



Telecom Order CRTC 2021-172

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Allocation of funds from Bell Canada's deferral account to the Canadian National Society of the Deaf-Blind, Inc. 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 intervener 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 these funds 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. By letter dated 29 July 2020, the Canadian National Society of the Deaf-Blind, Inc. (CNSDB) applied for costs with respect to its participation in the proceeding.
5. The CNSDB 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.

6. In particular, the CNSDB submitted that it represents the interests of persons with disabilities, specifically deaf-blind and blind Canadians, as a national consumer-run organization that promotes public awareness of issues associated with such disabilities.
7. The CNSDB submitted that it provided a fuller understanding of the issues affecting this class of subscribers by preparing a 44-page intervention and 10-page reply to the proceeding's interventions alongside the Canadian Association of the Deaf - Association des Sourds du Canada (CAD-ASC); the Deaf Wireless Canada Consultative Committee (DWCC); and Deafness Advocacy Association Nova Scotia (DAANS).
8. The CNSDB submitted that it participated in the proceeding in a responsible way by advancing the interests of deaf-blind people in Canada and by making recommendations on the subject matter of proceeding in an organized manner and with a distinct point of view.
9. The CNSDB requested that the Commission fix its costs at \$4,747, consisting of consultant and analyst fees. The CNSDB filed a bill of costs with its application, claiming 10.25 hours at the external consultant rate of \$110 per hour for the CNSDB's President, 9 hours at the external senior consultant rate of \$225 per hour for the DWCC's Acting Chair, 3 hours at the external intermediate consultant rate of \$165 per hour for the DWCC's Treasurer, and 10 hours at the rate of \$110 per hour for an external deaf-blind analyst.

Commission's analysis and determinations

Eligibility

10. As a preliminary issue, the Commission notes that the CNSDB filed its application for costs after the deadline established in Telecom and Broadcasting Notice of Consultation 2020-124-2. However, in the circumstances, the Commission considers that the CNSDB provided a reasonable explanation for the brief delay and that no party was prejudiced as a result. Accordingly, the Commission accepts the CNSDB's application for consideration.
11. 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.
12. 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.
13. 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. The CNSDB has demonstrated that it meets the first criterion by representing the interests of deaf-blind people in Canada and by elaborating on its membership and expertise.
14. The CNSDB assisted the Commission in developing a better understanding of the matters that were considered by explaining specific outstanding issues and challenges to be addressed in the proposed regulations to be made under the ACA, thereby satisfying the second criterion.
15. The CNSDB has also satisfied the remaining criterion through its participation in the proceeding. The CNSDB participated jointly with CAD-ASC, DAANS, and the DWCC in all stages of the proceeding and raised accessibility issues and challenges faced by deaf-blind Canadians.
16. Accordingly, the Commission finds that the CNSDB meets the criteria for an award of costs set out in Telecom and Broadcasting Notice of Consultation 2020-124-2.

Consultant fees

17. The CNSDB explained that it billed the DWCC's costs in accordance with the Commission's view that any hours claimed for work that consultants conduct for an organization must be billed by that organization.¹ Pursuant to Telecom Order 2018-438, the CNSDB also followed the Commission's direction that any hours spent by the DWCC working on sections of the submission related to issues faced by deaf-blind Canadians be addressed in the CNSDB's costs application.²
18. 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

¹ See Commission [letter](#) to the CNSDB and the DWCC, related to a different proceeding, in which the Commission indicated that an organization can only claim hours for work that consultants/analysts conducted for that organization and billed to that organization, but cannot claim hours for work that consultants/analysts conducted for other organizations because such costs must be billed by that other organization.

² In that order, the CNSDB was requested to indicate whether certain hours were claimed in error and to explain how the DWCC was billed for the time claimed in relation to work that appeared to be conducted for the CNSDB. The Commission found that the 27 hours claimed by the DWCC for work that its consultants and analyst conducted for the CNSDB were appropriate costs to be claimed.

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.

19. In Telecom Order 2017-129, the Commission permitted recovery at the external rate for the President of the Board of Directors of CAD-ASC, who prepared the organization's submissions, concluding that it was unlikely that this not-for-profit organization would otherwise be able to participate in Commission proceedings. In that order, the work of the President was considered as time spent as a consultant rather than as a director.
20. In the present circumstance, it would be consistent with that past case to apply similar rationale. The CNSDB's President should be considered to have participated directly in the development of the organization's submissions as a consultant rather than as a director.

Time claimed

21. The CNSDB's application contains a minor discrepancy insofar as the amount claimed for Consultant and Analyst Fees on Form III differs slightly from that claimed on Form V. This led to the issuance of a request for information from Commission staff seeking further explanation, to which the CNSDB did not reply.
22. However, there is sufficient information to conclude that the amount claimed in Form V is a clerical error: the amount claimed in Form III is substantiated by time sheets provided by the applicant as part of its application package. Accordingly, the Commission bases its assessment of the time claimed on that amount.
23. In the present case, the CNSDB participated jointly with CAD-ASC, DAANS, and the DWCC in all stages of the proceeding, explaining how the roles played by these organizations were all distinct.
24. The CNSDB raised relevant issues and developed unique policy and legal positions.
25. Accordingly, the Commission finds that the amount of time claimed by the CNSDB is appropriate.
26. In light of the above, the total amount claimed by the CNSDB was reasonably and necessarily incurred and should be allowed.

Directions regarding costs

27. The Commission **approves** the application by the CNSDB and **directs** Bell Canada to pay forthwith from its deferral account the amount of \$4,747 to the CNSDB.

2019 Policy Direction

28. 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).³ The Commission considers that its determinations in this order are consistent with the 2019 Policy Direction.
29. In particular, the present order, which requires the reimbursement of reasonably and necessarily incurred costs relating to public interest intervener participation in the proceeding, contributes 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*
- *Determination of costs award with respect to the participation of the Canadian National Society of the Deaf-Blind, Inc. in the Telecom Notice of Consultation 2017-33 proceeding, Telecom Order CRTC 2018-438, 28 November 2018*
- *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*

³ *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*