



## Telecom Costs Order CRTC 2008-24

Ottawa, 22 December 2008

### **Determination of costs award with respect to the participation of l'Union des consommateurs in the proceeding initiated by the Canadian Association of Internet Providers' Part VII application**

Reference: 8622-C51-200805153 and 4754-322

1. By letter dated 12 August 2008, l'Union des consommateurs (l'Union) 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 l'Union's application on 3 September 2008 from CAIP, on 5 September 2008 from Bell Canada, and on 16 and 17 September 2008 from TELUS Communications Company (TCC).

### **Application**

3. L'Union 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 proceeding.
4. L'Union requested that the Commission fix its costs at \$14,950, consisting of \$3,200 for legal fees and \$11,750 for analyst fees. L'Union's claim included the federal Goods and Services Tax (GST) on fees less the rebate to which l'Union is entitled in connection with the GST. L'Union filed a bill of costs with its application.
5. L'Union submitted that the appropriate respondent in this case was Bell Canada.

### **Answer**

6. In response to the application, CAIP stated that it had no objection to l'Union's entitlement to costs nor to the amounts claimed. CAIP agreed with l'Union'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 CAIP 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 costs allocation proposed by Bell Canada, in Bell Canada's comments on the costs applications of the Campaign for Democratic Media and the Public Interest Advocacy Centre with respect to their participation in the CAIP proceeding, 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.

7. 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.
8. 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**

9. L'Union did not submit reply comments.

### **Commission's analysis and determinations**

10. The Commission finds that l'Union has satisfied the criteria for an award of costs set out in subsection 44(1) of the Rules. Specifically, the Commission finds that l'Union is representative of a group or class of subscribers that has an interest in the outcome of the proceeding, it has participated in a responsible way, and it has contributed to a better understanding of the issues by the Commission.
11. The Commission notes that the rates claimed in respect of legal and analyst 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 l'Union was necessarily and reasonably incurred and should be allowed.
12. 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.
13. 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.

14. The Commission therefore finds that the appropriate respondents to l'Union's application for costs are Bell Canada and CAIP.
15. 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**

16. The Commission **approves** the application by l'Union for costs with respect to its participation in the CAIP proceeding.
17. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to l'Union at \$14,950.
18. The Commission directs that the award of costs to l'Union be paid forthwith by Bell Canada and CAIP according to the proportions set out in paragraph 15.

Secretary General

#### **Related document**

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

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