



Telecom Order CRTC 2021-356

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File numbers: 1011-NOC2021-0069 and 4754-663

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 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 as part of its proposal. In the circumstances, the Commission considered that such responses were unnecessary.

Application

4. By letter dated 26 April 2021, the Community Media Advocacy Centre (CMAC) applied for costs with respect to its participation in the proceeding that led to Telecom and Broadcasting Regulatory Policy 2021-215.
5. CMAC 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, CMAC submitted that it is a non-profit organization that represents the interests of persons with disabilities who are Indigenous or racialized, or who identify as women.
7. CMAC submitted that it provided a fuller understanding of the issues affecting these classes of subscribers by filing a procedural letter, an intervention, and a reply, and by making recommendations on the subject matter of the proceeding in a focused and structured manner with a unique advocacy perspective. CMAC submitted that by contributing as it did, it participated responsibly.
8. CMAC requested that the Commission fix its costs at \$17,332.48, consisting entirely of consultant fees. CMAC filed a bill of costs with its application, claiming 67 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.
9. On 24 August 2021, Commission staff issued a request for information to CMAC, which CMAC replied to on 30 August 2021.

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, CMAC indicated that its participation offered the unique perspective of advocating explicitly

on behalf of persons with disabilities who are also impacted by intersectionality, including those who may be Indigenous or racialized persons, or who identify as women. For instance, CMAC filed a letter on the record of the proceeding from the DisAbled Women's Network of Canada in support of CMAC's positions. The Commission therefore considers that CMAC has demonstrated that it meets the first criterion.

13. CMAC also assisted the Commission in developing a better understanding of the matters that were considered, thereby satisfying the second criterion. For instance, CMAC highlighted the importance of consulting persons with disabilities in a way that accounts for intersectionality with other aspects of their identities.
14. CMAC has also satisfied the remaining criterion through its participation in all stages of the proceeding, by raising issues with the proposed Regulations on behalf of the groups it represents.
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 Commission recognizes the important contribution that non-profit organizations make to its ability to better understand the issues in a proceeding and to help the Canadians represented by the organization. In these organizations, it is common for volunteers to conduct work traditionally undertaken by paid staff, including researching and drafting the organization's submissions to the Commission. It would not be in the public interest to prevent these organizations from recovering costs simply because the work was completed by a volunteer, since it is unlikely that the organization would be able to participate in Commission proceedings without this cost recovery.
17. However, it remains important for the Commission to ensure that such volunteers are properly categorized as in-house or external consultants based on the principles established in the *Guidelines for the Assessment of Costs* (Guidelines), as set out in Telecom Regulatory Policy 2010-963, and adapted to the circumstances. 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.
18. CMAC claimed fees consistent with the rates for external consultants listed in the Guidelines.
19. The Commission has previously awarded costs at the external consultant rate to CMAC, in Telecom Order 2021-175, and to internal resources of certain other not-for-profit organizations such as the Canadian Association of the Deaf-Association des

Sourds du Canada and the Deaf Wireless Canada Consultative Committee, where the applicants had provided compelling justification as to why fees should be awarded at the external rate.¹

20. In this case, CMAC submitted that it has no paid staff or operating budget, and 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.
21. In the present circumstances, it would be appropriate to apply a similar rationale as that which has been previously applied to CMAC and to permit its claim at the external consultant rate.

Time claimed

22. In the request for information issued on 24 August 2021, CMAC was asked, among other things, to provide additional rationale for the fees claimed on behalf of its consultants and to comment on whether the time claimed could be considered excessive.
23. In response, CMAC reiterated the extent of its participation in this proceeding, the amount of documentation involved, the degree of responsibility it assumed, and the unique nature of its submissions. It also provided additional details regarding the experience and expertise of its consultants. Finally, it argued that the time claimed at the external rate was reasonable in comparison to the other claimants in the file, some of whom claimed fees at the internal rate.
24. In the present matter, CMAC raised relevant issues and made unique submissions. The time it has claimed with respect to its consultants is greater than what was claimed by some other applicants, but not by all. As the record of this proceeding involved multiple proposals for regulatory amendments, it can reasonably be considered complex.
25. On the other hand, the fees CMAC has claimed are notably in excess of all other applicants, even those that participated jointly, and are somewhat greater than its own claim in the first phase of the regulation-making process.² CMAC's submissions, while valuable, are not generally lengthier or more detailed than those of these other applicants.
26. On balance, the Commission finds that the amount of time claimed by CMAC should be reduced slightly downward, by \$2,000, in order to be considered reasonable and necessarily incurred.

¹ See, for instance, Telecom Orders 2017-129 and 2017-137.

² See Telecom Order 2021-175.

Directions regarding costs

27. The Commission **approves, with changes**, the application by CMAC and **directs** Bell Canada to pay forthwith from its deferral account the amount of \$15,332.48 to CMAC.

2019 Policy Direction

28. 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).³ The Commission considers that its determinations in this order are consistent with the 2019 Policy Direction.

29. 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 Community Media Advocacy Centre for its participation in the proceeding initiated by Telecom and Broadcasting Notice of Consultation 2020-124, Telecom Order CRTC 2021-175, 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*

³ *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*

- *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 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*