



Telecom Order CRTC 2011-321

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Ottawa, 13 May 2011

Determination of costs awards with respect to the participation of various parties in the Telecom Notice of Consultation 2010-43 proceeding

File numbers: 8663-C12-201000653, 4754-379, 4754-380, and 4754-381

In this order, the Commission approves the following parties' applications for costs awards with respect to their participation in the Telecom Notice of Consultation 2010-43 proceeding: the Canadian Association of the Deaf; the Canadian Internet Policy and Public Interest Clinic, on behalf of OpenMedia.ca; and l'Union des consommateurs.

1. By letters dated 10 and 17 December 2010, respectively, l'Union des consommateurs (l'Union) and the Canadian Association of the Deaf (CAD) applied for costs with respect to their participation in the proceeding initiated by Telecom Notice of Consultation 2010-43 (the proceeding). By letter dated 20 December 2010, the Canadian Internet Policy and Public Interest Clinic (CIPPIC), on behalf of OpenMedia.ca, also applied for costs with respect to its participation in the proceeding.
2. On 7 January 2011, Bell Canada, on behalf of itself, Bell Aliant Regional Communications, Limited Partnership (Bell Aliant), NorthernTel, Limited Partnership (NorthernTel), and Télébec, Limited Partnership (Télébec) [collectively, Bell Canada et al.], as well as TELUS Communications Company (TCC), filed comments in response to the applications by CAD, CIPPIC, and l'Union (collectively, the costs applicants). The costs applicants did not file any reply comments.

Applications

3. The costs applicants submitted that they 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 they represented a group of subscribers that had an interest in the outcome of the proceeding, they had participated responsibly, and they had contributed to a better understanding of the issues by the Commission through their participation in the proceeding.
4. In particular, CAD submitted that it represented the deaf community, which is directly affected by access to basic telecommunications services, that it participated selectively, and that it raised issues that were not raised by other participants in the proceeding. CIPPIC submitted that it represented a group of subscribers that had a direct interest in the outcome of the proceeding and that its participation was deliberately limited in an attempt to avoid duplicating the efforts of other intervenor groups.

5. CAD requested that the Commission fix its costs at \$5,034.40, consisting entirely of legal fees. CAD's claim included the Harmonized Sales Tax (HST) on fees less the rebate to which CAD is entitled in connection with the HST. CAD filed a bill of costs with its application.
6. CIPPIC requested that the Commission fix its costs at \$2,048.75, consisting entirely of legal fees. CIPPIC filed a bill of costs with its application.
7. L'Union requested that the Commission fix its costs at \$5,200, consisting entirely of legal fees. L'Union filed a bill of costs with its application.
8. The costs applicants made no submissions as to the appropriate costs respondents.

Answer

9. Bell Canada et al. and TCC did not object to the costs applicants' entitlement to costs or to the amounts claimed.
10. With respect to the allocation of costs, Bell Canada et al. submitted that all telecommunications service providers (TSPs) that were party to the proceeding should be named as costs respondents and that costs should be allocated in proportion to their telecommunications operating revenues (TORs).¹
11. TCC submitted that the allocation of costs based on TORs would result in a disproportionate share of costs being allocated to certain parties solely on the basis of their corporate structures, and requested that the Commission allocate costs in a manner that is neutral with respect to corporate structure. TCC further submitted that given the proceeding's significance to all industry players, the cost-base of respondents should be as wide as possible and that the Commission should, at a minimum, consider the total TORs of the TSP entities associated with, for example, the Bell Canada group of companies, the Rogers group of companies,² TCC, MTS Allstream Inc. (MTS Allstream), and Saskatchewan Telecommunications (SaskTel), and assess costs against each group of companies based on their percentage of TORs.

Commission's analysis and determinations

12. The Commission finds that the costs applicants have satisfied the criteria for an award of costs set out in subsection 44(1) of the Rules. Specifically, the Commission finds that the costs applicants represented a group or class of subscribers that had an interest in the outcome of the proceeding, they participated responsibly, and they contributed to a better understanding of the issues by the Commission.

¹ TORs consist of Canadian telecommunications revenues from local and access, long distance, data, private line, Internet, and wireless services.

² TCC did not specify which companies were included in the Bell group of companies or in the Rogers group of companies.

13. The Commission notes that the rates claimed in respect of legal fees are in accordance with the rates set out in the Commission's Legal Directorate's *Guidelines for the Taxation of Costs*, revised as of 24 April 2007. The Commission finds that the total amount claimed by the costs applicants was necessarily and reasonably incurred and should be allowed.
14. 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.
15. 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: Accelerated Connections Inc., Radiant Communications Corporation, SSI Micro Ltd., and TekSavvy Solutions Inc. (collectively, the independent Internet service providers); l'Association des compagnies de Téléphone du Québec, participating on behalf of its member companies; Barrett Xplore Inc. and Barrett Broadband Networks Inc.; Bell Aliant, KMTS, NorthernTel, and Télébec (collectively, Bell Aliant et al.); Bell Canada; Bragg Communications Inc., operating as EastLink; the British Columbia Broadband Association, participating on behalf of its member companies;³ the Canadian Cable Systems Alliance; Cogeco Cable Inc.; MTS Allstream; Northwestel Inc.; the Ontario Telecommunications Association, participating on behalf of its member companies,⁴ and TBayTel; Quebecor Media Inc., participating on behalf of its affiliate Videotron Ltd. (Videotron); Rogers Communications Inc. (RCI); SaskTel; Shaw Communications Inc. (Shaw); and TCC.
16. 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.

³ These member companies are A2B Fiber Inc.; ABC Communications Ltd.; Alliance Business Solutions Inc.; BCNET; BC Wireless Ltd.; Blueberry Ventures, Inc.; Cascadia Networking Inc.; China Creek Internet Services Ltd.; ElkValley Networks Ltd.; GwaiiTel Society; 508533 B.C. Ltd., operating as Highway 16 Internet; MBSI Canada Ltd.; Navigata Communications 2009, Inc.; Peace Region Internet Society; PerfectWorld Innovations Inc.; Seaview Communications Ltd.; and Tranzeo Wireless Technologies, Inc.

⁴ These member companies are Brooke Telecom Co-operative Ltd.; Bruce Telecom; Cochrane Telecom Services; Execulink Telecom Inc.; Gosfield North Communications Co-operative Limited; Hay Communications Co-operative Limited; Huron Telecommunications Co-operative Limited; Lansdowne Rural Telephone Co. Ltd.; Mornington Communications Co-operative Limited; Nexicom Telecommunications Inc.; Nexicom Telephones Inc.; North Frontenac Telephone Corporation Ltd.; NRTC Communications; Ontera; Quadro Communications Co-operative Inc.; Roxborough Telephone Company Limited; Tuckersmith Communications Co-operative Limited; Wightman Telecom Ltd.; and WTC Communications.

17. 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 it is appropriate, in the present circumstances, to limit the respondents to TCC, RCI, Bell Canada, Bell Aliant et al., MTS Allstream, Shaw, Videotron, and SaskTel.
18. The Commission notes that it generally allocates the responsibility for payment of costs among respondents based on their TORs as an indicator of the relative size and interest of the parties involved in the proceeding. The Commission notes TCC's submission that corporate structure should not dictate how costs are apportioned and that, when the Commission is apportioning costs, it should include the TORs of the affiliated entities of those TSPs that were party to the proceeding. While the Commission recognizes that TCC's integrated corporate structure results in its bearing a greater percentage of costs, the Commission considers that, in the present circumstances, it is appropriate to continue its usual practice of apportioning costs in proportion to the TORs of only those parties that actively participated in the proceeding and had a significant interest in its outcome. Accordingly, the Commission does not consider it appropriate in this case to include the TORs of affiliated entities.
19. 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. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated as follows:

TCC	27.1%
RCI	25.7%
Bell Canada	23.9%
Bell Aliant et al.	8.4%
MTS Allstream	5.1%
Shaw	3.7%
Videotron	3.1%
SaskTel	3.0%

20. The Commission notes that the members of Bell Aliant et al. filed joint submissions in the proceeding. Consistent with its general approach articulated in Telecom Costs Order 2002-4, the Commission makes Bell Aliant responsible for payment on behalf of Bell Aliant et al. and leaves it to the members of Bell Aliant et al. to determine the appropriate allocation of costs among themselves.
21. Regarding the other respondents that filed joint submissions in the proceeding, the Commission notes that these parties also filed significant separate submissions. Therefore, with respect to these respondents, the Commission is departing from the approach articulated in Telecom Costs Order 2002-4, whereby it would generally make the party that filed submissions on behalf of other respondents responsible for payment on behalf of those respondents and let the respondents determine among themselves the appropriate allocation of their share of costs.

Directions regarding costs

22. The Commission **approves** the applications for costs by the costs applicants with respect to their participation in the proceeding.
23. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to CAD at \$5,034.40, the costs to be paid to CIPPIC at \$2,048.75, and the costs to be paid to l'Union at \$5,200.
24. The Commission directs that the award of costs to the costs applicants be paid forthwith by TCC, RCI, Bell Canada, Bell Aliant on behalf of Bell Aliant et al., MTS Allstream, Shaw, Videotron, and SaskTel, according to the proportions set out in paragraph 19.

Secretary General

Related documents

- *Proceeding to review access to basic telecommunications services and other matters*, Telecom Notice of Consultation CRTC 2010-43, 28 January 2010, as amended by *Obligation to serve and other matters*, Telecom Notice of Consultation CRTC 2010-43-1, 5 March 2010; Telecom Notice of Consultation CRTC 2010-43-2, 30 March 2010; and Telecom Notice of Consultation CRTC 2010-43-3, 23 July 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