



Telecom Order CRTC 2021-355

PDF version

Ottawa, 29 October 2021

File numbers: 1011-NOC2021-0069 and 4754-667

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 2021-69

Background

1. In Telecom and Broadcasting Notice of Consultation 2021-69, the Commission called for comments on the text of the draft *Canadian Radio-television and Telecommunications Commission Accessibility Reporting Regulations* (the Regulations). It was the second of two consultations on the structure, form, and content of the Regulations to be made under the *Accessible Canada Act* (ACA).
2. In Telecom and Broadcasting Notice of Consultation 2020-124-2, the Commission approved a proposal by Bell Canada to use funds in its deferral account to fund public interest participation in the regulation-making proceedings under the ACA. 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. In that notice of consultation, the Commission noted that Bell Canada did not submit that it required the opportunity to respond to applications for a share of the available funds as part of its proposal. In the circumstances, the Commission considered that such responses were unnecessary.

Application

4. By letter dated 30 April 2021, the Deaf Wireless Canada Consultative Committee (DWCC) applied for costs with respect to its participation in the proceeding that led to Telecom and Broadcasting Regulatory Policy 2021-215.
5. The DWCC submitted that it had met the criteria for an award of costs 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 represents the interests of persons with disabilities, specifically people who are Deaf, Deaf-Blind, and Hard of Hearing in Canada, in part by liaising with other representative accessibility groups.
7. The DWCC submitted that alongside the Canadian Association of the Deaf-Association des Sourds du Canada (CAD-ASC) and the Canadian National Society of the Deaf-Blind, Inc. (CNSDB), it provided a fuller understanding of the issues affecting this class of subscribers by applying an accessibility lens to the proposed regulations, which offered the Commission a distinct point of view.
8. The DWCC submitted that it participated in the proceeding in a responsible way by preparing and filing a focused and structured intervention and reply in the proceeding.
9. The DWCC requested that the Commission fix its costs at \$4,710, consisting entirely of consultant fees. The DWCC filed a bill of costs with its application, claiming 18 hours at the rate of \$225 per hour for an external senior consultant and 4 hours at the rate of \$165 per hour for an external intermediate consultant.
10. The DWCC submitted that its finances are dealt with by CAD-ASC, of which it is a standing committee, and requested that any funds awarded be directed to CAD-ASC on its behalf.

Commission's analysis and determinations

Eligibility

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. In the present case, the DWCC has demonstrated that it meets the first criterion by having represented the interests of people who are Deaf, Deaf-Blind, and Hard of Hearing in its capacity as a standing committee of CAD-ASC.
14. The DWCC assisted the Commission in developing a better understanding of the matters that were considered by providing informed and distinct commentary regarding the proposed wording of the draft Regulations, through an accessibility lens, focused on the needs of Deaf, Deaf-Blind, and Hard of Hearing people, thereby satisfying the second criterion.
15. The DWCC has also satisfied the remaining criterion through its participation in the proceeding. The DWCC participated jointly with CAD-ASC and the CNSDB in all stages of the proceeding, and diligently and responsibly raised issues regarding the proposed Regulations on behalf of Deaf, Deaf-Blind, and Hard of Hearing Canadians.
16. 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

17. 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.
18. The DWCC 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.
19. The fees claimed by DWCC are consistent with how the Commission has previously applied the external consultant rate in applications submitted by DWCC.¹
20. Among other things, DWCC's consultants have specific, relevant experience and expertise as consultants, including providing services to other organizations.² Given the above, it was appropriate for the DWCC to claim costs at the external consultant rate.

¹ See, for example, Telecom Orders 2018-438 and 2021-172.

² See, for example, Telecom Order 2018-41.

Time claimed

21. In the present matter, the DWCC participated jointly with CAD-ASC and the CNSDB in all stages of the proceeding. The scale of its claim is consistent with this joint participation and with the scope of its submissions, which 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.

Directions 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 \$4,710 to CAD-ASC on behalf of 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).³ 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

- *The Canadian Radio-television and Telecommunications Commission Accessibility Reporting Regulations, Telecom and Broadcasting Regulatory Policy CRTC 2021-215, 7 July 2021*
- *Call for comments – The Canadian Radio-television and Telecommunications Commission Accessibility Reporting Regulations, Telecom and Broadcasting Notice of Consultation CRTC 2021-69, 18 February 2021*
- *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*

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*

initiated by Telecom and Broadcasting Notice of Consultation 2020-124, Telecom Order CRTC 2021-172, 13 May 2021

- *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 National Society of the Deaf-Blind, Inc. in the proceeding that led to Telecom Regulatory Policy 2017-182, Telecom Order CRTC 2018-41, 2 February 2018*
- *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*