



## Telecom Order CRTC 2016-371

PDF version

Ottawa, 9 September 2016

*File numbers: 8620-J106-201601633 and 4754-516*

### **Determination of costs award with respect to the participation of the Public Interest Advocacy Centre in the proceeding initiated by Ice Wireless Inc. and Sugar Mobile Inc. relating to Rogers Communications Canada Inc.'s notice to terminate its roaming agreement with Ice Wireless Inc.**

#### **Application**

1. By letter dated 31 March 2016, the Public Interest Advocacy Centre (PIAC) applied for costs with respect to its participation in the proceeding initiated by Ice Wireless Inc. (Ice Wireless), on behalf of itself and Sugar Mobile Inc. (collectively, Ice Wireless et al.), relating to Rogers Communications Canada Inc.'s (RCCI) notice to terminate its roaming agreement with Ice Wireless (the proceeding).
2. Ice Wireless et al., TELUS Communications Company (TCC), and Vaxination Informatique (Vaxination) filed interventions, dated 5 April 2016, in response to PIAC's application for costs. PIAC did not file a reply.
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. In particular, PIAC submitted that it represented Canadian consumers and users of telecommunications services, as well as the public interest at large, by advocating for equitable access, affordability, and protection for telecommunications users. It also submitted that it had assisted the Commission in developing a better understanding of the matters that were considered by providing an interpretation of the interplay between the *Telecommunications Act* (the Act), Telecom Regulatory Policy 2015-177, the *Radiocommunication Act*, the *Conditions of Licence for Mandatory Roaming and Antenna Tower and Site Sharing and to Prohibit Exclusive Site Arrangements*, as well as the roaming agreement between Ice Wireless and RCCI.
5. PIAC requested that the Commission fix its costs at \$5,618.24, consisting entirely of 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.

6. PIAC submitted that the following entities are the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents) because, in PIAC's view, each of these parties participated actively in the proceeding and advocated thoroughly: Bell Canada; Bragg Communications Incorporated, operating as Eastlink (Eastlink); the Canadian Network Operators Consortium Inc. (CNOOC); Ice Wireless et al.; Quebecor Media Inc., on behalf of Videotron G.P. (Videotron); RCCI; and TCC.

## **Answers**

7. Ice Wireless et al. did not object to PIAC's cost claim, so long as costs were allocated according to telecommunications operating revenues (TORs).<sup>1</sup> Ice Wireless et al. also submitted that the Commission should exclude any potential costs respondents who would be responsible for paying less than \$100 of a total costs award.
8. TCC submitted that Ice Wireless et al. and RCCI should be the sole costs respondents given that the proceeding was entirely the result of a dispute between these two entities. TCC submitted that it would leave it to the Commission to determine the responsibility for costs between the parties.
9. TCC submitted that if the Commission concluded that it would be appropriate for other interveners to be responsible for costs, it should allocate 70% of the costs between Ice Wireless et al. and RCCI, and 30% of the costs divided among the remaining interveners.
10. Vaxination submitted that individuals, small businesses, and associations who participate actively and advocate thoroughly should not fear being named as costs respondents because they participated in the proceeding, and that a party should know ahead of its participation if it risks being named a costs respondent.
11. Vaxination urged the Commission to carefully consider who should be named as costs respondents, questioning whether they should be limited to the two main parties in the dispute, Ice Wireless et al. and RCCI, or if all incumbent local exchange carriers should automatically be made costs respondents since they participated in the proceeding.

## **Commission's analysis and determinations**

12. The criteria for an award of costs are set out in section 68 of the Rules of Procedure, which reads as follows:

---

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

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.
13. PIAC has satisfied these criteria through its participation in the proceeding. In particular, PIAC's submissions on the definitions of a "mobile virtual network operator" and "network" assisted the Commission in developing a better understanding of the matters that were considered.
14. 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.
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 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. While Bell Canada, CNOC, Eastlink, TCC, Vaxination, and Videotron had an interest and participated in the proceeding, RCCI and Ice Wireless et al. had the greater interest in the outcome of the proceeding, which was reflected by their degree of participation. Accordingly, the Commission considers that Ice Wireless et al. and RCCI are the appropriate costs respondents.
17. The Commission generally allocates the responsibility for payment of costs among parties based on their TORs, as an indicator of the relative size and interest of the parties involved in the proceeding. However, the Commission has occasionally departed from this approach in circumstances where it would not fairly reflect the interests or degree of participation of the parties concerned.
18. As submitted by TCC, this was largely a bilateral dispute between Ice Wireless et al. and RCCI. The approach of allocating the responsibility for payment of costs solely based on TORs would not adequately reflect the degree of interest or participation of the parties involved. In the circumstances, it is appropriate to divide the costs evenly between Ice Wireless et al. and RCCI, as the applicant and respondent, respectively, in the proceeding.

19. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated as follows:

Company	Percentage	Amount
Ice Wireless et al.	50%	\$2,809.12
RCCI	50%	\$2,809.12

### Directions regarding costs

20. The Commission **approves** the application by PIAC for costs with respect to its participation in the proceeding.
21. Pursuant to subsection 56(1) of the Act, the Commission fixes the costs to be paid to PIAC at \$5,618.24.
22. The Commission **directs** that the award of costs to PIAC be paid forthwith by Ice Wireless et al. and RCCI according to the proportions set out in paragraph 19.

Secretary General

### Related documents

- *Regulatory framework for wholesale mobile wireless services*, Telecom Regulatory Policy CRTC 2015-177, 5 May 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