



Telecom Order CRTC 2009-764

Ottawa, 10 December 2009

Determination of costs award with respect to the participation of the Canadian Association of the Deaf in the Telecom Public Notice 2008-19 proceeding

File numbers: 8646-C12-200815400 and 4754-355

1. By letter dated 28 August 2009, the Canadian Association of the Deaf (CAD) applied for costs with respect to its participation in the proceeding initiated by Telecom Public Notice 2008-19 (the Internet traffic management practices (ITMP) proceeding).
2. Comments were received on this application from Bell Aliant Regional Communications, Limited Partnership (Bell Aliant), Bell Canada, Cogeco Cable Inc., Rogers Communications Inc. (RCI), Saskatchewan Telecommunications (SaskTel), and Shaw Communications Inc. (Shaw) [collectively, the Companies]; Barrett Xplore Inc. and Barrett Broadband Networks (Barrett); the Canadian Association of Internet Providers (CAIP); and TELUS Communications Company (TCC). CAD did not file reply comments.

Application

3. CAD 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 significant body of subscribers that will be affected by the outcome of the ITMP proceeding, it had participated responsibly throughout the ITMP proceeding, and it contributed to a better understanding of the issues by the Commission through written submissions in the ITMP proceeding.
4. CAD requested that the Commission fix its costs at \$6,851.25 for legal fees. CAD's claim included the federal Goods and Services Tax.
5. CAD made no submission as to the appropriate costs respondents.

Answer

6. In response to the application, the Companies submitted that they did not object to the amounts claimed by CAD. They submitted that the costs should be allocated among all telecommunications service providers (TSPs), including organizations that represented TSPs who participated in the ITMP proceeding.
7. TCC generally endorsed the submissions of the Companies except on the issue of the appropriate costs respondents. TCC submitted that since it does not engage in traffic shaping, it should not be required to pay costs. However, TCC stated that it would not object if all participating TSPs, and any representative organizations, were made costs respondents or, at a minimum, if the five largest cable company Internet service providers (ISPs) were made costs

respondents.

8. Barrett noted that CAD's application for costs appeared considerably more reasonable than those of some other parties filed in the ITMP proceeding, but did not offer other comments on CAD's application.
9. CAIP submitted that it was not an appropriate costs respondent to this application on the basis that it did not participate in the ITMP proceeding by choice, that it is a not-for-profit association that does not have the resources to pay costs awards, and that in a previous proceeding that was more complex than the ITMP proceeding, the Commission refrained from naming associations as costs respondents.

Commission's analysis and determinations

10. The Commission finds that CAD has satisfied the criteria for an award of costs set out in subsection 44(1) of the Rules. Specifically, the Commission finds that CAD 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 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 CAD 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. 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 the following parties actively participated in the proceeding and had a significant interest in its outcome: Barrett, Bragg Communications Inc., CAIP, the Coalition of Internet Service Providers Inc., the Companies, Cybersurf Corp., Distributel Communications Limited, Execulink Telecom Inc., MTS Allstream Inc. (MTS Allstream), Primus Telecommunications Canada Inc., Quebecor Media Inc. (QMI) on behalf of Videotron Ltd., RipNET Limited, and TCC.
14. The Commission notes TCC's submission that it should not be made a costs respondent because it does not engage in traffic shaping. The Commission notes, however, that TCC does currently employ economic ITMPs in the form of monthly capacity limit charges. The Commission also notes that TCC stated in the ITMP proceeding that it reserves the right to employ non-economic ITMPs in the future, and that it made submissions in the ITMP proceeding on the regulatory framework that should apply for both economic and non-economic ITMPs employed by ISPs. Accordingly, the Commission rejects TCC's submission that it should not be made a costs respondent.

15. The Commission further notes, however, that in allocating costs among respondents, it has also been sensitive to the fact that if too large a number of respondents are named, the applicant may have to collect small amounts from many respondents, resulting in a significant administrative burden to the applicant.
16. In light of the above and given the relatively small size of the costs award in this case, the large number of potential costs respondents, and the result that if all potential costs respondents were retained, CAD would be required to collect small amounts from certain respondents. Accordingly, the Commission considers that it is appropriate, in the present circumstances, to limit the respondents to Bell Aliant and Bell Canada (collectively, the Bell companies), MTS Allstream, QMI, RCI, SaskTel, Shaw, and TCC.
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' telecommunications operating revenues (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. With respect to the Bell companies and RCI, the Commission notes that both made representations regarding what rules should apply to ITMPs on wireless networks. For this reason, the Commission has included in the TORs of the Bell companies the TORs of Bell Mobility Inc., and in the TORs of RCI, the TORs of Rogers Wireless Partnership and Fido Solutions Inc. Accordingly, the Commission finds that the responsibility for the payment of costs should be allocated as follows:

The Bell companies	40%
TCC	25%
RCI	22%
MTS Allstream	5%
SaskTel	3%
Shaw	3%
QMI	2%

18. The Commission notes that the Bell companies filed joint submissions in the ITMP proceeding. Consistent with its general approach articulated in Telecom Costs Order 2002-4, the Commission makes Bell Canada responsible for payment on behalf of the Bell companies, and leaves it to the Bell companies to determine the appropriate allocation of the costs among themselves.

Direction as to costs

19. The Commission **approves** the application by CAD for costs with respect to its participation in the ITMP proceeding.
20. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to CAD at \$6,851.25.
21. The Commission directs that the award of costs to CAD be paid forthwith by Bell Canada on behalf of the Bell companies; MTS Allstream; QMI; RCI; SaskTel; Shaw; and TCC, according to the proportions set out in paragraph 17.

Secretary General

Related documents

- *Review of the Internet traffic management practices of Internet service providers*, Telecom Public Notice CRTC 2008-19, 20 November 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

This document is available in alternative format upon request, and may also be examined in PDF format or in HTML at the following Internet site: <http://www.crtc.gc.ca>