



Telecom Order CRTC 2021-282

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File numbers: 1011-NOC2020-0124 and 4754-652

Allocation of funds from Bell Canada's deferral account to Philanthropolis for its participation in the proceeding initiated by Telecom and Broadcasting Notice of Consultation 2020-124

Background

1. In Telecom and Broadcasting Notice of Consultation 2020-124-2, the Commission approved a proposal by Bell Canada to use up to \$125,000 from the company's deferral account to fund public interest and accessibility intervenor participation in the proceeding initiated by Telecom and Broadcasting Notice of Consultation 2020-124 (the proceeding) and, if funds remained, in a follow-up proceeding. In the proceeding, the Commission considered regulations to be made under the *Accessible Canada Act* (ACA) regarding the accessibility reporting requirements for broadcasting undertakings, Canadian telecommunications common carriers, and telecommunications service providers.
2. The Commission indicated that it would distribute any funds awarded in a manner that closely resembles its general practices and procedures in respect of applications for final telecommunications costs awards, including the application of the eligibility criteria for costs awards set out in section 68 of the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (the Rules of Procedure).
3. The Commission noted 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 considered that such responses were unnecessary.

Application

4. On 28 July 2020, the Broadcast Advocacy Group (BAG) filed forms with the Commission setting out an account of its costs with respect to its participation in the proceeding. At that time, BAG did not file any supporting materials.
5. By letter dated 26 November 2020, the applicant submitted that BAG was "now part of Philanthropolis, a registered charity" and requested that any funds awarded to BAG be paid to Philanthropolis.

Additional process

6. The Commission issued requests for information to the applicant on 15 January 2021 and 29 March 2021. Among other matters, information was sought regarding the criteria for an award of costs in section 68 of the Rules of Procedure, the amounts sought and how they were reasonably and necessarily incurred, and the claimant consultant's position in relation to the applicant organization.
7. The applicant filed responses on the public record of the proceeding on 22 February 2021 and 5 April 2021, while designating certain information contained in the responses as confidential.
8. Philanthropolis submitted that it had met the criteria set out in section 68 of the Rules of Procedure because it represented a group of subscribers that had an interest in the outcome of the proceeding, it had assisted the Commission in developing a better understanding of the matters that were considered, and it had participated in a responsible way.
9. In particular, Philanthropolis submitted that it represents the interests of persons with disabilities, specifically disabled and minority Canadian media consumers, who have an interest in the proceeding.
10. Philanthropolis submitted that it assisted the Commission in developing a fuller understanding of the issues affecting this class of subscribers by preparing a 33-page intervention and including commissioned third-party polling.
11. Philanthropolis submitted that it participated in the proceeding in a responsible way by advancing the interests of unrepresented minorities through a publicly accessible report and commissioned polling.
12. Philanthropolis further submitted that its intervention was commensurate with the scope of the issues considered in the proceeding.
13. Finally, Philanthropolis submitted that the consultant in respect of which it was seeking funds does not have a paid position with the charity nor does he take part in, or control, the day-to-day operations of Philanthropolis.
14. Philanthropolis requested that the Commission award it funding of \$17,739.85 for consultant fees and \$400 for disbursements. The applicant filed a bill of costs, claiming 68.2 hours at the rate of \$225 per hour for an external consultant and a \$400 disbursement related to an online survey.

Commission's analysis and determinations

Eligibility

15. In Telecom and Broadcasting Notice of Consultation 2020-124-2, the Commission stated the following:

15. [...] 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
 - 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. The Commission further indicated that it would have regard to whether the applicant had explained how the costs claimed were reasonably and necessarily incurred in the circumstances.
17. In Telecom Information Bulletin 2016-188, the Commission provided guidance regarding how an applicant may demonstrate that it satisfies the first criterion with respect to its representation of interested subscribers. Philanthropolis has demonstrated that it (or its predecessor) met the first criterion by representing the interests of disabled and minority Canadian media consumers. These consumers have a clear interest in the Commission's regulation-making activity under the ACA, the purpose of which is generally to operationalize the accessibility reporting requirements of regulated telecommunications and broadcasting entities, as established by the ACA.
18. Philanthropolis has also demonstrated that it (or its predecessor) provided some degree of assistance to the Commission in developing a better understanding of the matters that were considered in the proceeding. As will be discussed in greater detail below, certain portions of the intervention filed were relevant to the proceeding, including those that responded to the questions set out by the Commission in the proceeding regarding the content of the regulations to be made. Accordingly, the second eligibility criterion is satisfied.
19. The remaining criterion of responsible participation in the proceeding is also satisfied. Philanthropolis' predecessor, BAG, filed a timely intervention in the proceeding that contained certain responsive information.
20. Accordingly, the Commission finds that Philanthropolis meets the criteria for an award of costs set out in Telecom and Broadcasting Notice of Consultation 2020-124-2.

Consultant fees

21. The costs that can be reasonably claimed for external consultants are higher than those for in-house consultants. This is because it is generally presumed that in-house consultants are part of the organization and provide services as part of their regular duties, the costs for which are covered by the organization's regular operating costs.

However, external consultants are presumed to be charging the organization industry rates for specific expertise.

22. Philanthropolis claimed fees consistent with the rate for an external consultant listed in the *Guidelines for the Assessment of Costs*, as set out in Telecom Regulatory Policy 2010-963. Philanthropolis also indicated that the claimant consultant was a director of the applicant organization.
23. The Commission has applied the external consultant rate to certain internal resources of certain not-for-profit organizations such as the Canadian Association of the Deaf - Association des Sourds du Canada (CAD-ASC), in Telecom Order 2017-129, and the Deaf Wireless Canada Consultative Committee (DWCC), in Telecom Order 2017-137, where the applicant had provided compelling justification as to why fees should be awarded at the external rate.
24. In this case, Philanthropolis indicated that its consultant's position within the organization is unpaid and that he does not control its day-to-day operations.
25. In the present circumstance, it would be appropriate to apply a similar rationale as has been previously applied to CAD-ASC and the DWCC to Philanthropolis and to permit recovery at the external rate on this basis.

Time claimed

26. The Commission notes that the proceeding was necessarily limited to determining appropriate procedural requirements to be imposed by regulation on broadcasting and telecommunications entities in order to implement their reporting obligations under the ACA. As noted above, the intervention filed does briefly respond to certain questions set out in the proceeding; it also reviews various sources to incorporate statistics about disability groups and minority media consumers. These submissions were relevant and useful. Otherwise, however, Philanthropolis' intervention was generally spent discussing matters that did not address the questions posed by the Commission in the proceeding and that were not otherwise relevant, such as the adoption of specific accessibility measures for broadcasting services.
27. The Commission notes that the other funding applicants in this proceeding were able to address a significantly greater proportion of the relevant issues, as established by the proceeding, often while claiming significantly less in fees.
28. In light of the above, the total amount claimed by Philanthropolis was not reasonably and necessarily incurred and must be reduced. The Commission considers one third of the time claimed to be appropriate, as this recognizes the value of certain activities, such as reviewing the record, and researching and drafting the relevant portions of the intervention.

Disbursements

29. Philanthropolis claimed \$400 as a disbursement relating to the cost of an online, two-question survey. The survey was targeted to the general public and concerned the potential utility to persons with disabilities of accessible features of broadcasting services, such as an audio programming guide.
30. In the Commission's view, this survey was not germane to the matters under consideration in the proceeding, which were limited to the appropriate procedural requirements for accessibility-related reporting obligations of broadcasting and telecommunications entities. Further, the applicant has not explained how it had necessarily and reasonably incurred this expense in connection with its participation in the proceeding. In the circumstances, the Commission **denies** the disbursement claim.

Directions regarding costs

31. The Commission **partially approves** the application by Philanthropolis and **directs** Bell Canada to pay forthwith from its deferral account the amount of \$5,779.95 (i.e., one third of \$17,339.85) to Philanthropolis.

2019 Policy Direction

32. The Governor in Council issued a policy direction in which it directed the Commission to consider how its decisions can promote competition, affordability, consumer interests, and innovation (the 2019 Policy Direction).¹ The Commission considers that its determinations in this order are consistent with the 2019 Policy Direction.
33. In particular, the present order, which requires the reimbursement of those reasonably and necessarily incurred costs relating to public interest intervener participation in the proceeding, contributes, in a responsible manner, to enhancing and protecting the rights of consumers in their relationships with service providers, including rights related to accessibility.

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 Notices of Consultation CRTC 2020-124-1, 13 May 2020; and 2020-124-2, 4 June 2020*

¹ *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives to Promote Competition, Affordability, Consumer Interests and Innovation, SOR/2019-227, 17 June 2019*

- *Determination of costs award with respect to the participation of the Deaf Wireless Canada Consultative Committee in the proceeding leading to Telecom Regulatory Policy 2016-496*, Telecom Order CRTC 2017-137, 5 May 2017
- *Determination of costs award with respect to the participation of the Canadian Association of the Deaf in the proceeding leading to Telecom Regulatory Policy 2016-496*, Telecom Order CRTC 2017-129, 3 May 2017
- *Guidance for costs award applicants regarding representation of a group or a class of subscribers*, Telecom Information Bulletin CRTC 2016-188, 17 May 2016
- *Revision of CRTC costs award practices and procedures*, Telecom Regulatory Policy CRTC 2010-963, 23 December 2010