



Telecom Order CRTC 2009-463

Ottawa, 30 July 2009

Determination of costs award with respect to the participation of the ARCH Disability Law Centre in the Broadcasting Notice of Public Hearing/Telecom Public Notice 2008-8 proceeding

File number: 8665-C12-200807943 and 4754-347

1. By letter dated 10 March 2009, and addendum dated 1 April 2009, the ARCH Disability Law Centre (ARCH) applied for costs with respect to its participation in the proceeding initiated by Broadcasting Notice of Public Hearing/Telecom Public Notice 2008-8 (the Public Notice 2008-8 proceeding).
2. On 27 March 2009, Bell Aliant Regional Communications, Limited Partnership, Bell Canada, and Télébec, Limited Partnership (collectively, the Companies); MTS Allstream Inc. (MTS Allstream); Rogers Communications Inc. (RCI); Saskatchewan Telecommunications (SaskTel); and TELUS Communications Company (TCC) filed joint comments in response to ARCH's application. TCC separately filed additional comments on 27 March 2009.
3. On 2 April 2009, the Companies, MTS Allstream, RCI, SaskTel, and TCC filed additional comments.

Application

4. ARCH 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 2008-8 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 2008-8 proceeding.
5. ARCH requested that the Commission fix its costs at \$104,884.53, consisting of \$100,487.69 for legal fees and \$4,396.84 for disbursements. ARCH's claim included the federal Goods and Services Tax (GST) on fees and disbursements less the rebate to which ARCH is entitled in connection with the GST. ARCH filed a bill of costs with its application.
6. ARCH made no submission as to the appropriate costs respondents.

Answer

7. In response to the application, the Companies, MTS Allstream, RCI, SaskTel, and TCC contested ARCH's submission that all legal costs claimed related to telecommunications matters, estimating instead that only 99 percent of ARCH's legal costs were so related. They also submitted that ARCH's claims for outside counsel were excessive.

8. Finally, the Companies, MTS Allstream, RCI, SaskTel, and TCC submitted that costs should be allocated among all telecommunications service providers that were party to the Public Notice 2008-8 proceeding in proportion to their respective share of telecommunications operating revenues (TORs). Specifically, they submitted that in addition to themselves, the following should be named as costs respondents: Bragg Communications Inc. on behalf of Eastlink, Cogeco Cable Inc., the Canadian Cable Systems Alliance Inc. (CCSA), Distributel Communications Limited, Quebecor Media Inc. on behalf of Videotron Ltd. (Videotron), and Shaw Communications Inc. (Shaw).
9. In separate comments, TCC submitted that wireless revenues should be included as part of the calculation of TORs to determine the allocation among costs respondents, as issues regarding the accessibility of wireless telecommunications services were prominent in the Public Notice 2008-8 proceeding.
10. In an additional answer filed 2 April 2009, the Companies, MTS Allstream, RCI, SaskTel, and TCC withdrew their objection with respect to ARCH's outside counsel costs.

Commission's analysis and determinations

11. The Commission finds that ARCH has satisfied the criteria for an award of costs set out in subsection 44(1) of the Rules. Specifically, the Commission finds that ARCH 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.
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.
13. The Commission notes the submission of the Companies, MTS Allstream, RCI, SaskTel, and TCC that only 99 percent of ARCH's legal costs relate to telecommunications matters. Having reviewed ARCH's written and oral submissions, the Commission finds that 100 percent of ARCH's legal costs relate to telecommunications matters.
14. The Commission finds that the total amount claimed by ARCH was necessarily and reasonably incurred and should be allowed, subject to the following. The Commission has discovered a mathematical error in ARCH's calculation of its GST reduction. To account for this error, the Commission finds that the total allowable amount claimed by ARCH is reduced to \$104,862.61.
15. The Commission considers that this is an appropriate case in which to fix costs and dispense with taxation, in accordance with the streamlined procedure set out in Telecom Public Notice 2002-5.
16. In determining the appropriate respondents to an award of costs, the Commission has generally looked at which parties are affected by the issues and have actively participated in the proceeding. The Commission notes, in this regard, that many parties had a significant interest in the outcome of the Public Notice 2008-8 proceeding. However, the Commission further notes that not all parties actively participated in the Public Notice 2008-8 proceeding, in that certain

parties responded only to Commission interrogatories and did not attend the hearing, or make initial or reply comments. In light of the above, the Commission considers that it is appropriate, in the present circumstances, to limit the respondents to the Companies, TCC, RCI, MTS Allstream, Shaw, SaskTel, Videotron, and the CCSA.

17. 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. In calculating TORs, the Commission considers it appropriate to include wireless revenues, as the Public Notice 2008-8 proceeding dealt extensively with wireless issues. With respect to the CCSA, the Commission notes that the TORs of all CCSA members are not available, and therefore finds that as a proxy, the CCSA is responsible for payment of one percent of the total costs awarded in this order. Accordingly, the Commission finds that the responsibility for the payment of costs should be allocated as follows:

The Companies	40.5%
TCC	24.3%
RCI	21.7%
MTS Allstream	4.8%
Shaw	2.7%
SaskTel	2.6%
Videotron	2.4%
CCSA	1%

18. The Commission notes that Bell Canada filed submissions in the Public Notice 2008-8 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

19. The Commission **approves** the application by ARCH for costs with respect to its participation in the Public Notice 2008-8 proceeding.
20. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to ARCH at \$104,862.61.

21. The Commission directs that the award of costs to ARCH be paid forthwith by Bell Canada on behalf of the Companies, TCC, RCI, MTS Allstream, Shaw, SaskTel, Videotron, and the CCSA, according to the proportions set out in paragraph 17.

Secretary General

Related documents

- *Unresolved issues related to the accessibility of telecommunications and broadcasting services to persons with disabilities*, Broadcasting Notice of Public Hearing CRTC/Telecom Public Notice CRTC 2008-8, 10 June 2008, as amended by Broadcasting Notice of Public Hearing CRTC 2008-8-1/Telecom Public Notice CRTC 2008-8-1, 24 July 2008, and Broadcasting Notice of Public Hearing CRTC 2008-8-2/Telecom Public Notice CRTC 2008-8-2, 17 October 2008
- *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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