



Telecom Order CRTC 2014-548

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Determination of costs award with respect to the participation of the Public Interest Advocacy Centre in the proceeding leading to Telecom Decision 2014-481

1. By letter dated 8 May 2014, the Public Interest Advocacy Centre (PIAC), on behalf of itself and Chimo Community Services (Chimo), applied for costs with respect to their participation in the proceeding leading to Telecom Decision 2014-481 regarding charges for wireless calls to helplines and measures to protect helpline-user confidentiality (the proceeding).
2. The Commission did not receive any interventions in response to the application.

Application

3. PIAC submitted that it had met the criteria for an award of costs set out in section 68 of the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (the Rules of Procedure) because it represented a group or class 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.
4. PIAC requested that the Commission fix its costs at \$26,987.51, consisting of external and in-house legal fees and of disbursements. PIAC's claim included the Ontario Harmonized Sales Tax (HST) on fees for external counsel, less the rebate to which PIAC is entitled in connection with the HST. Specifically, PIAC claimed 78.7 hours for external counsel at a rate of \$290 per hour (which comes to \$23,722.23 with HST and the associated rebate); 5.25 days for in-house counsel at a rate of \$600 per day (which comes to \$3,150); and \$115.28 for disbursements. PIAC filed a bill of costs with its application.
5. PIAC submitted that all incumbent local exchange carriers and other corporate parties that participated in the proceeding are the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents).

Commission's analysis and determinations

6. The criteria for an award of costs are set out in section 68 of the Rules of Procedure, which reads as follows:

68. The Commission must determine whether to award final costs and the maximum percentage of costs that is to be awarded on the basis of the following criteria:

- (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.

7. The Commission finds that PIAC has satisfied these criteria through its participation in the proceeding. In particular, the Commission considers that, by filing the application that initiated the proceeding, PIAC brought issues to the Commission's attention that, on the face of the application, may warrant further investigation and analysis under the *Telecommunications Act* (the Act).
8. However, though the rates claimed in respect of legal fees and disbursements are in accordance with the rates established in the Commission's *Guidelines for the Assessment of Costs* (the Guidelines), as set out in Telecom Regulatory Policy 2010-963, the Commission considers that PIAC has claimed excessive time in respect of its legal fees. For the reasons set out below, the Commission considers that the total amount claimed by PIAC was not necessarily and reasonably incurred and finds that this total amount must be varied.
9. The Commission notes that the criteria set out in section 68 of the Rules of Procedure are to be used not only to determine eligibility for an award of costs, but also to determine the maximum percentage of costs that is to be awarded.
10. The Commission considers that, while PIAC raised important social issues having potential implications for the Canadian telecommunications system, and while it contributed to an increased understanding of these issues, it failed to provide critical information necessary for the Commission to adjudicate the issues.
11. Specifically, this lack of critical information precluded the Commission from being able to establish the magnitude of the relief requested in the application in terms of its likely impact on the general subscriber base. Further, it precluded the Commission from being able to assess the issues raised by PIAC and Chimo with respect to compliance with section 27(2) of the Act, and whether the requested relief would serve to further the policy objectives of the Act.
12. Of particular significance, PIAC failed to establish a clearly defined scope and approximate number of qualifying helplines, a reliable mechanism whereby helplines would qualify or whereby a database of qualified helplines would be routinely

updated, and a forecast of the number of wireless minutes that would be zero-rated¹ if the requested relief was granted.

13. In light of the above, the Commission finds that the time claimed in respect of PIAC's legal fees should be reduced. Specifically, the Commission reduces the time allowed in respect of PIAC's external counsel and in-house counsel by 50 %, to 39.4 hours and 2.75 days, respectively. Consequently, the Commission finds the following amounts to be necessarily and reasonably incurred: \$11,876.18 for external counsel; \$1,650 for in-house counsel; and \$115.28 for disbursements. The total amount of costs allowed is therefore \$13,641.46.
14. 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.
15. The Commission notes that it has generally determined that the appropriate costs respondents to an award of costs are the parties that have a significant interest in the outcome of the proceeding in question and have participated actively in that proceeding. The Commission considers that wireless service providers (WSPs) had a significant interest in the outcome of the proceeding, and that the following WSPs participated actively throughout the proceeding: Bell Aliant Regional Communications, Limited Partnership and Bell Canada (collectively, the Bell companies); Bragg Communications Inc., carrying on business as Eastlink; MTS Inc. and Allstream Inc.; Quebecor Media Inc., on behalf of its affiliate Videotron G.P.; Rogers Communications Inc. (RCI); Saskatchewan Telecommunications; and TELUS Communications Company (TCC).
16. The Commission further notes, however, that in allocating costs among costs respondents, it has also been sensitive to the fact that if numerous costs respondents are named, the applicant may have to collect small amounts from many costs respondents, resulting in a significant administrative burden to the applicant.
17. In light of the above, the Commission considers that it is appropriate to limit the costs respondents to the Bell companies, RCI, and TCC.
18. The Commission notes that it generally allocates the responsibility for payment of costs among costs respondents based on their telecommunications operating revenues (TORs)² 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 costs respondents in proportion to their TORs, based on their most recent audited financial statements. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated as follows:

¹ Zero-rated, in the context of this order, means that minutes used for wireless calls to qualifying helplines would not count towards voice minutes on a post-paid plan, and would not incur charges on a prepaid plan.

² TORs consist of Canadian telecommunications revenues from local and access, long distance, data, private line, Internet, and wireless services.

Company	Percentage	Amount
Bell companies	34.4%	\$4,693.79
TCC	33.1%	\$4,509.53
RCI	32.5%	\$4,438.14

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

Directions regarding costs

20. The Commission **approves with changes** the application by PIAC for costs with respect to its participation in the proceeding.
21. Pursuant to subsection 56(1) of the Act, the Commission fixes the costs to be paid to PIAC at \$13,641.46.
22. The Commission **directs** that the award of costs to PIAC be paid forthwith by Bell Canada on behalf of the Bell companies, by RCI, and by TCC according to the proportions set out in paragraph 18.

Secretary General

Related documents

- *Public Interest Advocacy Centre and Chimo Community Services – Application regarding charges for wireless calls to helplines and measures to protect helpline-user confidentiality*, Telecom Decision CRTC 2014-481, 18 September 2014
- *Revision of CRTC costs award practices and procedures*, Telecom Regulatory Policy CRTC 2010-963, 23 December 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