



Telecom Order CRTC 2011-252

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Route reference: Telecom Notice of Consultation 2010-247

Ottawa, 15 April 2011

Determination of costs award with respect to the participation of the Canadian Association of the Deaf in the Telecom Notice of Consultation 2010-247 proceeding

File numbers: 8665-C12-201007229 and 4754-383

1. By letter dated 24 December 2010, the Canadian Association of the Deaf (CAD) applied for costs with respect to its participation in the proceeding initiated by Telecom Notice of Consultation 2010-247 (the proceeding).¹
2. On 6 January 2011, Bell Canada, on behalf of itself, Bell Aliant Regional Communications, Limited Partnership, and their respective affiliates (collectively, Bell Canada et al.), filed comments in response to CAD's application. CAD did not file any reply comments.

Application

3. CAD 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) because it represented a group of subscribers that had an interest in the outcome of the proceeding, it had participated responsibly, and it had contributed to a better understanding of the issues by the Commission through its participation in the proceeding.
4. CAD requested that the Commission fix its costs at \$3,294, consisting entirely of legal fees claimed in respect of Henry Vlug plus the Ontario Harmonized Sales Tax (HST). CAD claimed 9.5 hours of work by Mr. Vlug at a rate of \$290 per hour. CAD filed a bill of costs with its application.
5. CAD made no submission as to the appropriate costs respondents.

Answer

6. In response to the application, Bell Canada et al. did not object to CAD's entitlement to costs or generally to the amount claimed, subject to the correction of a small error in CAD's calculation of the applicable taxes.

¹ The proceeding led to the publication of Telecom Decision 2010-921 and Telecom Regulatory Policy 2011-46.

7. Bell Canada et al. submitted that all telecommunications service providers (TSPs) party to the proceeding should be named as costs respondents, with responsibility for costs allocated in proportion to their respective share of telecommunications operating revenues (TORs).²

Commission's analysis and determinations

8. The Commission finds that CAD has satisfied the criteria for an award of costs set out in subsection 44(1) of the Rules. Specifically, the Commission finds that CAD represented a group or class of subscribers that had an interest in the outcome of the proceeding, it participated responsibly, and it contributed to a better understanding of the issues by the Commission.
9. The Commission notes that the rates claimed in respect of outside counsel legal fees are in accordance with the rates established in the Commission's *Guidelines for the Assessment of Costs* (the Guidelines), as set out in Telecom Regulatory Policy 2010-963. However, the Commission notes that CAD made a mathematical error in calculating the amount of HST payable, as noted by Bell Canada et al. In addition, the Commission notes that CAD's calculations and Bell Canada et al.'s proposed correction to those calculations were both based on 12 percent HST; however, the applicable sales tax rate in Ontario is 13 percent. As a result, the Commission finds that the correct total amount that CAD should claim is \$3,113.15. The Commission finds that the total amount claimed by CAD, as revised, was necessarily and reasonably incurred and should be allowed.
10. 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.
11. In determining the appropriate respondents to an award of costs, the Commission has generally considered 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: Bell Canada et al.; Cogeco Cable Inc.; Distributel Communications Limited; MTS Allstream Inc. (MTS Allstream); Rogers Communications Inc. (RCI); Quebecor Media Inc., on behalf of its affiliate Videotron Ltd.; Saskatchewan Telecommunications; Shaw Communications; TELUS Communications Company (TCC); and Verizon Canada Ltd. The Commission further notes, however, that in allocating costs among respondents, it has also been sensitive to the fact that if numerous respondents are named, the applicant may have to collect small amounts from many respondents, resulting in a significant administrative burden to the applicant.

² TORs consist of Canadian telecommunications revenues from local and access, long distance, data, private line, Internet, and wireless services.

12. In light of the above, and given the relatively small size of the costs award and the large number of potential costs respondents in this case, the Commission considers that, consistent with section 48 of the Guidelines, it is appropriate to limit the respondents to Bell Canada et al., TCC, RCI, and MTS Allstream.
13. The Commission notes that it generally allocates the responsibility for payment of costs among respondents based on the respondents' 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, based on their most recent audited financial statements. With respect to Bell Canada et al. and RCI, the Commission notes that all TSPs that provide services within the scope of the Commissioner for Complaints for Telecommunications Services Inc.'s (CCTS) mandate – including wireless services – are required to be CCTS members. For this reason, the Commission has included Bell Mobility Inc.'s TORs in the TORs of Bell Canada et al., and Rogers Communications Partnership's and Fido Solutions Inc.'s TORs in the TORs of RCI. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated as follows:

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|--------------------|-----|
| Bell Canada et al. | 44% |
| TCC | 27% |
| RCI | 24% |
| MTS Allstream | 5% |

14. The Commission notes that Bell Canada filed submissions in the proceeding on behalf of Bell Canada et al. 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.

Directions regarding costs

15. The Commission **approves** the application by CAD for costs with respect to its participation in the proceeding.
16. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to CAD at \$3,113.50.
17. The Commission directs that the award of costs to CAD be paid forthwith by Bell Canada on behalf of Bell Canada et al., by TCC, by RCI, and by MTS Allstream, according to the proportions set out in paragraph 13.

Secretary General

Related documents

- *Review of the Commissioner for Complaints for Telecommunications Services*, Telecom Regulatory Policy CRTC 2011-46, 26 January 2011
- *Revision of CRTC costs award practices and procedures*, Telecom Regulatory Policy CRTC 2010-963, 23 December 2010
- *Review of the Commissioner for Complaints for Telecommunications Services – Decision on membership*, Telecom Decision CRTC 2010-921, 8 December 2010
- *Review of the Commissioner for Complaints for Telecommunications Services*, Telecom Notice of Consultation CRTC 2010-247, 30 April 2010, as amended by Telecom Notice of Consultation CRTC 2010-247-1, 12 August 2010
- *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