Canadian Radio-television and Telecommunications Commission
Conseil de la radiodiffusion et des télécommunications canadiennes

Telecom Order CRTC 2016-210

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Determination of costs award with respect to the participation of the Consumers' Association of Canada and the Public Interest Advocacy Centre in the proceeding leading to Telecom Decision 2016-170

Application

1. By letter dated 30 September 2015, the Consumers' Association of Canada (CAC) and the Public Interest Advocacy Centre (PIAC) [collectively, CAC/PIAC] applied for costs with respect to their participation in the proceeding initiated by TELUS Communications Company's (TCC) application for an order directing Shaw Communications Inc. (Shaw) to cease applying liquidated damages when a contract governed by Broadcasting and Telecom Regulatory Policy 2014-576 is cancelled before installation work has begun (the proceeding).

2. On 13 October 2015, TCC filed an intervention in response to CAC/PIAC's application for costs. CAC/PIAC did not file a reply.

3. CAC/PIAC submitted that they 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 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, CAC/PIAC submitted that they assisted the Commission by providing a counterbalance to the arguments of both Shaw and TCC. CAC/PIAC also submitted that their comments raised a number of issues relating to the relief sought by TCC that were not adequately addressed in the application. CAC/PIAC set out the mandates of both of their organizations, and further stated that their submission was developed efficiently by competent and experienced counsel.

5. CAC/PIAC requested that the Commission fix their costs at $3,683.40, consisting of $3,466.40 in fees for external legal counsel and $217.00 in fees for an in-house articling student. CAC/PIAC's claim included the Ontario Harmonized Sales Tax (HST) on fees less the rebate to which CAC/PIAC are entitled in connection with the HST. CAC/PIAC filed a bill of costs with their application.

6. CAC/PIAC claimed 11.5 hours at a rate of $290 per hour for external legal counsel, and 3.1 hours at a rate of $70 per hour for an in-house articling student.

7. CAC/PIAC identified TCC and Shaw, the applicant and the respondent, respectively, in the proceeding, as the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents).

Answer

8. In response to the application for costs, TCC provided no comments regarding the criteria for an award of costs, and left it to the Commission's discretion to determine if CAC/PIAC met the criteria.

9. With respect to the allocation of costs, TCC submitted that the costs should be apportioned equally between itself and Shaw.

Commission's analysis and determinations

10. 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.

11. CAC/PIAC have satisfied these criteria through their participation in the proceeding. In particular, CAC/PIAC represented a group of subscribers that had an interest in the outcome of the proceeding, given the nature of their work as non-profit organizations that aim to educate and advocate on behalf of consumers.

12. CAC/PIAC's submissions assisted the Commission in developing a better understanding of the issues raised in the proceeding. In particular, their submissions regarding the complexities and legal concerns related to Shaw's mechanism for addressing termination charges, as well as the outcome sought by TCC in respect of this issue, identified unique and relevant considerations for the Commission to evaluate while considering TCC's application.

13. Specifically, CAC/PIAC submitted that the application of liquidated damages prior to the commencement of installation work is harmful to consumers and competition. They argued that cancellation charges bearing no relationship with damages actually incurred are punitive

in nature, and that such a practice would be inconsistent with the Policy Direction[1] and certain policy objectives set out in the *Telecommunications Act* (the Act).[2] CAC/PIAC nonetheless noted that TCC's proposed outcome is ambiguous and cautioned that it could result in more complex and opaque contractual provisions concerning the calculation of liquidated damages. CAC/PIAC also questioned the regulatory efficiency and effectiveness of Commission intervention with respect to the calculation of cancellation charges on a case-by-case basis.

14. The rates claimed in respect of legal fees for the external legal counsel and the in-house articling student 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 CAC/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 appropriate costs respondents to CAC/PIAC's costs application are Shaw and TCC.

17. The Commission generally allocates the responsibility for payment of costs among costs respondents based on their telecommunications operating revenues (TORs),[3] as reported in their most recent audited financial statements. However, the Commission has occasionally departed from this approach in cases where individual payments by costs respondents would be too small in size or where the nature of the interests of parties would require such a deviation. In this case, TCC has suggested that costs should be apportioned equally between itself and Shaw. Shaw filed no comments with respect to CAC/PIAC's costs application, nor did it oppose the allocation proposed by TCC. For this reason, and given that both parties had a similar degree of interest in the proceeding, the responsibility for the payment of costs should be allocated as follows:

Company	**Percentage**	**Amount**
Shaw	50%	$1,841.70
TCC	50%	$1,841.70

[1] *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, P.C. 2006-1534, 14 December 2006

[2] The Policy Direction directed the Commission to achieve the policy objectives set out in section 7 of the Act by relying on market forces to the maximum extent feasible and, when relying on regulation, to use measures that are efficient and proportionate to their purpose and that interfere with the operation of competitive market forces to the minimum extent necessary to meet the policy objectives. The policy objectives of particular relevance are paragraphs 7(c), (f), and (h).

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

Directions regarding costs

18. The Commission **approves** the application by CAC/PIAC for costs with respect to their participation in the proceeding.

19. Pursuant to subsection 56(1) of the Act, the Commission fixes the costs to be paid to CAC/PIAC at $3,683.40.

20. The Commission **directs** that the award of costs to CAC/PIAC be paid forthwith by Shaw and TCC according to the proportions set out in paragraph 17 above.

Secretary General

Related documents

- *TELUS Communications Company – Prohibition of 30-day cancellation policies – Application regarding liquidated damages*, Telecom Decision CRTC 2016-170, 5 May 2016

- *Prohibition of 30-day cancellation policies*, Broadcasting and Telecom Regulatory Policy CRTC 2014-576, 6 November 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