



Telecom Order CRTC 2021-171

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Ottawa, 13 May 2021

File numbers: 1011-NOC2020-0124 and 4754-651

Allocation of funds from Bell Canada's deferral account to Media Access Canada for its participation in the proceeding initiated by Telecom and Broadcasting Notice of Consultation 2020-124

Background

1. In Telecom and Broadcasting Notice of Consultation 2020-124-2, the Commission approved a proposal by Bell Canada to use up to \$125,000 from the company's deferral account to fund public interest and accessibility intervener participation in the proceeding initiated by Telecom and Broadcasting Notice of Consultation 2020-124 (the proceeding) and, if funds remained, in a follow-up proceeding. In the proceeding, the Commission considered regulations to be made under the *Accessible Canada Act* (ACA) regarding the accessibility reporting requirements for broadcasting undertakings, Canadian telecommunications common carriers, and telecommunications service providers.
2. The Commission indicated that it would distribute these funds in a manner that closely resembles its general practices and procedures in respect of applications for final telecommunications costs awards, including the application of the eligibility criteria for costs awards set out in section 68 of the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (the Rules of Procedure).
3. The Commission noted that Bell Canada did not submit, as part of its proposal, that it required the opportunity to respond to applications for a share of the available funds. In the circumstances, the Commission considered that such responses were unnecessary.

Application

4. By letter dated 22 July 2020, Media Access Canada (MAC) applied for costs with respect to its participation in the proceeding.
5. MAC submitted that it had met the criteria set out in section 68 of the Rules of Procedure because it represented a group 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.

6. In particular, MAC submitted that it is an independent, not-for-profit organization that represents the interests of Canadians with hearing, seeing, physical, mental, and psychological disabilities.
7. MAC submitted that it provided a fuller understanding of the issues affecting this class of subscribers by preparing a 24-page intervention and 12-page reply to the proceeding's interventions.
8. MAC submitted that it participated in the proceeding in a responsible way by making recommendations on the subject matter in an organized and timely manner, and by utilizing junior legal resources to minimize the costs of participation.
9. MAC requested that the Commission fix its costs at \$7,872.75, consisting entirely of legal fees. MAC filed a bill of costs with its application, claiming 30.06 hours at the rate of \$206 per hour for an external intermediate legal counsel, 2 hours at the rate of \$135 per hour for an external junior legal counsel, and 5.5 hours at the rate of \$70 per hour for an external articling student. MAC's claim included the federal Goods and Services Tax and the provincial sales tax for Quebec. MAC submitted that it is not entitled to a rebate in connection with any applicable tax.

Commission's analysis and determinations

Eligibility

10. In Telecom and Broadcasting Notice of Consultation 2020-124-2, the Commission stated the following:
 15. [...] Eligibility for a share of these funds will be evaluated according to the criteria set out in section 68 of the Rules of Procedure, namely
 - a. whether the applicant had, or was the representative of a group or a class of subscribers that had, an interest in the outcome of the proceeding;
 - b. the extent to which the applicant assisted the Commission in developing a better understanding of the matters that were considered; and
 - c. whether the applicant participated in the proceeding in a responsible way.
11. The Commission further indicated that it would have regard to whether the applicant had explained how the costs claimed were reasonably and necessarily incurred in the circumstances.
12. In Telecom Information Bulletin 2016-188, the Commission provided guidance regarding how an applicant may demonstrate that it satisfies the first criterion with respect to its representation of interested subscribers. MAC has demonstrated that it meets the first criterion by representing Canadians with hearing, seeing, physical, mental, and psychological disabilities, and by elaborating on its membership and expertise, as well as on the consultation with stakeholders and research that it undertook.

13. MAC assisted the Commission in developing a better understanding of the matters that were considered by explaining specific outstanding issues and challenges to be addressed in the proposed regulations to be made under the ACA, thereby satisfying the second criterion.
14. MAC has also satisfied the remaining criterion through its participation in the proceeding. MAC participated in all stages of the proceeding and raised accessibility issues and challenges faced by Canadians with various disabilities.
15. While MAC relied mainly on the work of a senior lawyer, it made efforts to use junior legal resources to synthesize information and to reduce the cost of preparing its submissions.
16. Accordingly, the Commission finds that MAC meets the criteria for an award of costs set out in Telecom and Broadcasting Notice of Consultation 2020-124-2.

Legal fees

17. The fees claimed by MAC for legal counsel and an articling student are consistent with the *Guidelines for the Assessment of Costs*, as set out in Telecom Regulatory Policy 2010-963.
18. In Telecom Order 2017-364, the Commission determined that the manner in which a lawyer reports to the appropriate law society constitutes an objective evidentiary piece of information and enables the Commission to avoid resource-intensive analysis on the status of the lawyer. Since MAC's Chief Executive Officer has reported his employment status to the law society as a lawyer in Private Practice, it was appropriate for MAC to claim costs for his work at an external counsel rate.

Time claimed

19. In the present case, MAC participated in all stages of the proceeding, raised relevant issues, and developed unique policy and legal positions. Accordingly, the Commission finds that the amount of time claimed by MAC is appropriate in the circumstances.
20. In light of the above, the total amount claimed by MAC was reasonably and necessarily incurred and should be allowed.

Directions regarding costs

21. The Commission **approves** the application by MAC and **directs** Bell Canada to pay forthwith from its deferral account the amount of \$7,872.75 to MAC.

2019 Policy Direction

22. The Governor in Council issued a policy direction in which it directed the Commission to consider how its decisions can promote competition, affordability, consumer interests, and innovation (the 2019 Policy Direction).¹ The Commission considers that its determinations in this order are consistent with the 2019 Policy Direction.
23. In particular, the present order, which requires the reimbursement of reasonably and necessarily incurred costs relating to public interest intervener participation in the proceeding, contributes to enhancing and protecting the rights of consumers in their relationships with service providers, including rights related to accessibility.

Secretary General

Related documents

- *Call for comments – Regulations to be made under the Accessible Canada Act, Telecom and Broadcasting Notice of Consultation CRTC 2020-124, 14 April 2020; as amended by Telecom and Broadcasting Notices of Consultation CRTC 2020-124-1, 13 May 2020; and 2020-124-2, 4 June 2020*
- *Determination of costs award with respect to the participation of the Coalition in the proceeding that led to Telecom Regulatory Policy 2017-200, Telecom Order CRTC 2017-364, 16 October 2017*
- *Guidance for costs award applicants regarding representation of a group or a class of subscribers, Telecom Information Bulletin CRTC 2016-188, 17 May 2016*
- *Revision of CRTC costs award practices and procedures, Telecom Regulatory Policy CRTC 2010-963, 23 December 2010*

¹ *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives to Promote Competition, Affordability, Consumer Interests and Innovation, SOR/2019-227, 17 June 2019*