



Telecom Order CRTC 2012-571

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Ottawa, 17 October 2012

Determination of costs award with respect to the participation of l'Union des consommateurs in the Telecom Notice of Consultation 2011-348 proceeding

File numbers: 8663-C12-201108754 and 4754-405

1. By letter dated 24 May 2012, l'Union des consommateurs (l'Union) applied for costs with respect to its participation in the proceeding initiated by Telecom Notice of Consultation 2011-348 (the proceeding).
2. On 4 July 2012, TELUS Communications Company (TCC) filed an intervention in response to l'Union's application. L'Union did not file a reply.

Application

3. L'Union submitted that it had met the criteria for an award of costs set out in section 68 of the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (the Rules of Procedure) because it represented a group or class of subscribers that had an interest in the outcome of the proceeding, it had assisted the Commission in developing a better understanding of the matters that were considered, and it had participated in a responsible way.
4. L'Union requested that the Commission fix its costs at \$1,375, consisting of \$1,175 for in-house analyst fees and \$200 for in-house legal fees. L'Union filed a bill of costs with its application.
5. L'Union made no submission as to the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents).
6. L'Union indicated that it would leave it to the Commission's discretion to designate the parties responsible for payment of costs and allocate costs between the companies involved in the proceeding.

Answer

7. In response to the application, TCC submitted that the appropriate costs respondents should be the small incumbent local exchange carriers (ILECs) and the associations that represent them. TCC noted that this was consistent with its intervention submitted in reply to the Public Interest Advocacy Centre's application for costs in this proceeding.

Commission's analysis and determinations

8. The Commission finds that l'Union has satisfied the criteria for an award of costs set out in section 68 of the Rules of Procedure. Specifically, the Commission finds that l'Union represented a group or class of subscribers that had an interest in the outcome of the proceeding, it assisted the Commission in developing a better understanding of the matters that were considered, and it participated in a responsible way.
9. The Commission notes that the rates claimed in respect of analyst and 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. The Commission finds that the total amount claimed by l'Union 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. The Commission notes that it has generally determined that the appropriate costs respondents to an award of costs are the parties that have a significant interest in the outcome of the proceeding in question and have participated actively in that proceeding. The Commission considers that Bragg Communications Inc., operating as EastLink (EastLink); KMTS; NorthernTel, Limited Partnership (NorthernTel); and TBayTel, as small ILECs or representatives thereof, had a significant interest in the outcome of the proceeding and participated actively throughout the proceeding.
12. The Commission also notes the significant interest of the member companies of l'Association des compagnies de téléphone du Québec inc. (ACTQ) and the Ontario Telecommunications Association (OTA) [collectively, ACTQ/OTA] in this review.
13. The Commission notes that the ACTQ/OTA member companies were made parties to the proceeding, and that following Telecom Decision 2012-188, in which the Commission denied ACTQ/OTA's request to suspend the proceeding, their members chose not to file proposals or respond to requests for information in accordance with the established schedule.
14. In Telecom Notice of Consultation 2011-348-4, the Commission noted its expectation that parties would participate responsibly in its proceedings, respecting established timelines and other procedural directions, so that it could effectively discharge its mandate in a timely manner in the public interest. The Commission also indicated its intent to not countenance any disregard for its directives with respect to the regulatory oversight it carries out under the *Telecommunications Act* (the Act).
15. Given that the ACTQ/OTA member companies were made parties to the proceeding but chose not to comply with Commission directives and, in light of the importance of this proceeding to the ACTQ/OTA, the Commission considers it appropriate for them to be named as costs respondents despite their lack of participation.

16. The Commission therefore finds that the appropriate costs respondents to l'Union's application for costs are the ACTQ/OTA member companies, EastLink, KMTS, NorthernTel, and TBayTel.
17. The Commission notes that it generally allocates the responsibility for payment of costs among costs respondents based on their telecommunications operating revenues (TORs)¹ 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 costs 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:

EastLink	41.3%
TBayTel	21.4%
OTA member companies	15.7%
NorthernTel	13.0%
ACTQ member companies	6.7%
KMTS	1.9%

18. The Commission notes that Bell Aliant Regional Communications, Limited Partnership and Bell Canada filed joint submissions in the proceeding with KMTS and NorthernTel. Consistent with its general approach articulated in Telecom Costs Order 2002-4, the Commission makes Bell Canada responsible for payment on behalf of KMTS and NorthernTel, and leaves it to Bell Canada, KMTS, and NorthernTel to determine the appropriate allocation of the costs among themselves. Similarly, the Commission makes the ACTQ and the OTA responsible for payment on behalf of their members, and leaves it to their members to determine the appropriate allocation of costs among themselves.

Directions regarding costs

19. The Commission **approves** the application by l'Union for costs with respect to its participation in the proceeding.
20. The Commission notes that because this proceeding was re-opened in Telecom Notice of Consultation 2011-348-4 on 30 July 2012, this award of costs applies only to the portions of the proceeding that occurred before that date.
21. Pursuant to subsection 56(1) of the Act, the Commission fixes the costs to be paid to l'Union at \$1,375.

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

22. The Commission directs that the award of costs to l'Union be paid forthwith by EastLink; TBayTel; the OTA, on behalf of its member companies; Bell Canada, on behalf of KMTS and NorthernTel; and the ACTQ, on behalf of its member companies, according to the proportions set out in paragraph 17.

Secretary General

Related documents

- *ACTQ/OTA – Application to stay certain portions of Telecom Regulatory Policy 2011-291 and related matters*, Telecom Decision CRTC 2012-188, 30 March 2012
- *Review of regulatory framework for the small incumbent local exchange carriers and related matters*, Telecom Notice of Consultation CRTC 2011-348, 26 May 2011, as amended by Telecom Notice of Consultation CRTC 2011-348-1, 5 July 2011; Telecom Notice of Consultation CRTC 2011-348-2, 28 November 2011; Telecom Notice of Consultation CRTC 2011-348-3, 21 December 2011; and Telecom Notice of Consultation CRTC 2011-348-4, 30 July 2012
- *Revision of CRTC costs award practices and procedures*, Telecom Regulatory Policy CRTC 2010-963, 23 December 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