represented by the CITC-JTF in the proceeding should be responsible for 50 percent of the costs. The Companies and TCC will be responsible for the other 50 percent of the costs based on their TORs. The Commission therefore concludes that the responsibility for the payment of costs should be allocated as follows:

CITC-JTF	50%
The Companies	28%
TCC	22%

17. The Commission notes that the Companies filed joint submissions in the Public Notice 2008-18 proceeding. The Commission also notes that the CITC-JTF filed submissions on behalf of the SILECs listed in its original submission. Consistent with its general approach articulated in Telecom Costs Order 2002-4, the Commission makes Bell Canada responsible for payment on behalf of the Companies, and the CITC-JTF responsible for payment on behalf of the SILECs listed in its original submission, and leaves it to the members of the Companies and the CITC-JTF to determine the appropriate allocation of the costs among themselves.

Direction as to costs

18. The Commission **approves** the application by the Coalition for costs with respect to its participation in the Public Notice 2008-18 proceeding.
19. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to the Coalition at \$2,035.69.
20. The Commission directs that the award of costs to the Coalition be paid forthwith by the CITC-JTF on behalf of the SILECs listed in its original application, Bell Canada on behalf of the Companies, and TCC, according to the proportions set out in paragraph 16.

Secretary General

Related documents

- *Determination of costs award with respect to the participation of the Coalition of Communication Consumers in the Telecom Public Notice 2008-15 proceeding, Telecom Order CRTC 2009-316, 29 May 2009*

- *Call for comments on whether the regulatory framework for forbearance from the regulation of local exchange services for the large incumbent local exchange carriers should also be applicable to small incumbent local exchange carriers, Telecom Public Notice CRTC 2008-18, 6 November 2008*
- *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*

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