



Telecom Order CRTC 2022-246

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File numbers: 8662-C182-202107185 and 4754-679

Determination of costs award with respect to the participation of the Public Interest Advocacy Centre in the proceeding initiated by an application to Review and Vary Telecom Regulatory Policy 2021-239

Application

1. By letter dated 18 January 2022, the Public Interest Advocacy Centre (PIAC) applied for costs with respect to its participation in the proceeding initiated by an application to Review and Vary Telecom Regulatory Policy 2021-239 (the proceeding). In the proceeding, the Commission is considering an application filed by the Competitive Network Operators of Canada (CNOC), requesting that the Commission review and vary its regulatory policy concerning the essentiality of fibre in-building wire (IBW).
2. TELUS Communications Inc. (TCI) filed an answer, dated 28 January 2022, in response to PIAC's application. CNOC filed a response to TCI's answer dated 4 February 2022, and TCI replied in a letter dated 9 February 2022.
3. PIAC submitted that it had met the criteria for an award of costs set out in the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (the Rules of Procedure). Citing section 66 of the Rules of Procedure, which sets out the required contents of a costs application, PIAC submitted that 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. In particular, PIAC submitted that it represents the interests of Canadian consumers, with a focus on vulnerable consumers. It provided details of its membership, including its organizational members. In its view, consumers residing in multi-dwelling units would be significantly impacted by the Commission's determinations in the proceeding as potential customers of service provided over IBW. PIAC also submitted that its contribution concerning innovation, investment, and natural justice raised important issues for the Commission's consideration.
5. PIAC requested that the Commission fix its costs at \$1,202.85, consisting of \$602.85 for external legal counsel fees and \$600 for in-house legal counsel fees. PIAC's claim included the Ontario Harmonized Sales Tax (HST) on external legal fees less the rebate to which it is entitled in connection with the HST. PIAC filed a bill of costs with its application.

6. PIAC submitted that telecommunications service providers that participated in the proceeding should be responsible for any costs, in proportion to their telecommunications revenues.

Submissions of other parties

7. In its answer, TCI did not contest PIAC's eligibility for costs or the quantum claimed. However, it argued that CNOC should be made solely responsible for any costs awarded. TCI submitted that this departure from the Commission's usual practice was justified in the circumstances as CNOC initiated the proceeding by filing a review and vary application despite not having participated in the initial proceeding.
8. In its response, CNOC submitted that TCI's proposal represented a marked deviation from the Commission's general practices and should be rejected. The relevant consideration, in its view, was which parties had an interest in the review and vary proceeding rather than who initiated the proceeding. It argued that whether or not it participated in an earlier proceeding is irrelevant to the awarding of costs in this proceeding.
9. CNOC acknowledged that it did not have a right to reply to TCI's answer, but argued that the Commission should exercise its discretion to accept CNOC's response, as CNOC would be prejudiced if it were unable to respond.
10. In reply, TCI argued that CNOC had the opportunity to make submissions regarding costs respondents and allocation of costs by filing an answer to PIAC's application – as TCI did – but CNOC neglected to do so. In its view, CNOC's response was out of process and should not be accepted by the Commission.

Commission's analysis

11. A preliminary issue to be resolved is whether to accept submissions, apart from the application and answer, onto the record. In the Commission's view, it would be appropriate to accept all submissions that were filed by all parties to the costs application.
12. While it is true that any party served with a costs application may file an answer to that application, and that CNOC did not do so, accepting all submissions will provide a fuller record upon which the Commission may base its determinations in the circumstances. Further, this approach permits both CNOC and TCI to respond fully to each other's proposals regarding costs respondents and allocation. There is no evidence that any party would suffer prejudice as a result of accepting these submissions. Accordingly, both CNOC's response and TCI's reply will form part of the record.
13. 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.
14. 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 explaining that it makes representations on behalf of organizational members and by detailing that membership, which includes senior citizens groups and people with disabilities.
15. PIAC has also satisfied the remaining criteria through its participation in the proceeding. Its submissions concerned significant substantive and legal issues, and presented perspectives on certain issues that were not otherwise raised on the record – for instance, its arguments regarding natural justice. These assisted the Commission in developing a better understanding of the matters that were considered.
16. Accordingly, the Commission finds that the applicant meets the criteria for an award of costs under section 68 of the Rules of Procedure.
17. The rates claimed in respect of legal fees are in accordance with the rates established in the *Guidelines for the Assessment of Costs*, 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.
18. 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.
19. 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. In this case, PIAC proposed that participating telecommunications service providers be made costs respondents while TCI has questioned the appropriateness of this approach and proposed that CNOC be solely responsible for costs. The Commission does not consider that a departure from its general approach is warranted in the circumstances.

20. Neither the *Telecommunications Act*, nor the Commission's practices limit who may file a review and vary application. Accordingly, there is no *prima facie* reason to consider it inappropriate for a party that did not participate in a proceeding to file an application to review and vary the Commission decision or policy resulting from that proceeding. Further, it is nothing more than conjecture to suggest that, in this case, CNOC having participated in the initial fibre IBW proceeding would have resulted in it not filing an application to review and vary Telecom Regulatory Policy 2021-239. For these reasons, TCI has not established that CNOC should be the sole costs respondent, contrary to the Commission's general practice.
21. Accordingly, consistent with that practice, the Commission considers that the appropriate costs respondent's to PIAC's application for costs are the parties to the proceeding that had a significant interest in the outcome of the proceeding and participated actively throughout the proceeding. In this case, these parties are: Beanfield Technologies Inc.; Bell Canada; Bragg Communications Incorporated, carrying on business as Eastlink; Cloudwifi Inc.; CNOC; Quebecor Media Inc.; Rogers Communications Canada Inc.; Saskatchewan Telecommunications; TCI; and TekSavvy Solutions Inc.
22. The Commission considers that, also 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) as an indicator of the relative size and interest of the parties involved in the proceeding.¹ However, as set out in Telecom Order 2015-160, the Commission considers \$1,000 to be the minimum amount that a costs respondent should be required to pay, due to the administrative burden that small costs awards impose on both the applicant and costs respondents.
23. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated solely to TCI.²

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 the awarding of costs in this instance is consistent with subparagraph 1(a)(iv) of the 2019 Policy Direction.

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 *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

25. By facilitating the participation of a group that represents consumer interests, this order contributes to enhancing and protecting the rights of consumers in their relationships with telecommunications service providers. Since consumer groups often require financial assistance to effectively participate in Commission proceedings, the Commission is of the view that its practice of awarding costs, as exercised in this instance, enables such groups to provide their perspectives on how consumer interests may be affected by the outcomes of the proceedings. In light of the above, the Commission considers that its determination to award costs to PIAC promotes consumer interests.

Directions regarding costs

26. The Commission **approves** the application by PIAC for costs with respect to its participation in the proceeding.
27. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to PIAC at \$1,202.85.
28. The Commission **directs** that the award of costs to PIAC be paid forthwith by TCI.

Secretary General

Related documents

- *Access to in-building wire in multi-dwelling units*, Telecom Regulatory Policy CRTC 2021-239, 27 July 2021
- *Guidance for costs award applicants regarding representation of a group or a class of subscribers*, Telecom Information Bulletin CRTC 2016-188, 17 May 2016
- *Determination of costs award with respect to the participation of the Ontario Video Relay Service Committee in the proceeding initiated by Telecom Notice of Consultation 2014-188*, Telecom Order CRTC 2015-160, 23 April 2015
- *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