



## Telecom Order CRTC 2016-411

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Ottawa, 17 October 2016

*File numbers: 8663-T117-201513325 and 4754-518*

### **Determination of costs award with respect to the participation of the Public Interest Advocacy Centre in the proceeding initiated by TekSavvy Solutions Inc.'s application regarding transitional access to aggregated wholesale high-speed access service**

#### **Application**

1. By letter dated 5 May 2016, the Public Interest Advocacy Centre (PIAC) applied for costs with respect to its participation in the proceeding initiated by TekSavvy Solutions Inc.'s (TekSavvy) application regarding transitional access to aggregated wholesale high-speed access service (the proceeding). In the proceeding, TekSavvy requested relief regarding Rogers Communications Canada Inc.'s (RCCI) removal of coaxial cable from a Toronto neighbourhood and the corresponding deployment of fibre optic facilities.
2. The Commission did not receive any interventions in response to the application for costs.
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 the interests of Canadian consumers and users of telecommunications services, and the public interest at large, by advocating for equitable access, affordability, and protection for telecommunications users. PIAC also submitted that it assisted the Commission in developing a better understanding of the matters that were considered in the proceeding through its concise intervention and comments, which focused on protecting the interests of end-users. Finally, PIAC submitted that it participated in a responsible way through, for example, its judicious use of less-senior counsel.
5. PIAC requested that the Commission fix its costs at \$2,183.99, 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.

6. PIAC submitted that the Canadian Network Operators Consortium Inc., RCCI, Saskatchewan Telecommunications, TekSavvy, and TELUS Communications Company are the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents) because, in the applicant's view, they had a significant interest in the outcome of the proceeding and participated actively in the proceeding.
7. PIAC took no position on how the responsibility for the payment of costs should be divided among the costs respondents.

### **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 has satisfied these criteria through its participation in the proceeding. In particular, PIAC's submissions, especially regarding competition and protecting the interests of end-users, assisted the Commission in developing a better understanding of the matters that were considered. Moreover, PIAC provided a distinct point of view as an organization representing the interests of Canadian telecommunications users, and was the only party representing consumer interests in the proceeding.
10. 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.
11. 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. The Commission considers that because the proceeding was essentially a bilateral dispute between RCCI and TekSavvy, those parties had a significant interest in the outcome of the proceeding, while the interests of the other parties identified by PIAC as proposed costs respondents were less significant. Further, RCCI and TekSavvy participated actively in the proceeding. Accordingly, the Commission finds that

RCCI and TekSavvy are the appropriate costs respondents to PIAC's application for costs.

13. The Commission generally allocates the responsibility for payment of costs among costs respondents based on their telecommunications operating revenues (TORs),<sup>1</sup> 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 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 fairly reflect the interests or degree of participation of the parties concerned.
14. In the circumstances, the Commission considers that RCCI and TekSavvy should each be required to pay 50% of the costs award:

<b>Company</b>	<b>Percentage</b>	<b>Amount</b>
RCCI	50%	\$1,092.00
TekSavvy	50%	\$1,091.99

### **Directions regarding costs**

15. The Commission **approves** the application by PIAC for costs with respect to its participation in the proceeding.
16. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to PIAC at \$2,183.99.
17. The Commission **directs** that the award of costs to PIAC be paid forthwith by RCCI and TekSavvy according to the proportions set out in paragraph 14.

Secretary General

### **Related documents**

- *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

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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. In this order, the Commission has used the TORs of the costs respondents based on their most recent audited financial statements.