



## Telecom Order CRTC 2015-567

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Ottawa, 21 December 2015

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### **Determination of costs award with respect to the participation of the Consumers' Association of Canada and the Public Interest Advocacy Centre in the proceeding initiated by Telecom Notice of Consultation 2015-67**

#### **Application**

1. By letter dated 8 June 2015, the Consumers' Association of Canada (CAC) and the Public Interest Advocacy Centre (PIAC) [collectively, CAC/PIAC or the costs applicants] applied for costs with respect to their participation in the proceeding initiated by Telecom Notice of Consultation 2015-67 concerning the sufficiency and appropriateness of current consumer safeguards requiring notification of rates for non-cash payphone calls (the proceeding).
2. The Commission did not receive any interventions in response to the application for costs.
3. CAC/PIAC submitted that they 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 they represented a group or class of subscribers that had an interest in the outcome of the proceeding, they had assisted the Commission in developing a better understanding of the matters that were considered, and they had participated in a responsible way.
4. CAC/PIAC requested that the Commission fix their costs at \$11,792.91, consisting entirely of external legal fees (apportioned between senior counsel and an articling student). CAC/PIAC's claim included the Ontario Harmonized Sales Tax (HST) on fees less the rebate to which CAC/PIAC are entitled in connection with the HST. CAC/PIAC filed a bill of costs with their application.
5. The costs applicants submitted that Bell Canada is the appropriate party to be required to pay any costs awarded by the Commission (the costs respondent).

#### **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. CAC/PIAC have satisfied these criteria through their participation in the proceeding. In particular, CAC/PIAC argued, from a consumer-based perspective, that the current notification requirements are inadequate in material respects and can lead to bill shock. For instance, the costs applicants noted concerns that the “obtain a quote” option is often the last option in the integrated voice response system, only presented after the option to complete the call. The costs applicants also explained that, in many cases, the Commissioner for Complaints for Telecommunications Services Inc. considers complaints related to payphones to be beyond its mandate. The costs applicants proposed additional notification requirements aimed at ensuring consumers have access to timely, accurate information concerning rates, such as the posting of rate bands for long distance calls on or around payphones. CAC/PIAC thus helped the Commission in developing a better understanding of the matters that were considered in the proceeding.
8. CAC/PIAC’s use of an articling student for a portion of the legal work associated with its participation in the proceeding is in line with the Commission’s encouragement in the *Guidelines for the Assessment of Costs*, as set out in Telecom Regulatory Policy 2010-963 (the Guidelines) regarding responsible reliance on legal counsel. This serves as an indication that CAC/PIAC participated in a responsible manner.
9. The rates claimed in respect of external legal fees are in accordance with the rates established in the Guidelines. The Commission finds that the total amount claimed by CAC/PIAC *was necessarily and reasonably incurred* and should be allowed.
10. 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.
11. The Commission *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. As noted earlier, CAC/PIAC submitted that Bell Canada is the appropriate costs respondent. However, Bell Canada participated in the *proceeding, on behalf of itself and* Bell Aliant Regional Communications, Limited Partnership; Northwestel Inc.; and Télébec, Limited Partnership (*collectively, Bell Canada et al.*). Furthermore, the Commission considers that TELUS Communications

Company (TCC) also participated actively in the proceeding and has a significant interest in the outcome due to TCC's status as a large incumbent local exchange carrier that provides payphone services in multiple regions of Canada. As such, the Commission finds that the appropriate costs respondents are Bell Canada et al. and TCC.

12. The Commission considers that, consistent with its practice, it is appropriate to allocate the responsibility for payment of costs among costs respondents based on their telecommunications operating revenues (TORs),<sup>1</sup> as an indicator of the relative size and interest of the parties involved in the proceeding. Accordingly, the Commission finds that that the responsibility for payment of costs should be allocated as follows:

Company	Percentage	Amount
TCC	51.7%	\$6,096.93
Bell Canada et al.	48.3%	\$5,695.98

13. Consistent with its general approach articulated in *Telecom Costs Order* 2002-4, the Commission makes Bell Canada responsible for payment on behalf of Bell Canada et al. The Commission leaves it to the members of Bell Canada et al. to determine the appropriate allocation of costs among themselves.

### Directions regarding costs

14. The Commission **approves** the application by CAC/PIAC for costs with respect to their participation in the proceeding.
15. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to CAC/PIAC at \$11,792.91.
16. The Commission **directs** that the award of costs to CAC/PIAC be paid forthwith by TCC and Bell Canada, on behalf of Bell Canada et al., according to the proportions set out in paragraph 12 above.

Secretary General

### Related documents

- *Consumer safeguards for payphones – Notification of rates for non-cash payphone calls*, Telecom Notice of Consultation CRTC 2015-67, 26 February 2015
- *Revision of CRTC costs award practices and procedures*, Telecom Regulatory Policy CRTC 2010-963, 23 December 2010

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<sup>1</sup> TORs consist of Canadian telecommunications revenues from local and access, long distance, data, private line, Internet, and wireless services. In this order, the Commission has used the TORs of the costs respondents based on their most recent audited financial statements.

- *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 familial and the National Anti-Poverty Organizaion application for costs – Public Notice CRTC 2001-60*, Telecom Costs Order CRTC 2002-4, 24 April 2002