



Telecom and Broadcasting Notice of Consultation CRTC 2020-124-2

PDF version

References: 2020-124 and 2020-124-1

Ottawa, 4 June 2020

Public record: 1011-NOC2020-0124

Call for comments – Regulations to be made under the *Accessible Canada Act* – Changes to procedure and availability of deferral account funds

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*The Commission **approves** a proposal by Bell Canada regarding the use of \$125,000 from its deferral account. These funds shall be made available to defray the costs of public-interest and accessibility intervener participation in this proceeding and, if any funds remain, in the follow-up proceeding. Both proceedings are aimed at making regulations under the Accessible Canada Act.*

Background

1. In Telecom and Broadcasting Notice of Consultation 2020-124 (the notice), the Commission initiated a proceeding in which it sought comments on the content and structure of draft regulations establishing the manner and form of reporting requirements under the *Accessible Canada Act* (the ACA). In Telecom and Broadcasting Notice of Consultation 2020-124-1, the Commission extended the deadlines associated with the proceeding.
2. On 12 May 2020, Bell Canada filed a letter in which it set out a proposal regarding \$125,000 in funds remaining in its deferral account.¹
3. In particular, Bell Canada requested that the Commission approve the use of these funds to defray the costs of public-interest and accessibility intervener participation in the proceedings to make regulations under the ACA. These proceedings include the present proceeding and, if funds remain, a follow-up proceeding in which the draft regulations are to be published for comment.
4. Bell Canada explained that these funds had originally been committed to other projects aimed at improving the accessibility of telecommunications services.

¹ As part of the price cap framework for regulated local exchange services, the Commission required incumbent local exchange carriers to establish deferral accounts and to direct to them certain revenues from residential local exchange services provided in non-high cost serving areas. See, for example, Telecom Decision 2002-34.

It submitted that the funds were no longer needed for those projects, and that using the funds in the proposed manner would ultimately serve the same purpose.

5. Following the filing of Bell Canada's proposal, Commission staff issued a letter expressing their view that the proposal had merit and indicating that the proposal would be put to the Commission for decision.
6. The Canadian Association of the Deaf (CAD), on its own behalf and on behalf of the Canadian National Society of the Deaf-Blind, Inc., the Deaf Wireless Canada Consultative Committee, and the Deafness Advocacy Association Nova Scotia (collectively, CAD et al.), as well as the Forum for Research and Policy in Communications (FRPC), filed responses to Bell Canada's proposal. The FRPC sought additional detail regarding eligibility for the deferral account funds. CAD et al. reiterated previous requests made on the record of the proceeding seeking clarification of the Commission's authority to award costs to parties in the proceeding, independent of Bell Canada's procedural request.

Commission's analysis and determinations

7. In the notice, the Commission indicated that it may not have authority to consider applications for costs awards in this proceeding. Multiple parties have since made submissions requesting that the Commission reconsider whether it can award costs in this proceeding.
8. This proceeding is taking place under the ACA. In particular, sections 45 and 54 of the ACA empower the Commission to make the regulations that are the subject of the proceeding.² The ACA does not include a mechanism for awarding costs for or incidental to proceedings before the Commission under the ACA. This is in contrast to the *Telecommunications Act*, which does empower the Commission to award costs in proceedings under that act.³ Accordingly, in the notice, the Commission acknowledged and reflected this state of affairs by notifying interested persons of the legislated parameters under which the proceeding is taking place.
9. The Commission values the participation of a diverse range of parties in its proceedings, and the participation of persons with disabilities and groups representing their interests is particularly relevant in proceedings under the ACA. The Commission expects that interested persons will participate in its proceedings and has certain measures in place to assist in this regard. While the specific mechanism of telecommunications costs awards is not available in proceedings under the ACA,

² In the notice, the Commission also called for comment on the appropriateness of potentially exercising its powers of exemption under sections 46 and 55 of the ACA.

³ In this regard, the ACA is similar to the *Broadcasting Act*, which also does not empower the Commission to award costs. Parties to proceedings under the *Broadcasting Act* may claim costs for participation in such proceedings from the Broadcasting Participation Fund. That fund was established as a result of tangible benefits ordered pursuant to a Commission decision under the *Broadcasting Act* (Broadcasting Decision 2011-163) to approve the transfer of ownership and control of certain broadcasting undertakings.

Bell Canada's proposal would represent another form of assistance for parties in this proceeding and potentially the follow-up proceeding.

10. Bell Canada's proposal would assist the Commission in gathering a comprehensive record upon which it can ultimately decide how to implement the ACA's reporting requirements. These requirements have been imposed on Canadian carriers and telecommunications service providers (TSPs), among other regulated entities. In most cases, the specific questions posed in the notice draw no distinction between Canadian carriers, TSPs, and other regulated entities subject to the Commission's jurisdiction, such as broadcasting undertakings. Accordingly, the Commission expects that most parties' submissions would likewise not generally distinguish between these types of regulated entities, except in limited circumstances.
11. Ensuring that the ACA's reporting requirements are judiciously implemented and that accessibility interests are properly taken into account in doing so will contribute to improving accessibility.
12. Accordingly, the proposal would also be consistent with previously approved initiatives funded through deferral accounts. The Commission has authorized the expenditure of deferral account funds on a variety of incumbent local exchange carrier initiatives, including network expansion to high-cost serving areas and improvements to the accessibility of telecommunications services.⁴ In light of the above, it would be appropriate to reallocate these funds from previously approved initiatives that no longer require them.
13. Accordingly, the Commission **approves** Bell Canada's proposal.
14. In terms of implementation, a method of distributing these funds that closely resembles the Commission's general practices and procedures in respect of applications for final telecommunications costs awards would be appropriate. These general practices and procedures are set out in sections 65 to 70 of the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (the Rules of Procedure) as well as in the Commission's *Guidelines for the Assessment of Costs* (the Guidelines), as set out in Telecom Regulatory Policy 2010-963. The Commission considers that using similar practices and procedures in this case would serve the objectives of administrative efficiency, transparency, and fairness. Further, these practices and procedures are well established and should be generally familiar to parties.
15. In that regard, parties to the proceeding that would like to request a share of the available funds are to file an application with the Commission within 30 days of the close of record, setting out an account of their costs incurred, along with a brief justification of the party's eligibility. Eligibility for a share of these funds will be evaluated according to the criteria set out in section 68 of the Rules of Procedure, namely

⁴ See, for example, Telecom Decision 2006-9.

- (a) whether the applicant had, or was the representative of a group or a class of subscribers that had, an interest in the outcome of the proceeding;
 - (b) the extent to which the applicant assisted the Commission in developing a better understanding of the matters that were considered; and
 - (c) whether the applicant participated in the proceeding in a responsible way.
16. All fees and disbursements claimed are to be in accordance with the scale of costs set out in Appendix A to the Guidelines. In assessing these claims, the Commission will have regard to whether the applicant has explained how the costs claimed were reasonably and necessarily incurred in the circumstances. Applicants are also to detail any other financial assistance received relating to their participation in the proceeding, and any such amounts may be deducted from otherwise eligible claims.
17. To ensure the equitable distribution of the available funds, applicants may be able to recover only a portion of their expenses. If the total amount of all approved claims exceeds the available funds, the Commission intends to pro-rate the funds that are distributed to each eligible applicant. In particular, the Commission intends to calculate each eligible applicant's proportionate share of the funds based on the total amount of all claims approved by the Commission.⁵ If the application of this principle in the present proceeding results in some funds not being distributed, the remaining funds will be used towards funding expenses in the follow-up proceeding. In all cases, the amount distributed to a participant will not exceed that participant's actual expenses, taking into account any financial assistance it has received.
18. After each proceeding, the Commission will evaluate the applications received and issue a decision directing Bell Canada to pay the amounts to eligible applicants in accordance with the distribution method set out above.⁶
19. For greater certainty, the approval of Bell Canada's proposal does not affect the previously established deadlines in this proceeding.

Secretary General

Related documents

- *Call for comments – Regulations to be made under the Accessible Canada Act, Telecom and Broadcasting Notice of Consultation CRTC 2020-124, 14 April 2020; as amended by Telecom and Broadcasting Notice of Consultation CRTC 2020-124-1, 13 May 2020*

⁵ For example, if a party's claim represents 10% of the total amount of approved expenses for all applicants in the proceeding, that party would receive 10% of the available funds.

⁶ The Commission notes that Bell Canada did not submit, as part of its proposal, that it required the opportunity to respond to applications for a share of the available funds. In the circumstances, the Commission considers that such responses are unnecessary.

- *Change in effective control of CTVglobemedia Inc. 's licensed broadcasting subsidiaries*, Broadcasting Decision CRTC 2011-163, 7 March 2011
- *Revision of CRTC costs award practices and procedures*, Telecom Regulatory Policy CRTC 2010-963, 23 December 2010
- *Disposition of funds in the deferral accounts*, Telecom Decision CRTC 2006-9, 16 February 2006
- *Regulatory framework for second price cap period*, Telecom Decision CRTC 2002-34, 30 May 2002; as amended by Telecom Decision CRTC 2002-34-1, 15 July 2002