



Telecom Order CRTC 2009-765

Ottawa, 10 December 2009

Determination of costs award with respect to the participation of Jason Roks in the Telecom Public Notice 2008-19 proceeding

File numbers: 8646-C12-200815400 and 4754-361

1. On 28 August 2009, Jason Roks applied for costs with respect to his participation in the proceeding initiated by Telecom Public Notice 2008-19 (the Internet traffic management practices (ITMP) proceeding). On 5 October 2009, Mr. Roks submitted a cover letter and revised the amount claimed in his application.
2. Comments were received on this application from Bell Aliant Regional Communications, Limited Partnership and Bell Canada (collectively, the Bell companies). Mr. Roks replied on 1 November 2009.

Application

3. Mr. Roks submitted that he met the criteria for an award of costs set out in subsection 44(1) of the *CRTC Telecommunications Rules of Procedure* (the Rules), as he is a Canadian citizen who relies heavily on the Internet for his living and, as such, was concerned about the ITMP proceeding; he participated in a responsible manner throughout the ITMP proceeding; and he contributed to a better understanding of the issues by the Commission through his comments in the ITMP proceeding.
4. In his letter of 5 October 2009, Mr. Roks stated that in his original application the cost of his air travel was listed incorrectly as \$42.20 and that the correct figure is \$242.20. Mr. Roks therefore revised the amount he was claiming from \$1,365.20 to \$1,565.20. However, in further correspondence with Commission staff, Mr. Roks acknowledged that the total amount of his claim, accounting for the corrected cost of his air fare, is in fact \$1,365.20, all of which is for disbursements.
5. Mr. Roks made no submission as to the appropriate costs respondents.

Answer

6. In response to the application, the Bell companies submitted that Mr. Roks did not participate responsibly in the ITMP proceeding and did not contribute to a better understanding of the issues. They cited the late arrival of Mr. Roks to his oral presentation, the fact that he expressed misinformed opinion as fact, and the fact that he was unaware of the existence of the Commissioner for Complaints for Telecommunications Services (CCTS) as evidence that Mr. Roks did not participate responsibly and did not contribute to a better understanding of the issues. Accordingly, the Bell companies submitted that Mr. Roks's application for costs should be denied.

7. In reply, Mr. Roks submitted, as an example of how he contributed to a better understanding of the issues, that he made submissions on disclosure of ITMPs by Internet service providers, an issue that was dealt with by the Commission in its determinations in the ITMP proceeding issued in Telecom Regulatory Policy 2009-657. Mr. Roks also submitted that he had been invited to appear at the oral hearing for the ITMP proceeding by the Commission on the basis of his initial written submissions. Mr. Roks contended that the Commission should reject the Bell companies' submissions and continue to encourage individual Canadians to participate in its proceedings by awarding costs.

Commission's analysis and determinations

8. The Commission finds that Mr. Roks has an interest in the outcome of the ITMP proceeding.
9. The Commission also finds that Mr. Roks has participated in a responsible way in the ITMP proceeding. The Commission notes that on the day of Mr. Roks's presentation, the panel began hearing witnesses at 13:15, whereas Mr. Roks's presentation had been scheduled to begin at 13:30.
10. The Commission considers that Mr. Roks has contributed to a better understanding of the issues by the Commission. The Commission notes that Mr. Roks made submissions, both in writing and at the oral hearing, that were directly relevant to a number of issues that were before the Commission in this proceeding. Mr. Roks's submissions were thoughtful and of good quality. Furthermore, the Bell companies have not identified any portion of Mr. Roks's submissions to support their assertion that he presented misinformed opinion as fact. As to the fact that Mr. Roks was unaware of the CCTS, this had no bearing on the quality of his submissions.
11. In light of the above, the Commission considers that Mr. Roks has satisfied the criteria for an award of costs set out in subsection 44(1) of the Rules.
12. The Commission notes that the rates claimed in respect of Mr. Roks's disbursements 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 Mr. Roks 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, in this regard, that the following parties actively participated in the proceeding and had a significant interest in its outcome: Barrett Xplore Inc. and Barrett Broadband Networks, the Bell companies, Bragg Communications Inc., the Canadian Association of Internet Providers, the Coalition of Internet Service Providers Inc., Cogeco Cable Inc., Cybersurf Corp., Distributel Communications Limited, Execulink Telecom Inc., MTS Allstream Inc., Primus Telecommunications Canada Inc., Quebecor Media Inc. on behalf of Videotron Ltd., RipNET Limited, Rogers Communications Inc. (RCI), Saskatchewan

Telecommunications, Shaw Communications Inc., and TELUS Communications Company (TCC).

15. 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 many respondents, resulting 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 the result that if all potential costs respondents were retained, Mr. Roks would be required to collect small amounts from certain respondents. Accordingly, the Commission considers that it is appropriate, in the present circumstances, to limit the respondents to the Bell companies, RCI, and TCC.
17. The Commission notes that it has, in previous decisions, allocated the responsibility for the payment of costs among respondents on the basis of the respondents' telecommunications operating revenues (TORs), as an indicator of the relative size and interest of the parties involved in the proceeding. The Commission considers that, in the present circumstances, it is appropriate to apportion the costs among the respondents in proportion to their TORs, as reported in their most recent audited financial statements. With respect to the Bell companies and RCI, the Commission notes that those companies made representations regarding what rules should apply to ITMPs on wireless networks. For this reason, the Commission has included in the TORs of the Bell companies the TORs of Bell Mobility Inc., and in the TORs of RCI, the TORs of Rogers Wireless Partnership and Fido Solutions Inc. Accordingly, the Commission finds that the responsibility for the payment of costs should be allocated as follows:

The Bell companies	47%
TCC	28%
RCI	25%

18. The Commission notes that the Bell companies filed joint submissions in the ITMP proceeding. Consistent with its general approach articulated in Telecom Costs Order 2002-4, the Commission makes Bell Canada responsible for payment on behalf of the Bell companies, and leaves it to the Bell companies to determine the appropriate allocation of the costs among themselves.

Direction as to costs

19. The Commission **approves** the application by Mr. Roks for costs with respect to his participation in the ITMP proceeding.
20. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to Mr. Roks at \$1,365.20.

21. The Commission directs that the award of costs to Mr. Roks be paid forthwith by Bell Canada on behalf of the Bell companies; RCI; and TCC, according to the proportions set out in paragraph 17.

Secretary General

Related documents

- *Review of the Internet traffic management practices of Internet service providers*, Telecom Regulatory Policy CRTC 2009-657, 21 October 2009
- *Review of the Internet traffic management practices of Internet service providers*, Telecom Public Notice CRTC 2008-19, 20 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

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>