



## Telecom Order CRTC 2015-442

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*File numbers: 8663-C12-201401041 and 4754-475*

### **Determination of costs award with respect to the participation of the Public Interest Advocacy Centre in the inquiry initiated by Telecom Notice of Consultation 2014-44**

#### **Application**

1. By letter dated 22 December 2014, the Public Interest Advocacy Centre (PIAC) applied for costs with respect to its participation in the inquiry initiated by Telecom Notice of Consultation 2014-44 into the Canadian marketplace for satellite services used by telecommunications service providers to provide telecommunications services to Canadians (the Inquiry).
2. In response to PIAC's costs application, TELUS Communications Company (TCC) filed an intervention on 6 February 2015, and Telesat Canada (Telesat) filed an intervention on 9 February 2015. PIAC filed a reply on 11 February 2015.
3. PIAC acknowledged that its costs application was filed late. PIAC noted that due to its involvement in several Commission proceedings in the third and fourth quarters of 2014, its regulatory personnel were fully engaged in a range of regulatory filings. PIAC submitted that it did not expect that the delay would cause harm to any party.
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 Inquiry, 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. In particular, PIAC submitted that it represents the interests of a wide range of Canadians and that it provides legal and research services on behalf of consumers concerning important public services. PIAC stated that it aims to promote the availability of choices for Canadian consumers. PIAC also submitted that its comments assisted the Inquiry Officer in developing a better understanding of the issues associated with the supply of telecommunications services in the North and of wholesale telecommunications services. PIAC noted that the record of the Inquiry demonstrates that it identified a number of significant concerns relating to the questions raised in the Inquiry.

6. PIAC requested that the Commission fix its costs at \$11,755.62, consisting entirely of external legal fees. 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.
7. PIAC submitted that Bell Canada [on behalf of Bell Aliant Regional Communications, Limited Partnership (Bell Aliant); Bell Mobility Inc. (Bell Mobility); Northwestel Inc. (Northwestel); and Télébec, Limited Partnership (Télébec)], MTS Inc. and Allstream Inc. (collectively MTS Allstream), the SSi Group of Companies (SSi), TCC, and Telesat are the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents) because, in PIAC's view, these parties had a significant interest in the outcome of the Inquiry and participated actively in the Inquiry.

### **Answer**

8. In response to the application, TCC submitted that although it participated in the Inquiry, the costs respondents should be assessed based on the specific issues raised in the Inquiry and the parties' respective interest in those issues. TCC noted that it is not a satellite service provider and that its use of fixed satellite service (FSS) is insignificant since it provides telecommunications services terrestrially, with very few exceptions. TCC also submitted that its position in the Inquiry was based on the public's long-term interest in the availability of satellite services and not on TCC's interest in FSS rates.
9. TCC stated that therefore, the allocation of costs among costs respondents based on their telecommunications operating revenues (TORs)<sup>1</sup> would not reflect the interest of the parties in the outcome of the Inquiry. TCC proposed that Telesat should be responsible for 50% of the costs allocated because of its role as a major supplier of the services in question. TCC proposed that the remaining 50% of the costs should be allocated among the following carriers that purchase FSS, in proportion to their annual payments for FSS: Bell Aliant; Bell Canada; Bell Mobility; Ice Wireless Inc. / Iristel Inc. (Ice/Iristel); MTS Allstream; Northwestel; O.N. Tel Inc., operating as Ontera (Ontera); Saskatchewan Telecommunications (SaskTel); SSi; TCC; Télébec; and Xplornet Communications Inc. (Xplornet). TCC suggested that alternatively, the remaining 50% of the costs could be split equally among these service providers, but in no event should TCC be allocated more than 5% of the total costs.
10. In response to the application, Telesat argued that the Inquiry was not a proceeding in the normal sense of the term, given that the Inquiry would not lead to a Commission decision or a policy determination. Telesat submitted that the Commission should therefore consider very carefully whether it is appropriate to award costs in the present circumstances. Telesat submitted that in the event that a costs award is appropriate, the costs should be allocated among the following

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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.

carriers based on their TORs: Bell Aliant, Bell Canada, Bell Mobility, Ice/Iristel, MTS Allstream, Northwestel, Ontera, SaskTel, SSi, TCC, Télébec, Telesat, and Xplornet.

## Reply

11. In reply, PIAC submitted that Commission notices of consultation initiate Commission proceedings. PIAC argued that Telesat's submission that the Inquiry was not a proceeding is inconsistent with the common understanding and plain reading of the term "proceeding" and that there is little difference in the manner in which the Inquiry was conducted compared to many other Commission proceedings. PIAC stated that the *Telecommunications Act* (the Act) and the Rules of Procedure do not distinguish between a proceeding and an inquiry. PIAC added that Telesat's assertion that the Commission would not issue a decision following the Inquiry conveys a misleading impression of the significance of the outcome of the Inquiry. Following the Inquiry, the Commission may choose whether to initiate further process, and it is immaterial whether the Inquiry results in a formal Commission decision.
12. PIAC argued that if the Commission were to rule that costs awards are limited to formal Commission proceedings, groups that advocate on behalf of the public interest would be precluded from participating in processes that do not directly lead to a formal decision. PIAC submitted that the Commission has, in the past, awarded costs in proceedings that did not lead to a formal Commission decision.<sup>2</sup>

## Commission's analysis and determinations

13. As a preliminary matter, despite the delay in its filing, it is appropriate to accept and consider PIAC's application for costs in this case because the late filing did not prejudice any party. However, the Commission reminds costs applicants that they are expected to file their applications within the prescribed deadline, failing which they run the risk that their application might not be considered or that the amount claimed might be reduced.
14. In the inquiry initiated by Telecom Notice of Consultation 2012-686, Commission staff, with support from other parties to that inquiry, found that it would be reasonable to treat that inquiry as a proceeding for the purpose of costs awards. The present Inquiry had many attributes of a proceeding in that it was an initiative launched under the terms of the Act, and it served to assist the Commission in the administration of the Act. Consistent with the inquiry initiated by Telecom Notice of Consultation 2012-686, it is reasonable to characterize the present Inquiry as a proceeding for the

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<sup>2</sup> PIAC cited, among others, the following instances where the Commission has awarded costs in proceedings that did not lead to a formal Commission decision: Telecom Order 2014-560; Telecom Notice of Consultation 2013-337; and Commission staff letter entitled *Re: Appointment of an Inquiry Officer to review matters related to 9-1-1, Telecom Notice of Consultation CRTC 2012-686, 17 December 2012 (TNC 2012-686)*, dated 18 January 2013.

purpose of costs awards under section 56 of the Act. Therefore, it is open to parties to apply to the Commission for costs in respect of their participation.

15. 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.
16. PIAC has satisfied these criteria through its participation in the Inquiry. In particular, PIAC represented a group of subscribers that had an interest in the outcome of the Inquiry, namely consumers with an interest in the provision of important public services through satellite transport services. PIAC's submissions regarding the marketplace for satellite services and access to telecommunications services, such as broadband Internet services, by Canadians in Northern communities assisted the Commission in developing a better understanding of the matters that were considered. Furthermore, PIAC's consumer-focused submissions offered the Commission a distinct point of view.
17. The rates claimed in respect of 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 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 actively participated in the proceeding. The following parties had a significant interest in the outcome of the Inquiry and actively participated in the Inquiry: Bell Aliant, Bell Canada, Bell Mobility, Northwestel, and Télébec (collectively, Bell Canada et al.); Ice/Iristel; MTS Allstream; Ontera; SaskTel; SSI; TCC; Telesat; and Xplornet.

20. The Commission generally allocates the responsibility for payment of costs among costs respondents based on their TORs, as reported in their most recent audited financial statements. However, the Commission has occasionally departed from this approach to make the collection of a costs award easier for applicants or to reflect situations in which an allocation based only on TORs would not be fair.<sup>3</sup>
21. Given the focus of the Inquiry, the approach of allocating responsibility for a costs award based only on TORs would not reflect the interests or degree of participation of the parties. The Inquiry was intended to (i) provide the Commission with a better understanding of the key factors influencing the current and future costs and availability of satellite-based transport services, (ii) inform the Commission on the role of satellite transport services in meeting Canadians' telecommunications service requirements, and (iii) examine whether the Commission's current regulatory framework for satellite services remains appropriate. Therefore, FSS providers had a significant interest in the Inquiry. Further, other parties' interests in the matters considered during the Inquiry would be more appropriately and accurately reflected by taking into account both the degree of their use of FSS, as expressed by parties' payments to satellite operators for FSS, and their TORs.
22. Accordingly, it is appropriate for Telesat to be responsible for the payment of 50% of the costs, in recognition of its role as a major supplier of FSS in Canada and thus its significant interest in the Inquiry. Based on the FSS payment information and latest TORs available to the Commission, the remaining 50% of the costs should be allocated among the largest purchasers of FSS in equal amounts.
23. In Telecom Order 2015-160,<sup>4</sup> the Commission 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 costs respondents. Accordingly, the Commission finds that, in this case, the appropriate costs respondents are Bell Canada et al., Telesat, and Xplornet, and that the responsibility for payment of costs should be allocated as follows:

<b>Company</b>	<b>Percentage</b>	<b>Amount</b>
Telesat:	50%	\$5,877.82
Xplornet:	25%	\$2,938.90
Bell Canada et al.:	25%	\$2,938.90

24. 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 leaves it to the members of Bell Canada et al. to determine the appropriate allocation of the costs among themselves.

<sup>3</sup> See paragraph 16 of Telecom Order 2009-447, in which the Commission assigned one party to be responsible for 50% of the costs and allocated the remaining 50% of the costs based on TORs.

<sup>4</sup> See paragraph 21.

## Directions regarding costs

25. The Commission **approves** the application by PIAC for costs with respect to its participation in the Inquiry.
26. Pursuant to subsection 56(1) of the Act, the Commission fixes the costs to be paid to PIAC at \$11,755.62.
27. The Commission **directs** that the award of costs to PIAC be paid forthwith by Bell Canada on behalf of Bell Canada et al.; Telesat; and Xplornet according to the proportions set out in paragraph 23.

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
- *Determination of costs award with respect to the participation of the Public Interest Advocacy Centre in the Telecom Notice of Consultation 2013-337 proceeding*, Telecom Order CRTC 2014-560, 29 October 2014
- *Appointment of an Inquiry Officer to review matters related to transport services provided by satellite*, Telecom Notice of Consultation CRTC 2014-44, 6 February 2014
- *Fact-finding process on the role of payphones in the Canadian communications system*, Telecom Notice of Consultation CRTC 2013-337, 16 July 2013, as amended by Telecom Notice of Consultation CRTC 2013-337-1, 11 September 2013
- *Appointment of an Inquiry Officer to review matters related to 9-1-1*, Telecom Notice of Consultation CRTC 2012-686, 17 December 2012
- *Revision of CRTC costs award practices and procedures*, Telecom Regulatory Policy CRTC 2010-963, 23 December 2010
- *Determination of costs award with respect to the participation of the Coalition of Communication Consumers in the Telecom Public Notice 2008-18 proceeding*, Telecom Order CRTC 2009-447, 24 July 2009
- *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