



Telecom Order CRTC 2013-526

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Ottawa, 27 September 2013

Determination of costs award with respect to the participation of the Public Interest Advocacy Centre (PIAC) in the proceeding leading to Telecom Regulatory Policy 2013-271

File numbers: 8665-C12-201212448 and 4754-420

1. By letter dated 22 April 2013, the Public Interest Advocacy Centre (PIAC), on behalf of itself, the Consumers' Association of Canada, and the Council of Senior Citizens Organizations of British Columbia, applied for costs with respect to its participation in the proceeding leading to Telecom Regulatory Policy 2013-271 (the proceeding).
2. On 2 May 2013, TELUS Communications Company (TCC) filed an intervention in response to PIAC's application. PIAC filed a reply on 5 May 2013.

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 \$118,144.87, consisting of \$117,531.61 for legal fees and \$613.26 for disbursements. 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.
5. PIAC submitted that all wireless service providers are the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents). PIAC also submitted that the Canadian Wireless Telecommunications Association (CWTA) is an appropriate costs respondent given that, in the applicant's view, the CWTA played a central and controlling role in the proceeding.

Answer

6. In response to the application, TCC did not object to PIAC's eligibility for costs, but noted that the amount claimed was significantly higher than the other applicants' claimed amounts. TCC questioned why PIAC's costs application included external

counsel rates for some members of its counsel, who were introduced at the hearing as holding positions with PIAC.

7. With respect to naming the CWTA as a costs respondent, TCC noted that the CWTA's membership does not include all the wireless service providers that were made parties to the proceeding, nor do all wireless service providers contribute funding to the CWTA. TCC therefore submitted that making the CWTA a costs respondent could result in an inequitable sharing of costs among the wireless service providers, as compared to assessing costs directly against the providers alone.
8. TCC also submitted that the costs in this proceeding should be allocated on the basis of wireless revenues rather than the usual basis of telecommunications operating revenues (TORs)¹ due to the proceeding's focus on developing a wireless code of conduct.

Reply

9. PIAC submitted in reply that according to the Commission's *Guidelines for the Assessment of Costs* (the Guidelines), as set out in Telecom Regulatory Policy 2010-963, the positions held by legal counsel with public interest organizations do not determine the rates that can be billed for the purpose of costs applications; what does determine those rates is the employment status the counsel report to their law society. PIAC further submitted that, given the complexity of the proceeding and its subject matter, as well as the extent and character of PIAC's interventions, the amount of costs it claimed was entirely appropriate.
10. Finally, PIAC argued that the CWTA's participation in the proceeding was active and significant, including the preparation of a draft wireless code endorsed by several major providers, which makes it an appropriate costs respondent.

Commission's analysis and determinations

11. The Commission finds that PIAC has satisfied the criteria for an award of costs set out in section 68 of the Rules of Procedure. Specifically, the Commission finds that PIAC represented a group or class of subscribers that had an interest in the outcome of the proceeding, it assisted the Commission in developing a better understanding of the matters that were considered through its extensive, well-sourced, and detailed submissions on a broad cross-section of issues related to the national wireless market, and it participated in a responsible way.
12. The Commission notes that on 6 May 2013, TCC withdrew its question on the issue of PIAC counsel's entitlement to external rates, expressing its satisfaction with the explanation provided in PIAC's reply. The Commission considers that the rates claimed in respect of legal fees are in accordance with the rates established in the

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

Guidelines. The Commission finds that the total amount claimed by PIAC 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 disperse 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 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 also notes that it made all wireless service providers parties to this proceeding, and that they all participated actively throughout the proceeding.
15. With regard to the CWTA, the Commission notes that its membership does not include all the wireless service providers made party to the proceeding, nor is it limited to wireless service providers. Accordingly, the Commission considers that naming the CWTA as a costs respondent in addition to naming all the wireless service providers could introduce inequities in the assignment of costs, essentially double-charging some providers while indirectly assessing costs against other entities that do not have a significant interest in the outcome of the proceeding.
16. The Commission therefore finds that the appropriate costs respondents to PIAC's application for costs are Bell Aliant Regional Communications, Limited Partnership, Bell Canada, and Télébec, Limited Partnership (collectively, Bell Canada et al.); Bragg Communications Inc. (operating as EastLink); Data & Audio-Visual Enterprises Wireless Inc. (operating as Mobilicity); Globalive Wireless Management Corp. (Globalive); MTS Inc. (MTS) and Allstream Inc. (collectively, MTS Allstream); Public Mobile Inc. (Public Mobile); Rogers Communications Partnership (RCP); Saskatchewan Telecommunications (SaskTel); TCC; and Videotron G.P. (Videotron).
17. The Commission notes that it generally allocates the responsibility for payment of costs among costs respondents based on their TORs as an indicator of the relative size and interest of the parties involved in the proceeding. For the reasons discussed in Telecom Order 2013-521, also released today, 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:

Bell Canada et al.:	39.6%
TCC:	24.5%
RCP:	23.6%
MTS Allstream:	4.3%
Videotron:	3.5%
SaskTel:	2.6%

EastLink:	0.8%
Globalive:	0.7%
Public Mobile:	0.2%
Mobilicity:	0.2%

18. The Commission notes that Bell Canada filed submissions in the proceeding on behalf of Bell Canada et al. and that MTS Allstream filed joint submissions. 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. and MTS responsible for payment on behalf of MTS Allstream, and leaves it to the members of the companies to determine the appropriate allocation of the costs among themselves.

Directions regarding costs

19. The Commission **approves** the application by PIAC for costs with respect to its participation in the proceeding.
20. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to PIAC at \$118,144.87.
21. The Commission directs that the award of costs to PIAC be paid forthwith by Bell Canada on behalf of Bell Canada et al., by TCC, by RCP, by MTS on behalf of MTS Allstream, by Videotron, by SaskTel, by EastLink, by Globalive, by Public Mobile, and by Mobilicity, according to the proportions set out in paragraph 17.

Secretary General

Related documents

- *Determination of costs award with respect to the participation of the Consumers Council of Canada in the proceeding leading to Telecom Regulatory Policy 2013-271*, Telecom Order CRTC 2013-521, 27 September 2013
- *The Wireless Code*, Telecom Regulatory Policy CRTC 2013-271, 3 June 2013
- *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