



Telecom Decision CRTC 2013-235

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Ottawa, 9 May 2013

Bragg Communications Inc. – Application to review and vary Telecom Orders 2012-571 and 2012-572 regarding awards of costs for participation in the proceeding initiated by Telecom Notice of Consultation 2011-348

File number: 8662-E17-201215195

In this decision, the Commission varies Telecom Orders 2012-571 and 2012-572 by (i) removing Bragg Communications Inc. as a named costs respondent, and (ii) naming Amtelecom Limited Partnership and People’s Tel Limited Partnership as costs respondents to applications from l’Union des consommateurs and the Public Interest Advocacy Centre for costs related to participation in the proceeding initiated by Telecom Notice of Consultation 2011-348.

Introduction

1. The Commission received an application from Bragg Communications Inc. operating as EastLink (EastLink), dated 30 November 2012, in which the company requested that the Commission review and vary Telecom Orders 2012-571 and 2012-572 (collectively, the costs orders) with respect to the allocation of the responsibility for payment of costs awarded to l’Union des consommateurs (l’Union) and to the Public Interest Advocacy Centre (PIAC).
2. In its application, EastLink requested that the costs orders be modified to base its responsibility for payment of costs on the telecommunications operating revenues (TORs)¹ of Amtelecom Limited Partnership (Amtelecom) and People’s Tel Limited Partnership (People’s Tel), rather than on its own TORs.
3. The Commission received comments regarding EastLink’s application from TELUS Communications Company (TCC) and from the Canadian Independent Telephone Company Joint Task Force (CITC-JTF) on behalf of various companies.² The public record of this proceeding, which closed on 31 January 2013, is available on the Commission’s website at www.crtc.gc.ca under “Public Proceedings” or by using the file number provided above.

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

² The companies on whose behalf the CITC-JTF submitted comments are set out in the Appendix to this decision.

4. The Commission has identified the following issues to be addressed in this decision:
 - I. Did the Commission err in respect of the allocations of costs to EastLink?
 - II. If yes, should the resulting financial adjustments be applied now or in the future?

I. Did the Commission err in respect of the allocations of costs to EastLink?

5. EastLink argued that its share of the responsibility for costs is disproportionate when compared with the shares of the other costs respondents named in the costs orders. In support of its position that its responsibility for costs should be based on the TORs of Amtelecom and People's Tel only, EastLink argued that it is the only named costs respondent that is not a small incumbent local exchange carrier (ILEC) and that it was treated differently from Bell Canada for no apparent reason.
6. EastLink noted that it is the parent company of Amtelecom and People's Tel, both of which are legally separate corporate entities, and that during the proceeding initiated by Telecom Notice of Consultation 2011-348 (the proceeding), it filed submissions combining responses for itself and its two affiliates. EastLink submitted that this was similar to the situation involving Bell Aliant Regional Communications, Limited Partnership (Bell Aliant); Bell Canada; KMTS; and NorthernTel, Limited Partnership (NorthernTel), who provided joint submissions in the proceeding. EastLink noted, however, that while the Commission excluded Bell Canada's and Bell Aliant's TORs in allocating the responsibility for payment of costs, it included EastLink's TORs.
7. TCC supported EastLink's application. It submitted that the Commission's decision to allocate the responsibility for payment of costs on the basis of TORs left EastLink bearing costs based on its non-small-ILEC revenues, and that it was the only party treated in this way. TCC argued that this approach was inequitable; EastLink and its two affiliates were treated as a single integrated group of companies for cost allocation purposes, whereas KMTS and NorthernTel were treated as stand-alone entities even though they form part of the Bell group of companies. TCC submitted that, given the determinations in the costs orders that only small ILECs should be held responsible for payment of the awarded costs, the Commission should have allocated costs to EastLink on the basis of Amtelecom's and People's Tel's revenues only.

Commission's analysis and determinations

8. The Commission notes that it has generally determined that the appropriate respondents to an award of costs with respect to participation in a proceeding are the parties that have a significant interest in the outcome of, and have participated actively in, the underlying proceeding. Given that the proceeding dealt with a review of the small ILECs' regulatory framework, the Commission determined that the small ILECs should be retained as costs respondents in light of their significant interest in the outcome of that proceeding. Given this interest and the fact that all small ILECs had been named as parties to the proceeding, the Commission retained as costs respondents even those small ILECs that had chosen to disregard its requests for information and otherwise forgo participation in the proceeding.

9. The Commission considers that, taking the above into account, there is no principled basis upon which to retain EastLink as a costs respondent rather than Amtelecom and People's Tel. Amtelecom and People's Tel were both named as parties to the proceeding, and each is a distinct corporate entity registered with the Commission as a small ILEC. The Commission considers that naming Amtelecom and People's Tel as costs respondents, rather than EastLink, which is not a small ILEC, and allocating to them the responsibility for payment of costs on the basis of their respective TORs, would be consistent with the treatment afforded the other carriers that were parties to the proceeding.
10. The Commission therefore determines that it erred in allocating costs to EastLink rather than to Amtelecom and People's Tel.

II. If yes, should the resulting financial adjustments be applied now or in the future?

11. In its intervention, the CITC-JTF noted that the record of the proceeding had been reopened by the Commission, and expressed its expectation that additional claims for costs would be filed at some point in the future. In light of this, the CITC-JTF requested that, should the Commission vary the costs orders as a result of EastLink's application, the financial impact of the resulting revisions be applied to any subsequent awards of costs flowing from activities associated with reopening the record.
12. The Commission considers that delaying implementation of the adjustments resulting from the present decision would inappropriately penalize EastLink. Accordingly, the Commission **denies** the CITC-JTF's request.

Other matters

13. The CITC-JTF requested that the Commission expand the list of costs respondents by allocating the responsibility for payment of costs to most of the non-small-ILEC telecommunications service providers (TSPs) that participated in the proceeding. In the alternative, the CITC-JTF requested that, if the Commission grants EastLink's requested relief, it should exclude any competitive local exchange carrier (CLEC) revenues generated by the small ILECs when it allocates the responsibility for payment of costs.
14. The Commission considers that the CITC-JTF's request to vary the costs orders in order to name various non-small-ILEC TSPs as costs respondents constitutes a marked departure from the relief requested by EastLink, the adoption of which would affect the interests of those entities in a manner that was not foreseen by EastLink's application. The Commission therefore considers this request to be outside the scope of the present proceeding.
15. Similarly, the Commission considers that the CITC-JTF's request to revise the allocation of the responsibility for payment of costs by excluding any TORs associated with a costs respondent's activities as a CLEC is outside the scope of the present proceeding.

Conclusion

16. In light of the above, the Commission varies the costs orders to (i) name Amtelecom and People's Tel as costs respondents, and (ii) remove EastLink as a costs respondent. The Commission reassesses the allocation of the responsibility for payment of costs as follows:

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| TBayTel | 34.10% |
| Independent Telecommunications Providers Association (ITPA) member companies ³ | 25.00% |
| NorthernTel | 20.67% |
| Association des compagnies de téléphone du Québec (ACTQ) member companies | 10.69% |
| Amtelecom | 5.39% |
| KMTS | 2.97% |
| People's Tel | 1.17% |

17. Subject to the directives in paragraph 18 below, the Commission directs
- any additional costs resulting from the present decision to be paid forthwith to l'Union and PIAC; and
 - l'Union and PIAC to forthwith refund EastLink any payments made by the latter in relation to the costs orders.
18. For the purposes of compliance with the directions above and 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 them to determine the appropriate allocation of costs among themselves. Similarly, the Commission makes EastLink responsible for payment on behalf of Amtelecom and People's Tel, and leaves it them to determine the appropriate allocation of costs among themselves. Finally, the Commission makes the ACTQ and the ITPA responsible for payment on behalf of their members, and leaves it to their members to determine the appropriate allocation of costs among themselves.

Secretary General

³ The ITPA was previously known as the Ontario Telecommunications Association.

Related documents

- *Determination of costs award with respect to the participation of the Public Interest Advocacy Centre and Canada Without Poverty in the Telecom Notice of Consultation 2011-348 proceeding*, Telecom Order CRTC 2012-572, 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*, Telecom Order CRTC 2012-571, 17 October 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 Notices of Consultation CRTC 2011-348-1, 5 July 2011; 2011-348-2, 28 November 2011; 2011-348-3, 21 December 2011; and 2011-348-4, 30 July 2012
- *Action Réseau Consommateur, the Consumers' Association of Canada, Fédération des associations coopératives d'économie familial and the National Anti-Poverty Organization application for costs – Public Notice CRTC 2001-60*, Telecom Costs Order CRTC 2002-4, 24 April 2002

Appendix

CITC-JTF's intervention was filed on behalf of the following member companies of the ACTQ and the ITPA:

ACTQ

CoopTel
La Cie de Téléphone de Courcelles inc.
La Compagnie de Téléphone de Lambton Inc.
La Compagnie de Téléphone de St-Victor
La Compagnie de Téléphone Upton Inc.
Le Téléphone de St-Éphrem inc.
Sogetel inc.
Téléphone Guèvremont inc.
Téléphone Milot inc.

ITPA

Brooke Telecom Co-operative Ltd.
Bruce Telecom
CityWest Telephone Corporation
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 Limited
WTC Communications