



Telecom Order CRTC 2021-351

PDF version

Ottawa, 29 October 2021

File numbers: 1011-NOC2021-0069 and 4754-662

Allocation of funds from Bell Canada's deferral account to the Canadian Association of the Deaf-Association des Sourds du Canada for its participation in the proceeding initiated by Telecom and Broadcasting Notice of Consultation 2021-69

Background

1. In Telecom and Broadcasting Notice of Consultation 2021-69, the Commission called for comments on the text of the draft *Canadian Radio-television and Telecommunications Commission Accessibility Reporting Regulations* (the Regulations). It was the second of two consultations on the structure, form, and content of the Regulations to be made under the *Accessible Canada Act* (ACA).
2. In Telecom and Broadcasting Notice of Consultation 2020-124-2, the Commission approved a proposal by Bell Canada to use funds in its deferral account to fund public interest participation in the regulation-making proceedings under the ACA. 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. In that notice of consultation, the Commission noted that Bell Canada did not submit that it required the opportunity to respond to applications for a share of the available funds in its proposal. In the circumstances, the Commission considered that such responses were unnecessary.

Application

4. By letter dated 30 April 2021, the Canadian Association of the Deaf-Association des Sourds du Canada (CAD-ASC) applied for costs with respect to its participation in the proceeding that led to Telecom and Broadcasting Regulatory Policy 2021-215.
5. CAD-ASC submitted that it had met the criteria for an award of costs 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, CAD-ASC submitted that it represents the interests of persons with disabilities, specifically Deaf, Deaf-Blind, and Hard of Hearing persons in Canada, as a national organization composed of persons who are Deaf.
7. CAD-ASC submitted that alongside the Canadian National Society of the Deaf-Blind, Inc. (CNSDB) and the Deaf Wireless Canada Consultative Committee (DWCC), it provided a fuller understanding of the issues affecting this class of subscribers by preparing an intervention and reply.
8. CAD-ASC submitted that it participated in the proceeding in a responsible way by advancing the interests of Deaf people in Canada and by making concrete recommendations with respect to the proposed wording of the Regulations.
9. CAD-ASC requested that the Commission fix its costs at \$3,300, consisting entirely of consultant fees. CAD-ASC filed a bill of costs with its application, claiming 30 hours at the rate of \$110 per hour for an external consultant.

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. In the present case, CAD-ASC has demonstrated that it meets the first criterion by having represented the interests of individuals who are Deaf, Deaf-Blind, or Hard of Hearing. CAD-ASC is a national organization made up of people who are Deaf.
13. CAD-ASC assisted the Commission in developing a better understanding of the matters that were considered by providing commentary regarding the proposed

wording of the draft Regulations, focussing on, among other things, the status of sign languages and the feedback process. Thereby, CAD-ASC satisfied the second criterion.

14. CAD-ASC has also satisfied the remaining criterion through its participation in the proceeding. CAD-ASC participated jointly with the CNSDB and the DWCC in all stages of the proceeding, met all applicable deadlines, and raised accessibility issues and challenges faced by Deaf, Deaf-Blind, and Hard of Hearing Canadians.
15. Accordingly, the Commission finds that CAD-ASC 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. CAD-ASC claimed fees, incurred by its Vice-President, consistent with the rate for an external consultant listed in the *Guidelines for the Assessment of Costs*, as set out in Telecom Regulatory Policy 2010-963.
18. In Telecom Order 2017-129 and Telecom Order 2021-170, the Commission permitted recovery of costs at the external rate for the President of the Board of Directors of CAD-ASC, who prepared the organization's submissions, concluding that it was unlikely that this not-for-profit organization would otherwise be able to participate in Commission proceedings. In those orders, the work of the President was considered as time spent as a consultant rather than as a director.
19. In the present circumstances, it would be consistent with those past cases to apply similar rationale. CAD-ASC's Vice-President should be considered to have participated directly in the development of the organization's submissions as a consultant rather than as a director, and costs should be awarded at the external consultant rate.

Time claimed

20. In the present matter, CAD-ASC participated jointly with the CNSDB and the DWCC in all stages of the proceeding. The scale of its claim is consistent with this joint participation and with the scope of its submissions, which raised relevant issues and developed unique policy and legal positions. Accordingly, the Commission finds that the amount of time claimed by CAD-ASC is appropriate.
21. In light of the above, the total amount claimed by CAD-ASC was reasonably and necessarily incurred and should be allowed.

Directions regarding costs

22. The Commission **approves** the application by CAD-ASC and **directs** Bell Canada to pay forthwith from its deferral account the amount of \$3,300 to CAD-ASC.

2019 Policy Direction

23. 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.

24. 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

- *The Canadian Radio-television and Telecommunications Commission Accessibility Reporting Regulations, Telecom and Broadcasting Regulatory Policy CRTC 2021-215, 7 July 2021*
- *Allocation of funds from Bell Canada's deferral account to the Canadian Association of the Deaf - Association des Sourds du Canada for its participation in the proceeding initiated by Telecom and Broadcasting Notice of Consultation 2020-124, Telecom Order CRTC 2021-170, 13 May 2021*
- *Call for comments – The Canadian Radio-television and Telecommunications Commission Accessibility Reporting Regulations, Telecom and Broadcasting Notice of Consultation CRTC 2021-69, 18 February 2021*
- *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 Canadian Association of the Deaf in the proceeding leading to Telecom Regulatory Policy 2016-496, Telecom Order CRTC 2017-129, 3 May 2017*

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*

- *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