



Telecom Notice of Consultation CRTC 2009-716

Ottawa, 23 November 2009

Call for comments – Review of CRTC costs award practices and procedures

File numbers: 8657-C12-200915770 and 8657-B55-200913138

In this notice, the Commission initiates a proceeding to review its telecommunications costs award practices and procedures, and invites comments on these practices and procedures as they relate to the award and payment of costs pursuant to section 56 of the Telecommunications Act.

Introduction

1. On 25 September 2009, several telecommunications service providers¹ (collectively, the Applicants) filed an application pursuant to Part VII of the *CRTC Telecommunications Rules of Procedure* (the Rules) in which they requested that the Commission initiate a proceeding to review its procedures for the award and payment of costs pursuant to section 56 of the *Telecommunications Act* (the Act). These procedures are set out in section 44 of the Rules and in the Legal Directorate's *Guidelines for the Taxation of Costs* (the Guidelines), and are based on precedents established by previous Commission costs awards.
2. The Applicants expressed concern with regard to the Commission's current procedures for the awarding of costs. In particular, the Applicants submitted that there is a lack of incentive for costs claimants to control their own costs. The Applicants requested that the review address the criteria for entitlement to costs and for allocation of costs among potential costs respondents, as well as incentives for costs claimants to combine efforts and to control their costs. The Applicants provided examples of proposed changes to the Commission's procedures for consideration.
3. In a letter dated 9 October 2009, on behalf of the Consumers' Association of Canada, Canada Without Poverty, and Option consommateurs, the Public Interest Advocacy Centre (PIAC) requested that the review include an assessment of the rates set out in Appendix A to the Guidelines and that the process provide adequate time for potential public interest interveners to participate effectively in the proceeding. PIAC indicated that l'Union des consommateurs concurred with its request. In a letter dated 14 October 2009, the Canadian Internet Policy and Public Interest Clinic (CIPPIC) supported PIAC's request.

¹ Barrett Xplore Inc.; Bell Aliant Regional Communications, Limited Partnership; Bell Canada; Cogeco Cable Inc.; Northwestel Inc.; Rogers Communications Inc.; Saskatchewan Telecommunications; Shaw Communications Inc.; Télébec, Limited Partnership; and TELUS Communications Company

4. In a letter dated 26 October 2009, MTS Allstream Inc. (MTS Allstream) submitted that it would be appropriate for other parties to be able to suggest issues for inclusion in the review. MTS Allstream noted that the Commission has issued *Call for comments on new draft regulations concerning CRTC Rules of Practice and Procedure*, Broadcasting and Telecom Notice of Consultation CRTC 2009-602, 30 September 2009 (Notice of Consultation 2009-602), which contains draft regulations pertaining to costs awards, among other matters (the Proposed Rules). The Proposed Rules would replace and repeal the Rules and the *CRTC Rules of Procedure*. MTS Allstream suggested that as a matter of procedural efficiency, the scope and schedule of the proceeding initiated by Notice of Consultation 2009-602 (the Notice of Consultation 2009-602 proceeding) should be expanded to allow for a review of the Commission's costs award procedures.
5. The Commission is seeking comments on all aspects of its *practices and procedures* related to the award and payment of costs pursuant to section 56 of the Act.

Background

6. The Commission considers that individuals and groups that represent consumer interests often provide a valuable contribution to Commission decisions through their participation in telecommunications proceedings. The Commission also recognizes that, unlike telecommunications service providers, these individuals and groups often require financial assistance in order to effectively participate in such proceedings. Consequently, the Commission awards costs to facilitate the informed participation of these individuals and groups in its telecommunications proceedings.
7. Section 56 of the Act authorizes the Commission to award, and require payment of, costs associated with its telecommunications proceedings:
 56. (1) The Commission may award interim or final costs of and incidental to proceedings before it and may fix the amount of the costs or direct that the amount be taxed.
 - (2) The Commission may order by whom and to whom any costs are to be paid and by whom they are to be taxed and may establish a scale for the taxation of costs.
8. As noted above, the Commission's current costs award practices and procedures are found in section 44 of the Rules, in the Guidelines, and in precedents established by previous Commission costs awards. For example, subsection 44(1) of the Rules provides that the Commission may award costs to be paid to any intervenor who
 - (a) has, or is representative of a group or class of subscribers that has, an interest in the outcome of the proceeding of such a nature that the intervenor or group or class of subscribers will receive a benefit or suffer a detriment as a result of the order or decision resulting from the proceeding;
 - (b) has participated in a responsible way; and

(c) has contributed to a better understanding of the issues by the Commission.

Paragraph 44(6)(b) provides that costs awarded "shall not exceed those necessarily and reasonably incurred by the intervener in connection with its intervention."

9. Finally, the Guidelines set out general principles related to costs, including the types of costs that costs applicants may claim and the maximum rates for reimbursement.

Call for comments

10. The Commission seeks comments on the changes, if any, that should be made to its current costs award *practices and procedures*, including, but not limited to, the specific proposals made by the Applicants, CIPPIC, and PIAC. Parties are to provide full support and rationale for their submissions.

MTS Allstream's submission

11. The Commission does not agree with MTS Allstream that the review of its current costs award practices and procedures should form part of the Notice of Consultation 2009-602 proceeding. The Commission notes, in this regard, that a substantive review of its current costs award practices and procedures would necessarily involve a review of not only the Rules, but also the Guidelines and the precedents established by previous costs awards. The Commission also considers that including such a review in the Notice of Consultation 2009-602 proceeding would unduly delay the implementation of the Proposed Rules.
12. The Commission considers that an important distinction is to be made between this proceeding and the Notice of Consultation 2009-602 proceeding. Accordingly, the Commission has today issued Broadcasting and Telecom Notice of Consultation CRTC 2009-602-1, limiting the scope of comments in the Notice of Consultation 2009-602 proceeding. In that proceeding, comments with respect to costs are to focus on whether the language in the Proposed Rules accurately reflects current Commission costs award practices and procedures. By contrast, in the proceeding initiated by this notice of consultation, the Commission will consider whether any changes should be made to its current costs award practices and procedures, including any changes to the Rules, and if so, what those changes should be.
13. Any changes to the Commission's current costs award practices and procedures will be announced in a regulatory policy. Any substantive changes to the wording of the Proposed Rules necessary to implement these changes will be published for public comment pursuant to section 69 of the Act.

Procedure

14. The Applicants, CIPPIC, MTS Allstream, and PIAC are made parties to this proceeding. Their respective submissions to date are made part of the record of this proceeding.

15. Parties interested in participating in this proceeding (including receiving copies of all submissions) must notify the Commission of their intention to do so by filling out the online form; or by writing to the Secretary General, CRTC, Ottawa, Ontario, K1A 0N2; or by faxing to: 819-994-0218 by **8 December 2009** (the registration date). Parties are to provide their email address, where available. If parties do not have access to the Internet, they are to indicate in their notice whether they wish to receive disk versions of hard-copy filings.
16. The Commission will post on its website, as soon as possible after the registration date, a complete list of interested parties and their mailing addresses (including their email addresses, if available), identifying those parties who wish to receive disk versions.
17. Any party who wishes merely to file written comments in this proceeding, without receiving copies of the various submissions, may do so by writing to the Commission by **22 January 2010** at the address or fax number noted above, or by filling out the online form.
18. All parties may file with the Commission, serving copies on all other parties, comments with regard to the above-noted issues by **22 January 2010**.
19. All parties may file reply comments with the Commission, serving copies on all other parties, by **12 February 2010**.
20. The Commission will not formally acknowledge comments. It will, however, fully consider all comments and they will form part of the public record of the proceeding.
21. Where a document is to be filed or served by a specific date, the document must be actually received, not merely sent, by that date.
22. Parties may file their submissions electronically or on paper. Submissions longer than five pages should include a summary.
23. Electronic submissions should be in HTML format. As an alternative, those making submissions may use "Microsoft Word" for text and "Microsoft Excel" for spreadsheets.
24. Each paragraph of all submissions should be numbered. In addition, the line *****End of document***** should be entered following the last paragraph. This will help the Commission verify that the document has not been damaged during electronic transmission.
25. The Commission also encourages parties to monitor the record of this proceeding (and/or the Commission's website) for additional information that they may find useful when preparing their submissions.

Important notice

26. Note that all information that you provide as part of this public process, except information granted confidentiality, whether sent by postal mail, facsimile, email, or through the Commission's website at www.crtc.gc.ca, becomes part of a publicly accessible file and will be posted on the Commission's website. This information includes your personal information, such as your full name, email address, postal/street address, telephone and facsimile number(s), and any other personal information you provide.
27. The personal information you provide will be used and may be disclosed for the purpose for which the information was obtained or compiled by the Commission, or for a use consistent with that purpose.
28. Documents received electronically or otherwise will be posted on the Commission's website in their entirety exactly as you send them, including any personal information contained therein, in the official language and format in which they are received. Documents not received electronically will be available in PDF format.
29. Please note that the information you provide to the Commission as part of this public process is entered into an unsearchable database dedicated to this specific public process. This database is accessible only from the web page of this particular public process. As a result, a general search of our website with the help of either our own search engine or a third-party search engine will not link directly to the information that was provided as part of this public process.

Location of CRTC offices

30. Submissions may be examined or will be made available promptly upon request at the Commission offices during normal business hours.

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Secretary General

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