



Telecom Order CRTC 2021-174

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Ottawa, 13 May 2021

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Allocation of funds from Bell Canada's deferral account to the Deaf Wireless Canada Consultative Committee 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 20 July 2020, the Deaf Wireless Canada Consultative Committee (DWCC) applied for costs with respect to its participation in the proceeding.
5. The DWCC 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 DWCC submitted that it is a consumer-run association that advocates for the interests of persons with disabilities, specifically Deaf, deaf-blind, and hard-of-hearing (DDBHH) Canadians.
7. The DWCC 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 Canadian National Society of the Deaf-Blind, Inc. (CNSDB); and Deafness Advocacy Association Nova Scotia (DAANS).
8. The DWCC further submitted that it participated in the proceeding in a responsible way by advancing the interests of DDBHH people in Canada and by making recommendations on the subject matter of the proceeding in a structured manner with a distinct point of view.
9. The DWCC requested that the Commission fix its costs at \$22,777.50, consisting entirely of consultant fees. The DWCC filed a bill of costs with its application, claiming 60 hours at the rate of \$225 per hour for an external senior consultant, 10 hours at the rate of \$165 per hour for an external intermediate consultant, and 30 hours at the rate of \$225 per hour for an external senior consultant. The DWCC claimed the Ontario Harmonized Sales Tax and submitted that it is not entitled to a rebate in connection with any applicable tax.

Commission's analysis and determinations

Eligibility

10. 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.
11. 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.
12. 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 DWCC has demonstrated

that it meets the first criterion by representing the interests of DDBHH people in Canada and by elaborating on its membership and expertise.

13. The DWCC 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.
14. The DWCC has also satisfied the remaining criterion through its participation in the proceeding. The DWCC participated jointly with CAD-ASC, the CNSDB, and DAANS in all stages of the proceeding and raised accessibility issues and challenges faced by DDBHH Canadians.
15. Accordingly, the Commission finds that the DWCC meets the criteria for an award of costs set out in Telecom and Broadcasting Notice of Consultation 2020-124-2.

Consultant fees

16. 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.
17. The DWCC claimed fees consistent with the rates for external consultants listed in the *Guidelines for the Assessment of Costs*, as set out in Telecom Regulatory Policy 2010-963, rather than fees consistent with those for internal consultants.
18. In Telecom Order 2017-137, the Commission concluded that the DWCC's members are not paid staff, and that they take part in but do not control the day-to-day operations of the non-profit organization, as evidenced by the organization's collective decision making.
19. In the present case, the DWCC demonstrated that its consultants have specific relevant experience and expertise and provided consulting services to other organizations. Given the above, it is appropriate for the DWCC to claim costs at the external consultant rate.

Time claimed

20. In the present case, the DWCC participated jointly with CAD-ASC, the CNSDB, and DAANS in all stages of the proceeding, explaining how the roles played by these organizations were all distinct.
21. The DWCC raised relevant issues and developed unique policy and legal positions. Accordingly, the Commission finds that the amount of time claimed by the DWCC is appropriate.

22. In light of the above, the total amount claimed by the DWCC was reasonably and necessarily incurred and should be allowed.

Direction regarding costs

23. The Commission **approves** the application by the DWCC and **directs** Bell Canada to pay forthwith from its deferral account the amount of \$22,777.50 to the DWCC.

2019 Policy Direction

24. 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.

25. 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 Deaf Wireless Canada Consultative Committee in the proceeding leading to Telecom Regulatory Policy 2016-496, Telecom Order CRTC 2017-137, 5 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*

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*