



Telecom Order CRTC 2017-425

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Determination of costs award with respect to the participation of the Public Interest Advocacy Centre in the proceeding that led to Telecom Decision 2017-172

Application

1. By letter dated 14 June 2016, the Public Interest Advocacy Centre (PIAC) applied for costs with respect to its participation in the proceeding that led to Telecom Decision 2017-172 (the proceeding). In the proceeding, the Commission considered an application by Bell Canada for forbearance from the regulation of wholesale wireless access service.
2. The Commission did not receive any interventions in response to the application for costs.
3. As in the proceeding that led to Telecom Order 2017-364, there was additional process in this costs proceeding whereby Commission staff requested information from PIAC regarding the status of its articling students. In particular, Commission staff sought comments on whether it was appropriate for PIAC to claim legal fees for these individuals as internal or external resources. PIAC responded to the request, and Bell Canada and TELUS Communications Company (TCC)¹ provided comments.
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 had, and 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.
5. In particular, PIAC submitted that it intervenes in telecommunications proceedings on behalf of Canadian consumers and users of telecommunications services, and in the public interest at large. It submitted that such representation is part of its mandate and that it had an interest in the outcome of the proceeding. PIAC also submitted that it provided a fuller understanding of the matters that were considered in the proceeding through concise and well-researched written comments, a focused and structured

¹ In this proceeding, submissions were received from TCC. However, effective 1 October 2017, TCC's assets were legally transferred to TELUS Communications Inc. and TCC ceased to exist.

argument and advocacy, and the distinct point of view of an organization representing the interests of Canadian telecommunications service users. Further, PIAC noted that it was the only party representing consumer interests in the proceeding. In regard to the responsible participation criterion, PIAC submitted that it filed a focused, concise intervention; complied with all deadlines and directions; and judiciously used the services of less senior counsel and an articling student.

6. PIAC requested that the Commission fix its costs at \$1,949.08, 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.
7. PIAC claimed 3.3 hours for intermediate external counsel at a rate of \$206 per hour (\$706.58 with the HST and the associated rebate), and 17.75 hours for an articling student at the external-counsel rate of \$70 per hour (\$1,242.50 with no HST claimed).
8. PIAC submitted that Bell Canada is the appropriate party to be required to pay any costs awarded by the Commission (the costs respondent).

Commission's analysis and determinations

9. 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.
10. In Telecom Information Bulletin 2016-188, the Commission provided guidance regarding how an applicant may demonstrate that it satisfies the first criterion with respect to its representation of interested subscribers. In the present case, PIAC has demonstrated that it meets this requirement. PIAC identified the group of subscribers it represented, i.e. Canadian consumers and users of telecommunications services.
11. Although PIAC did not explain how it determined that the positions it presented reflected the interests of these consumers, the Commission considers that since consumer issues occupied a relatively limited portion of the proceeding, which occurred only in writing over a relatively short period of time, direct consultation or research would not necessarily have been practical in the circumstances. Therefore, it was reasonable for PIAC to develop its position based on its internal expertise.

12. PIAC has satisfied the remaining criteria through its participation in the proceeding. In particular, PIAC's submissions, especially regarding (i) the size of Bell Canada's proposed relevant geographic market, and (ii) implications for the viability of new entrants and future competition in Canada's wireless market as a whole if the provision of wireless access service were not mandated, as well as PIAC's comments regarding the duplicability component section of the Essentiality Test, assisted the Commission in developing a better understanding of the matters that were considered.
13. In Telecom Order 2017-364, the Commission determined that the articling student was a resource internal to PIAC and that the Coalition² was eligible to claim costs for the student's services based on the internal daily rate. The Commission finds that the same determination is appropriate in the present case, since the record of this proceeding on this issue is the same as that of the proceeding that led to Telecom Order 2017-364.
14. The Commission also finds that there are no exceptional circumstances in this case that would justify a deviation from the normal rate scale for costs applicable under the Commission's *Guidelines for the Assessment of Costs*, as set out in Telecom Regulatory Policy 2010-963 (the Guidelines).
15. PIAC is eligible to claim costs for the articling student using the internal daily rate. The Commission therefore reduces the costs for the articling student from \$1,242.50 to \$646.25, calculated using the daily rate of \$235. The 17.75 hours claimed at the external rate were converted into 2.75 days based on a 7-hour work day, in accordance with the Guidelines.
16. The rates claimed in respect of legal fees for intermediate external counsel are in accordance with the Guidelines. The Commission finds that the total amount claimed by PIAC, as adjusted above, was necessarily and reasonably incurred and should be allowed.
17. Accordingly, the total legal fees claimed are reduced from \$1,949.08 to \$1,352.83.
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 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 in the proceeding: Bell Canada, the Canadian Network Operators Consortium Inc., Rogers Communications Canada Inc., TCC, and WIND Mobile Corp. (now Freedom Mobile Inc.).

² The Coalition consists of the Consumers' Association of Canada, the Council of Senior Citizens' Organizations of British Columbia, the National Pensioners Federation, and PIAC.

20. As set out in Telecom Order 2015-160, the Commission considers \$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.
21. However, given (i) that Bell Canada filed the application initiating the proceeding, in which the company sought forbearance from the regulation of some of its services, (ii) the amount of costs under consideration, and (iii) the Commission's monetary threshold policy discussed in paragraph 20, the Commission considers that it is appropriate to allocate the responsibility for payment of costs to Bell Canada.

Directions regarding costs

22. The Commission **approves, with changes**, the application by PIAC for costs with respect to its participation in the proceeding.
23. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to PIAC at \$1,352.83.
24. The Commission **directs** that the award of costs to PIAC be paid forthwith by Bell Canada.

Secretary General

Related documents

- *Determination of costs award with respect to the participation of the Coalition in the proceeding that led to Telecom Regulatory Policy 2017-200*, Telecom Order CRTC 2017-364, 16 October 2017
- *Bell Canada – Application for forbearance from the regulation of wholesale wireless access service*, Telecom Decision CRTC 2017-172, 26 May 2017
- *Guidance for costs award applicants regarding representation of a group or a class of subscribers*, Telecom Information Bulletin CRTC 2016-188, 17 May 2016
- *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
- *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