



Telecom Costs Order CRTC 2008-23

Ottawa, 22 December 2008

Determination of costs award with respect to the participation of the Campaign for Democratic Media in the proceeding initiated by the Canadian Association of Internet Providers' Part VII application

Reference: 8622-C51-200805153 and 4754-321

1. By letter dated 29 July 2008, the Campaign for Democratic Media (CDM) applied for costs with respect to its participation in the proceeding initiated by the Canadian Association of Internet Providers' (CAIP) Part VII application dated 3 April 2008 (the CAIP proceeding) regarding Bell Canada's traffic-shaping practices in relation to its wholesale Gateway Access Service (GAS).
2. The Commission received comments in response to CDM's application on 6 August and 5 September 2008 from Bell Canada, on 3 September 2008 from CAIP, and on 16 and 17 September 2008 from TELUS Communications Company (TCC). The Canadian Internet Policy and Public Interest Clinic (CIPPIC), on behalf of CDM, filed reply comments on 12 September 2008.

Application

3. CDM submitted that it had met the criteria for an award of costs set out in subsection 44(1) of the *CRTC Telecommunications Rules of Procedure* (the Rules), as it represents a group of subscribers that had an interest in the outcome of the CAIP proceeding, it had participated responsibly, and it had contributed to a better understanding of the issues by the Commission through its participation in the CAIP proceeding.
4. CDM requested that the Commission fix its costs at \$10,355, consisting entirely of legal fees. CDM's claim included the federal Goods and Services Tax (GST) on fees less the rebate to which CDM is entitled in connection with the GST. CDM filed a bill of costs with its application.
5. CDM submitted that the appropriate respondent in this case was Bell Canada.

Answer

6. In response to the application, Bell Canada stated that it did not oppose CDM's entitlement to costs or the quantum specified. Bell Canada submitted that, since CAIP initiated and actively participated in the CAIP proceeding on behalf of many companies and its members will be affected by the outcome of the proceeding, it would be appropriate for CAIP to share the costs in the proceeding. With respect to the allocation of costs among costs respondents, Bell Canada submitted that it should bear two-thirds of the costs whereas CAIP, given its level of interest and participation in the proceeding, should be responsible for one-third of the costs.

7. In its response, CAIP stated that it had no objection to CDM's entitlement to costs nor to the amounts claimed. CAIP agreed with CDM's proposal that Bell Canada should be the sole costs respondent. In support, CAIP submitted that the CAIP proceeding was triggered by and focused on Bell Canada's actions. CAIP further submitted that the scale, scope, and consequent expense of the proceeding could have been minimized, if not avoided altogether, had Bell Canada notified its GAS customers of its intentions and applied to the Commission prior to making the changes to the GAS that are at issue in the proceeding. CAIP stated that it is a not-for-profit association that represents independent Internet service providers (ISPs) and has no permanent, full-time staff. According to CAIP, it is in no better position to pay a costs award than the costs claimants themselves. In the alternative, should the Commission determine that CAIP should be a costs respondent, CAIP submitted that all participants in the proceeding (other than the individual Canadians who intervened in the proceeding) should also be named as costs respondents and that CAIP (along with all other independent ISP participants) should be responsible for no more than 3.8 percent of the costs, which parallels independent ISPs' proportionate share in revenue of the residential market for high-speed Internet access services. According to CAIP, the allocation proposed by Bell Canada is completely arbitrary and manifestly unfair in light of the fact that it bears no relationship to CAIP's proportionate revenue share of that market.
8. In reply to CAIP's comments, Bell Canada stated that its proposal that it bear two-thirds of the costs while CAIP bears one-third was reasonable in the circumstances. In the alternative, Bell Canada indicated that it would also be agreeable to CAIP's suggestion that Bell Canada absorb all of the costs, provided, however, that the Commission rules that costs will follow the cause in this dispute. As such, Bell Canada submitted that, should the CAIP application be dismissed, CAIP should be responsible for all the costs.
9. TCC noted that the only direct parties in the CAIP proceeding were CAIP and Bell Canada. As a result, TCC submitted that any costs should be allocated between those two parties.

Reply

10. In reply, CIPPIC endorsed comments made by the Public Interest Advocacy Centre in respect of the latter's application for costs in the CAIP proceeding stating that Bell Canada should be responsible for all the costs.

Commission's analysis and determinations

11. The Commission finds that CDM has satisfied the criteria for an award of costs set out in subsection 44(1) of the Rules. Specifically, the Commission finds that CDM is representative of a group or class of subscribers that has an interest in the outcome of the CAIP proceeding, it has participated in a responsible way, and it has contributed to a better understanding of the issues by the Commission.
12. The Commission notes that the rates claimed in respect of legal fees are in accordance with the rates set out in the Legal Directorate's *Guidelines for the Taxation of Costs*, revised as of 24 April 2007. The Commission also finds that the total amount claimed by CDM was necessarily and reasonably incurred and should be allowed.

13. The Commission considers that this is an appropriate case in which to fix the costs and dispense with taxation, in accordance with the streamlined procedure set out in Telecom Public Notice 2002-5.
14. The Commission notes that it has generally determined that the appropriate respondents to an award of costs are the parties who have a significant interest in the outcome of the proceeding and have participated actively in the proceeding. The Commission considers that, along with others, Bell Canada and CAIP have a significant interest in the outcome of the CAIP proceeding and have participated actively throughout the proceeding. The Commission notes, however, that only Bell Canada and CAIP had a direct interest in the proceeding. Although CAIP is a not-for-profit organization, it represents for-profit interests. CAIP is one of Canada's largest Internet industry associations, representing both large and small commercial ISPs, as well as companies and other organizations that are involved in the business of providing Internet access and other telecommunications services.
15. The Commission therefore finds that the appropriate respondents to CDM's application for costs are Bell Canada and CAIP.
16. The Commission notes that it has often allocated the responsibility for the payment of costs among respondents based on the respondents' telecommunications operating revenues, as reported in their most recent audited financial statements. The Commission also notes that CAIP has, relative to Bell Canada, a very small share of the telecommunication revenues. However, the Commission considers that CAIP's contribution should be meaningful. The Commission therefore concludes that the responsibility for the payment of costs should be allocated as follows:

Bell Canada	80%
CAIP	20%

Direction as to costs

17. The Commission **approves** the application by CDM for costs with respect to its participation in the CAIP proceeding.
18. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to CDM at \$10,355.
19. The Commission directs that the award of costs to CDM be paid forthwith by Bell Canada and CAIP according to the proportions set out in paragraph 16.

Secretary General

Related document

- *New procedure for Telecom costs awards*, Telecom Public Notice CRTC 2002-5, 7 November 2002

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