



Telecom Order CRTC 2015-265

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and 4754-473*

Determination of costs awards with respect to the participation of the Public Interest Advocacy Centre, the Consumers' Association of Canada, the Council of Senior Citizens' Organizations of British Columbia, and the National Pensioners Federation, in the proceeding initiated by Telecom Notice of Consultation 2014-76

Application

1. By letter dated 4 December 2014, the Public Interest Advocacy Centre (PIAC), the Consumers' Association of Canada, the Council of Senior Citizens' Organizations of British Columbia, and the National Pensioners Federation (collectively, PIAC et al.), applied for costs with respect to their participation in the proceeding initiated by Telecom Notice of Consultation 2014-76 (the proceeding).
2. On 15 December 2014, TELUS Communications Company (TCC) filed an intervention in response to PIAC et al.'s application for costs.
3. PIAC et al. submitted that they had met the criteria for costs awards 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. In particular, PIAC et al. submitted that they are public interest organizations that represent the interests of a significant group of consumers, adding that they assisted the Commission in developing a better understanding of the issues raised in the above-referenced notice by submitting detailed comments and identifying a number of significant concerns relating to the review of wholesale mobile wireless services. PIAC et al. also submitted that during the proceeding they provided a consumer-based perspective distinct from that of the incumbent national mobile wireless service providers.
5. PIAC et al. requested that the Commission fix their costs at \$92,968.75, consisting of \$92,787.25 in external and internal legal fees, and \$181.50 in disbursements. Their claim included the Ontario Harmonized Sales Tax (HST) on fees less the rebate to which they are entitled in connection with the HST. PIAC et al. filed a bill of costs with their application.

6. PIAC et al. submitted that the mobile wireless service providers the Commission regulates are the appropriate costs respondents (costs respondents).

Answer

7. In response to the costs application, TCC submitted that it agrees that PIAC et al. have met the test for a costs award under the Rules of Procedure. TCC's submissions dealt only with the issue of apportionment of costs among costs respondents. While PIAC et al. proposed that costs be apportioned among mobile wireless service providers, TCC submitted that other parties that intervened in the Telecom Notice of Consultation 2014-76 proceeding, advocating for mandated Mobile Virtual Network Operator (MVNO) access, should also be included as costs respondents. These parties are the Canadian Cable Systems Alliance Inc. (CCSA), the Canadian Network Operators Consortium Inc. (CNOC), and Cogeco Cable Inc. (Cogeco). TCC submitted that the CCSA, CNOC, and Cogeco submissions demonstrated a significant interest in the outcome of the proceeding, and that these non-wireless service providers participated actively in the proceeding.

Commission's analysis and determinations

8. 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.
9. PIAC et al. satisfied these criteria through their participation in the proceeding. In particular, PIAC et al.'s submissions, especially those regarding whether there is a lack of adequate competition in the wireless market and its negative effects on wireless consumers, provided an important public interest and consumer perspective, thus assisting the Commission in developing a better understanding of the issues.
10. The rates claimed in respect of consultant and legal fees are in accordance with the rates established in the Commission's *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 et al. was necessarily and reasonably incurred and should be allowed.

11. 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.
12. In light of TCC's submission, the Commission considers that the CCSA, CNOC, and Cogeco participated actively in the proceeding and advocated thoroughly for mandated MVNO access.
13. 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. The Commission considers that the following parties had a significant interest in the outcome of the proceeding and participated actively throughout the proceeding: Bell Mobility Inc. (Bell Mobility); Bragg Communications Incorporated, operating as Eastlink; the CCSA; CNOC; Cogeco; Data & Audio Visual Enterprises Wireless Inc., operating as Mobilicity; Globalive Wireless Management Corp., operating as WIND Mobile; MTS Inc. (MTS); Quebecor Media Inc., on behalf of its affiliate Videotron G.P. (Videotron); Rogers Communications Partnership (RCP); Saskatchewan Telecommunications (SaskTel); TBayTel; and TCC.
14. 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)¹ as an indicator of the relative size and interest of the parties involved in the proceeding.² However, in Telecom Order 2015-160,³ it considered \$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 cost respondents. Accordingly, the Commission finds that, in this case, the appropriate cost respondents are Bell Mobility, the CCSA, CNOC, Cogeco, Eastlink, MTS, RCP, SaskTel, TCC, and Videotron, and that the responsibility for payment of costs should be allocated as follows:

Company	Percentage	Amount
TCC	32.1%	\$29,842.97
RCP	29.9%	\$27,797.65
Bell Mobility	18.8%	\$17,478.12
Videotron	5.1%	\$4,741.41
MTS	4.7%	\$4,369.53
SaskTel	3.3%	\$3,067.97

¹ 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, where available (see footnote 2).

² The TORs of all members of the CCSA and CNOC are not readily available to the Commission.

³ See paragraph 21 of Telecom Order 2015-160.

CCSA ⁴	1.9% ⁵	\$1,766.41
CNOC	1.6% ⁶	\$1,487.50
Cogeco	1.4%	\$1,301.56
Eastlink	1.2%	\$1,115.63

Directions regarding costs

15. The Commission **approves** the application by PIAC et al. for costs with respect to their participation in the proceeding.
16. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to PIAC et al. at \$92,968.75.
17. The Commission **directs** that the award of costs to PIAC et al. be paid forthwith by TCC, RCP, Bell Mobility, Videotron, MTS, SaskTel, the CCSA, CNOC, Cogeco, and Eastlink according to the proportions set out in paragraph 14 above.

Secretary General

Related documents

- *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
- *Review of wholesale mobile wireless services*, Telecom Notice of Consultation CRTC 2014-76, 20 February 2014, as amended by Telecom Notices of Consultation CRTC 2014-76-1, 25 April 2014; and 2014-76-2, 5 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

⁴ While EastLink is a member of the CCSA, its TORs have been excluded from the calculation of CCSA's TORs to avoid double counting because EastLink is included, separately, as a costs respondent in this order.

⁵ See footnote 2. On examining the TORs of those members of the CCSA whose revenues are readily available, the Commission considers it appropriate in these circumstances to find the CCSA responsible for the payment of 1.9% of the total costs awarded.

⁶ See footnote 2. On examining the TORs of those members of CNOC whose revenues are readily available, the Commission considers it appropriate in these circumstances to find CNOC responsible for the payment of 1.6% of the total costs awarded.