



Telecom Order CRTC 2019-171

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File numbers: 8620-P8-201711630 and 4754-592

Determination of costs award with respect to the participation of the Public Interest Advocacy Centre in the proceeding that led to Telecom Decision 2019-169

Application

1. By letter dated 12 March 2018, the Public Interest Advocacy Centre (PIAC) applied for costs with respect to its participation in the proceeding that led to Telecom Decision 2019-169 (the proceeding), which was initiated by its application concerning the unlocking of mobile devices and the associated requirements set out in the Wireless Code. In the proceeding, the Commission considered, in particular, whether any additional regulatory measures were required with respect to the unlocking of mobile devices.
2. The record of the proceeding initially closed on 12 February 2018; however, it was subsequently reopened for supplementary representations, including a request for information and associated responses. By letter dated 18 September 2018, PIAC applied for supplementary costs with respect to its participation in this additional phase.
3. The Commission did not receive any interventions in response to the application for costs.
4. 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.
5. Specifically, PIAC submitted that it had brought the question of mobile device unlocking for former customers of wireless service providers (WSPs) and other potential device holders to the Commission's attention, and had provided cogent legal arguments in favour of its position on the issues raised.
6. With respect to the group or class of subscribers that PIAC submitted it represents, PIAC explained that it advocates on behalf of consumer interests by representing a number of individual and organizational members in various regions of the country and that its activities place a particular emphasis on low-income consumers. With

respect to the specific methods by which PIAC submitted that it represents this group or class, PIAC explained that it has conducted extensive research on issues such as the affordability of communications services and that it has directly consulted with consumers on issues related to device unlocking.

7. In its initial costs claim, PIAC requested that the Commission fix its costs at \$2,462.85, consisting entirely of legal fees. PIAC claimed 1.7 hours for senior external counsel at a rate of \$290 per hour and 13.9 hours for junior external counsel at a rate of \$135 per hour.
8. In its supplementary costs claim, PIAC requested that the Commission fix its additional costs at \$1,854.81, also consisting entirely of legal fees. PIAC claimed 0.8 hours for senior external counsel at a rate of \$290 per hour and 11.5 hours for junior external counsel at a rate of \$135 per hour. Accordingly, PIAC requested that the Commission fix its total costs at \$4,317.66.
9. PIAC's claim included the Ontario Harmonized Sales Tax (HST) on fees less the rebate to which PIAC is entitled in connection with the HST. PIAC filed a bill of costs with its application.
10. PIAC submitted that Bell Canada is the appropriate party to be required to pay any costs awarded by the Commission (the costs respondent). PIAC argued that although Bell Canada did not participate in the proceeding, it was principally the actions of that company that led to the filing of the application that initiated the proceeding. In the alternative, PIAC submitted that the Commission should name as costs respondents the WSPs that participated in the proceeding and should allocate costs in proportion to their wireless service revenues.

Commission's analysis and determinations

11. 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.

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. In the present case, PIAC has demonstrated that it meets this requirement by, for instance, consulting with specific individuals regarding device unlocking issues that those individuals have experienced.
13. PIAC has also satisfied the remaining criteria through its participation in the proceeding. In particular, PIAC participated responsibly in part through its judicious use of legal resources, which was commensurate with the scope of the issues being considered.
14. The rates claimed in respect of legal fees are in accordance with the rates established in the *Guidelines for the Assessment of Costs* (the Guidelines), as set out in Telecom Regulatory Policy 2010-963. The Commission finds that the total amount claimed by PIAC was necessarily and reasonably incurred and should be allowed.
15. 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.
16. 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. However, the Commission must not fetter its discretion by considering itself strictly bound by this general practice when adhering to it would not be appropriate.
17. In the present case, PIAC argued that Bell Canada had the most significant interest in the proceeding, which was initiated by PIAC's request for a general interpretation of certain provisions of the Wireless Code.
18. The Commission considers that the issues examined in the proceeding are broad in nature and could significantly affect the interests of all WSPs in the market, as evidenced by the fact that multiple WSPs responded to PIAC's application and all WSPs were instructed to participate in the request for information process.
19. In the circumstances, the Commission does not consider that PIAC has established that it would be appropriate to deviate from the general practice of naming as costs respondents those parties that have a significant interest in the outcome of the proceeding in question and have participated actively in the proceeding. In the present case, that category would include all WSPs.
20. The Commission notes, however, that in allocating costs among costs respondents, it has 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 both the applicant and the costs respondents.
21. In light of the above, and given the relatively small size of the costs award and the large number of potential costs respondents in this case, the Commission considers

that, consistent with section 48 of the Guidelines, it is appropriate to limit the costs respondents to the largest WSPs, namely Bell Mobility Inc. (Bell Mobility), Rogers Communications Canada Inc. (RCCI), and TELUS Communications Inc. (TCI).

22. PIAC requested that the Commission allocate costs on the basis of wireless service revenues. No potential costs respondent commented on this proposal, which would constitute a slightly different approach from the Commission's general practice of allocating the responsibility for payment of costs among costs respondents based on their telecommunications operating revenues (TORs) for all telecommunications services, as an indicator of their relative size and interest in the proceeding.¹
23. The Commission does not consider it necessary to deviate from its general practice in the present case, as PIAC has provided no compelling rationale for its alternative proposal.
24. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated as follows:²

Company	Proportion	Amount
TCI	37.2%	\$1,606.14
RCCI	35.2%	\$1,518.55
Bell Mobility ³	27.6%	\$1,192.97

Directions regarding costs

25. The Commission **approves** the application by PIAC for costs with respect to its participation in the proceeding.
26. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to PIAC at \$4,317.66.
27. The Commission **directs** that the award of costs to PIAC be paid forthwith by TCI, RCCI, and Bell Mobility according to the proportions set out in paragraph 24.

¹ TORs consist of Canadian telecommunications revenues from local and access, long distance, data, private line, Internet, and wireless services.

² In this order, the Commission has used the TORs of the costs respondents based on their most recent audited financial statements.

³ On 1 April 2017, Bell Canada amalgamated with MTS Inc., which is now operating as Bell MTS, a division of Bell Canada. Given that Bell Mobility and Bell MTS are related entities and that Bell Mobility participated in the proceeding on behalf of Bell MTS, Bell Mobility's TORs include those of MTS Inc.

Secretary General

Related documents

- *Wireless Code – Request to clarify the device unlocking rules*, Telecom Decision CRTC 2019-169, 23 May 2019
- *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
- *New procedure for Telecom costs awards*, Telecom Public Notice CRTC 2002-5, 7 November 2002