



Telecom Order CRTC 2021-175

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Allocation of funds from Bell Canada's deferral account to the Community Media Advocacy Centre 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 6 September 2020, the Community Media Advocacy Centre (CMAC) applied for costs with respect to its participation in the proceeding.
5. CMAC 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, CMAC submitted that it is a non-profit organization that represents the interests of people with disabilities who are Indigenous or racialized, or who identify as women, and that offers advocacy and support to these groups.
7. CMAC submitted that it provided a fuller understanding of the issues affecting this class of subscribers by preparing a 14-page intervention and 5-page reply to the proceeding's interventions.
8. CMAC further submitted that it participated in the proceeding in a responsible way by advancing the interests of people with disabilities who are Indigenous or racialized, or who identify as women, and by making recommendations on the subject matter of the proceeding in a structured manner, with a unique and distinct point of view.
9. CMAC requested that the Commission fix its costs at \$16,815.10, consisting entirely of consultant fees. CMAC filed a bill of costs with its application, claiming 65 hours at the rate of \$225 per hour split between two external senior consultants. CMAC claimed the federal Goods and Services Tax and the provincial sales tax for Quebec. It 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. CMAC has demonstrated that it meets the first criterion by representing people with disabilities who are Indigenous or racialized, or who identify as women, and by elaborating on its membership and expertise.
13. CMAC 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. CMAC has also satisfied the remaining criterion through its participation in the proceeding. CMAC participated in all stages of the proceeding, and provided a distinct point of view with respect to accessibility issues and challenges faced by people who are racialized, Indigenous, or who identify as women, and who are living with disabilities.
15. Accordingly, the Commission finds that CMAC meets the criteria for an award of costs set out in Telecom and Broadcasting Notice of Consultation 2020-124-2.

Consultant fees

16. The costs that can be reasonably claimed for external consultants are higher than those for in-house consultants. This is because it is generally presumed that in-house consultants are part of the organization and provide services as part of their regular duties, the costs for which are covered by the organization's regular operating costs. However, external consultants are presumed to be charging the organization industry rates for specific expertise.
17. CMAC claimed fees consistent with the rates for external consultants listed in the *Guidelines for the Assessment of Costs*, as set out in Telecom Regulatory Policy 2010-963, rather than fees consistent with those for internal consultants.
18. The Commission has applied the external consultant rate to certain internal resources of certain non-profit organizations such as the Canadian Association of the Deaf - Association des Sourds du Canada (CAD-ASC), in Telecom Order 2017-129, and the Deaf Wireless Canada Consultative Committee (DWCC), in Telecom Order 2017-137, where the applicant had provided compelling justification as to why fees should be awarded at the external rate.
19. In this case, CMAC indicated that its consultants are volunteers who perform work for CMAC on an as-needed basis and do not control the day-to-day operations of the organization. CMAC demonstrated that both its consultants have provided consulting services to CMAC since 2015 and that both of them have previously been awarded costs at the external rate by the Broadcast Participation Fund.
20. In the present circumstance, it would be appropriate to apply a similar rationale as has been previously applied to CAD-ASC and the DWCC to CMAC. CMAC's consultants should be considered to have participated directly in the development of CMAC's submissions as consultants who perform work on an as-needed basis and should have fees awarded at the external rate.

Time claimed

21. In the present case, CMAC participated in all stages of the proceeding, raised relevant issues, and developed a unique advocacy perspective. Accordingly, the Commission finds that the amount of time claimed by CMAC is appropriate.
22. In light of the above, the total amount claimed by CMAC was reasonably and necessarily incurred and should be allowed.

Directions regarding costs

23. The Commission **approves** the application by CMAC and **directs** Bell Canada to pay forthwith from its deferral account the amount of \$16,815.10 to CMAC.

2019 Policy Direction

24. 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.
25. 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 Deaf Wireless Canada Consultative Committee in the proceeding leading to Telecom Regulatory Policy 2016-496, Telecom Order CRTC 2017-137, 5 May 2017*
- *Determination of costs award with respect to the participation of the Canadian Association of the Deaf in the proceeding leading to*

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*

Telecom Regulatory Policy 2016-496, Telecom Order CRTC 2017-129,
3 May 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