



## Telecom Order CRTC 2010-967

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Route reference: Telecom Notice of Consultation 2009-716

Ottawa, 23 December 2010

### **Determination of costs award with respect to the participation of the Canadian Association of the Deaf in the Telecom Notice of Consultation 2009-716 proceeding**

File numbers: 8657-C12-200915770, 8657-B55-200913138, and 4754-367

1. By letter dated 17 March 2010, the Canadian Association of the Deaf (CAD) applied for costs with respect to its participation in the proceeding initiated by Telecom Notice of Consultation 2009-716 (the proceeding).
2. On 26 March 2010, Barrett Xplore Inc., Bell Aliant Regional Communications, Limited Partnership (Bell Aliant), Bell Canada, Northwestel Inc., Rogers Communications Inc. (RCI), Saskatchewan Telecommunications (SaskTel), Télébec, Limited Partnership, and TELUS Communications Company (TCC) (collectively, the companies) filed comments in response to CAD's application.

### **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) because it represented a group of subscribers that had an interest in the outcome of the 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. CAD requested that the Commission fix its costs at \$8,373.75, consisting entirely of legal fees claimed in respect of Henry Vlug plus the applicable federal Goods and Services Tax (GST). CAD claimed 27.5 hours of work by Mr. Vlug at a rate of \$290 per hour. CAD filed a bill of costs with its application.
5. CAD made no submission as to the appropriate costs respondents.

### **Answer**

6. The companies did not object to CAD's entitlement to costs; however, they expressed concern over the amount of costs claimed. In particular, the companies submitted that CAD's claim related to the preparation of its comments and reply comments is excessive in light of the brief nature of those comments. The companies further submitted that CAD's reply comments did not contribute to a better understanding of the issues by the Commission and that CAD's allowable costs should be reduced accordingly.

7. The companies submitted that costs should be allocated among the costs respondents in proportion to their respective telecommunications operating revenues (TORs).

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

8. 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 represented a group or class of subscribers that had an interest in the outcome of the proceeding, it participated responsibly, and it contributed to a better understanding of the issues by the Commission. Accordingly, the Commission finds that the applicant meets the criteria for an award of costs under subsection 44(1) of the Rules.
9. The Commission notes that the rates claimed in respect of legal fees are in accordance with the rates set out in the Commission's Legal Directorate's *Guidelines for the Taxation of Costs*, revised as of 24 April 2007. However, the Commission considers that CAD's claim of five hours for the drafting of its reply comments is excessive in light of their brief nature and minimal contribution to a better understanding of the issues by the Commission. The Commission considers that under the circumstances, it is reasonable to allow no more than three hours of drafting time for CAD's reply comments. Accordingly, the Commission reduces CAD's allowable costs by \$609, which represents the reduced allowable amount plus the applicable GST.
10. 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.
11. The Commission notes that it has generally determined that the appropriate respondents to an award of costs are the parties who had a significant interest in the outcome of the proceeding in question and participated actively in that proceeding. The Commission notes, in this regard, that the following parties actively participated in the proceeding and had a significant interest in its outcome: the companies, Cogeco Cable Inc. (Cogeco), MTS Allstream Inc., Open Source Solutions, Shaw Communications Inc. (Shaw), and TekSavvy Solutions Inc. However, the Commission notes that the proceeding was initiated by a Part VII application filed jointly by the companies, Cogeco, and Shaw, and considers it appropriate to limit the respondents to those parties.
12. The Commission further notes 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. In light of the above, and given that CAD would be required to collect small amounts from certain costs respondents if all potential respondents were retained, the Commission considers that it is appropriate, in the present circumstances, to further limit the respondents to Bell Aliant, Bell Canada, RCI, SaskTel, Shaw, and TCC.

13. 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:

TCC	32%
Bell Canada	31%
RCI	20%
Bell Aliant	9%
SaskTel	4%
Shaw	4%

### **Directions as to costs**

14. The Commission **approves** the application by CAD for costs with respect to its participation in the proceeding.
15. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to CAD at \$7,764.75.
16. The Commission directs that the award of costs to CAD be paid forthwith by Bell Aliant, Bell Canada, RCI, SaskTel, Shaw, and TCC according to the proportions set out in paragraph 13.

Secretary General

### **Related documents**

- *Call for comments – Review of CRTC costs award practices and procedures*, Telecom Notice of Consultation CRTC 2009-716, 23 November 2009
- *New procedure for Telecom costs awards*, Telecom Public Notice CRTC 2002-5, 7 November 2002