



Telecom Order CRTC 2009-317

Route reference: Telecom Public Notice 2008-16

Ottawa, 29 May 2009

Determination of costs award with respect to the participation of the Coalition of Communication Consumers in the Telecom Public Notice 2008-16 proceeding

File number: 8663-C12-200814740 and 4754-340

1. By letter dated 2 February 2009, the Coalition of Communication Consumers (the Coalition) applied for costs with respect to its participation in the proceeding initiated by Telecom Public Notice 2008-16 (the Public Notice 2008-16 proceeding).
2. On 9 February 2009, Bell Canada on behalf of itself and Bell Aliant Regional Communications, Limited Partnership, Saskatchewan Telecommunications, and Télébec, Limited Partnership (collectively, the Companies) filed comments in response to the application by the Coalition. On 11 February 2009, TELUS Communications Company (TCC) filed comments in response to the application by the Coalition. On 10 February 2009, the Coalition filed reply comments.

Application

3. The Coalition 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 Public Notice 2008-16 proceeding, it had participated responsibly, and it had contributed to a better understanding of the issues by the Commission through its participation in the Public Notice 2008-16 proceeding.
4. The Coalition requested that the Commission fix its costs at \$2,858.63, consisting of legal fees and the federal Goods and Services Tax (GST) on fees.
5. The Coalition claimed 16.5 hours at a rate of \$165 per hour for legal fees associated with outside legal counsel.
6. The Coalition made no submission as to the appropriate costs respondents.

Answer

7. In response to the application, both the Companies and TCC and submitted that they had no objection to the amounts claimed by the Coalition. However, both respondents asked the Commission, before awarding costs, to determine whether the Coalition legitimately represents a significant body of subscribers as required by subsection 44(1) of the Rules.
8. The Companies argued that the Commission has very rarely awarded costs to individuals, yet it is unclear to Bell Canada whether the Coalition represents more than a few individuals. The Companies also noted that the Coalition is not incorporated. They submitted that incorporation, with a mission statement that makes clear that the organization represents a significant body of

subscribers, would militate in favour of finding that a cost applicant represents a significant body of subscribers. Further, the Companies requested that the Commission confirm that the Coalition is not receiving funding from other sources in association with its participation in the Public Notice 2008-16 proceeding.

9. TCC submitted that the Commission should make a determination as to the Coalition's status, raised in TCC's reply to the Coalition's application for costs for participation in the proceeding initiated by Public Notice 2008-15, before awarding costs to the Coalition for its participation in the Public Notice 2008-16 proceeding.
10. The Companies submitted that any costs awarded should be allocated among the telecommunications service providers who participated in the Public Notice 2008-16 proceeding in proportion to their relative share of telecommunications operating revenues (TORs).

Reply

11. The Coalition submitted that the Commission has awarded costs in the past to organizations without a formal relationship with the subscribers they represented (e.g. the Canadian Internet Policy and Public Interest Clinic in Telecom Costs Order 2008-5) and to unincorporated organizations (e.g. the Campaign for Democratic Media in Telecom Costs Order 2008-23). The Coalition also submitted that requiring a formal relationship or incorporation as a pre-requisite for the award of costs may restrict access to Commission proceedings. The Coalition further submitted that the Commission has awarded costs to new organizations whose constituency cannot be specifically ascertained (i.e. Mr. Mark Obermeyer on behalf of "97% of the People of Canada" in Telecom Costs Order 2006-10).
12. The Coalition confirmed that it has not received, nor will it receive, any financial assistance from any other source in connection with its participation in any Commission proceeding.
13. The Coalition submitted that if costs are not awarded, the Coalition will be unable to continue participating in future Commission proceedings.

Commission's analysis and determinations

14. The Commission has previously awarded costs to individuals and parties that did not represent a body of subscribers with whom the parties had a formal relationship, unincorporated organizations, and organizations whose constituency could not be easily ascertained. The Commission also notes that its general objective in awarding costs is to encourage the informed participation of individuals and organizations who otherwise could not participate in Commission proceedings in order to permit the greatest variety of voices to be considered by the Commission in making its decisions. As noted in Telecom Cost Order 2009-316, the Coalition has advised the Commission that it is an unincorporated coalition of organized and unorganized groups, including consumers, advocates, and professionals across Canada.

15. The Commission finds that the Coalition has satisfied the criteria for an award of costs set out in subsection 44(1) of the Rules. Specifically, the Commission finds that the Coalition is representative of a group or class of subscribers that has an interest in the outcome of the proceeding, has participated in a responsible way and has contributed to a better understanding of the issues by the Commission.
16. The Commission notes that the rates claimed in respect of outside legal counsel 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 the Coalition was necessarily and reasonably incurred and should be allowed.
17. 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.
18. The Commission finds that the appropriate respondents to the Coalition's costs application are the Companies, TCC, and MTS Allstream Inc. (MTS Allstream).
19. The Commission notes that it has, in previous decisions, allocated the responsibility for the payment of costs among respondents on the basis of the respondents' TORs, as an indicator of the relative size and interest of the parties involved in the proceeding. The Commission considers that, in the present circumstances, it is appropriate to apportion the costs among the respondents in proportion to their TORs, as reported in their most recent audited financial statements. Accordingly, the Commission finds that the responsibility for the payment of costs should be allocated as follows:

The Companies	55%
TCC	37%
MTS Allstream	8%

20. The Commission notes that Bell Canada filed submissions in the Public Notice 2008-16 proceeding on behalf of the Companies. Consistent with its general approach articulated in Telecom Costs Order 2002-4, the Commission makes Bell Canada responsible for payment on behalf of the Companies and leaves it to the members of the Companies to determine the appropriate allocation of the costs among themselves.

Direction as to costs

21. The Commission **approves** the application by the Coalition for costs with respect to its participation in the Public Notice 2008-16 proceeding.
22. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to the Coalition at \$2,858.63.

23. The Commission directs that the award of costs to the Coalition be paid forthwith by Bell Canada on behalf of the Companies, TCC, and MTS Allstream, according to the proportions set out in paragraph 19.

Secretary General

Related documents

- *Notice of consultation – Review of various customer account management regulatory measures*, Telecom Public Notice CRTC 2008-16, 3 November 2008, as amended by Telecom Public Notice 2008-16-1, 27 November 2008
- *Notice of consultation – Review of the regulatory requirements pertaining to the monitoring and reporting of certain data*, 27 October 2009, Telecom Public Notice CRTC 2008-15
- *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*, Telecom Costs Order CRTC 2008-23, 22 December 2008
- *Determination of costs award with respect to the participation of the Canadian Internet Policy and Public Interest Clinic in the Telecom Public Notice CRTC 2007-16 proceeding*, Telecom Costs Order CRTC 2008-5, 30 May 2008
- *Application for costs by Mr. Mark Obermeyer on behalf of "97% of the People of Canada"* - Proceeding to establish a national do not call list framework and to review the telemarketing rules, *Telecom Public Notice CRTC 2006-4*, Telecom Costs Order CRTC 2006-10, 21 September 2006
- *New procedure for Telecom costs awards*, Telecom Public Notice CRTC 2002-5, 7 November 2002
- *Action Réseau Consommateur, the Consumers' Association of Canada, Fédération des associations coopératives d'économie familiale and the National Anti-Poverty Organization application for costs – Public Notice CRTC 2001-60*, Telecom Costs Order CRTC 2002-4, 24 April 2002

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