



## Telecom Order CRTC 2010-950

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Ottawa, 21 December 2010

### **Determination of costs award with respect to the participation of the Public Interest Advocacy Centre in the Telecom Notice of Consultation 2010-277 proceeding**

File numbers: 8640-C12-201008178 and 4754-372

1. By letter dated 28 July 2010, the Public Interest Advocacy Centre (PIAC) applied for costs with respect to its participation in the proceeding initiated by Telecom Notice of Consultation 2010-277 (the proceeding).
2. On 30 July 2010, Bell Canada, on behalf of itself, Bell Aliant Regional Communications, Limited Partnership (Bell Aliant), and Télébec, Limited Partnership (Télébec) (collectively, Bell Canada et al.), filed comments in response to PIAC's application. PIAC did not file reply comments.

#### **Application**

3. PIAC submitted that it had met the criteria for an award of costs set out in subsection 44(1) of the *CRTC Telecommunications Rules of Procedure* (the Rules) because it represented a group of subscribers that had an interest in the outcome of the proceeding, it had participated responsibly, and it had contributed to a better understanding of the issues by the Commission through its participation in the proceeding.
4. PIAC requested that the Commission fix its costs at \$2,665, consisting entirely of legal fees. PIAC's claim included the federal Goods and Services Tax (GST) on fees less the rebate to which PIAC is entitled in connection with the GST. PIAC filed a bill of costs with its application.
5. PIAC claimed 10 hours at a rate of \$250 per hour for legal fees.
6. PIAC made no submission as to the appropriate costs respondents.

#### **Answer**

7. In response to the application, Bell Canada et al. did not object to PIAC's eligibility for costs but to the amount being claimed. They argued that PIAC had made unsubstantiated and erroneous claims about the wireless and retail voice mail markets. They also stated that PIAC's comments betrayed its lack of understanding of the Commission's price cap framework, powers, and previous decisions. They submitted that, as a result, PIAC had not contributed to a better understanding of the issues by the Commission through its participation in the proceeding.

Bell Canada et al. stated that they were not generally opposed to sharing costs for PIAC's participation in public proceedings but noted that the Commission had not awarded costs in the past when interveners had failed to contribute to a better understanding of the issues in a proceeding.

### **Commission's analysis and determinations**

8. The Commission finds that PIAC has satisfied the criteria for an award of costs set out in subsection 44(1) of the Rules. Specifically, the Commission finds that PIAC represented a group or class of subscribers that had an interest in the outcome of the proceeding and that it participated responsibly. However, the Commission finds that PIAC only partially contributed to a better understanding of the issues by the Commission. Accordingly, the Commission finds that the costs amount claimed should be reduced.
9. The Commission notes that PIAC's comments articulated policy concerns about the prospect of complete forbearance from regulation. The comments also brought to light an alternative perspective to the incumbent local exchange carriers' (ILECs) characterization of the relevant market for forbearance, particularly regarding the substitutability of various products for the ILECs' voice mail services. Because of this, the Commission considers that PIAC's comments added to a better understanding of the issues in the proceeding.
10. However, the Commission also considers that PIAC's submissions regarding the operation of the price cap framework were not relevant to the proceeding. These submissions, as well as PIAC's lack of understanding of the price cap framework, did not contribute to a better understanding by the Commission of the issues related to forbearance from the regulation of voice mail services.
11. As a result, the Commission considers that two-thirds of PIAC's submissions contributed to a better understanding of the issues. Accordingly, the Commission reduces PIAC's cost claim by one-third, to a total of \$1,777.
12. The Commission notes that the rates claimed in respect of legal fees are in accordance with the rates set out in the Commission's Legal Directorate's *Guidelines for the Taxation of Costs*, revised as of 24 April 2007. The Commission also finds that the amount claimed by PIAC, reduced to reflect the Commission's analysis in paragraph 10, was necessarily and reasonably incurred and should be allowed.
13. The Commission considers that this is an appropriate case in which to fix the costs and dispense with taxation, in accordance with the streamlined procedure set out in Telecom Public Notice 2002-5.
14. The Commission notes that it has generally determined that the appropriate respondents to an award of costs are the parties who have a significant interest in the outcome of the proceeding and have participated actively in the proceeding.

The Commission considers that Bell Canada et al., TELUS Communications Company (TCC), MTS Allstream Inc. (MTS Allstream), and Saskatchewan Telecommunications (SaskTel) had a significant interest in the outcome of the proceeding, and that these parties participated actively throughout the proceeding. In Telecom Regulatory Policy 2010-777, the Commission (i) approved SaskTel's application requesting that the Commission forbear from regulating the company's retail residential and business voice mail services province wide, and (ii) directed all ILECs to revise their retail voice mail service tariffs to reflect its determinations set out in that regulatory policy. The Commission therefore finds that the appropriate respondents to PIAC's application for costs are Bell Canada et al., TCC, MTS Allstream, and SaskTel.

15. The Commission notes that it has, in previous decisions, allocated the responsibility for the payment of costs among respondents on the basis of the respondents' telecommunications operating revenues (TORs), as an indicator of the relative size and interest of the parties involved in the proceeding. The Commission considers that, in the present circumstances, it is appropriate to apportion the costs among the respondents in proportion to their TORs, as reported in their most recent audited financial statements. Accordingly, the Commission finds that the responsibility for the payment of costs should be allocated as follows:

Bell Canada et al.	49.4%
TCC	38.8%
MTS Allstream	7.6%
SaskTel	4.2%

16. The Commission notes that Bell Canada filed submissions in the proceeding on behalf of Bell Aliant and Télébec. Consistent with its general approach articulated in Telecom Costs Order 2002-4, the Commission makes Bell Canada responsible for payment on behalf of the other two companies and leaves it to the members of the companies to determine the appropriate allocation of the costs among themselves.

### **Directions as to costs**

17. The Commission **approves** the application by PIAC for costs with respect to its participation in the proceeding.
18. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to PIAC at \$1,777.
19. The Commission directs that the award of costs to PIAC be paid forthwith by Bell Canada et al., TCC, MTS Allstream, and SaskTel according to the proportions set out in paragraph 15.

Secretary General

## Related documents

- *Forbearance from the regulation of retail voice mail services provided by the incumbent local exchange carriers*, Telecom Regulatory Policy CRTC 2010-777, 20 October 2010
- *Forbearance from the regulation of retail voice mail services*, Telecom Notice of Consultation 2010-277, 14 May 2010
- *New procedure for Telecom costs awards*, Telecom Public Notice CRTC 2002-5, 7 November 2002
- *Action Réseau Consommateur, the Consumers' Association of Canada, Fédération des associations coopératives d'économie familiale and the National Anti-Poverty Organization application for costs – Public Notice CRTC 2001-60*, Telecom Costs Order CRTC 2002-4, 24 April 2002