



Telecom Order CRTC 2018-116

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Determination of costs award with respect to the participation of the Public Interest Advocacy Centre in the proceeding initiated by Telecom Notice of Consultation 2017-49

Application

1. By letter dated 27 September 2017, the Public Interest Advocacy Centre (PIAC) applied for costs with respect to its participation in the proceeding initiated by Telecom Notice of Consultation 2017-49 (the proceeding). In the proceeding, the Commission examined whether a competitor quality of service regime continues to be required and, if so, how it should be structured, taking into account recent changes in the telecommunications marketplace and the Commission's regulatory measures.
2. TELUS Communications Inc. (TCI) filed an intervention, dated 10 October 2017, in response to PIAC's application.
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 represents Canadian consumers, with a particular focus on low-income consumers.
5. With respect to the class of subscribers that PIAC has submitted it represents, PIAC explained that this class comprises all consumers across Canada. PIAC added that it represents a number of individual and organizational members, which currently are the following: Alberta Council on Aging, Pensioners Concerned, Dying with Dignity Canada, the Federation of Metro Tenants' Associations, the Ontario Society of Senior Citizens' Organizations, PEI Council of People with Disabilities, and Rural Dignity of Canada.
6. With respect to the specific methods by which PIAC has submitted that it represents this class, PIAC explained that it has conducted extensive research related to consumer interest and has recently compiled reports on affordability and consumer choice, and that it regularly reviews information sources about telecommunications

markets. PIAC added that a board of directors drawn from across Canada holds it accountable for its representation of the public interest.

7. PIAC requested that the Commission fix its costs at \$12,881.70, 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.
8. PIAC claimed 4 hours for senior external counsel at a rate of \$290 per hour (\$1,205.70 with the HST and the associated rebate), 8.75 days for junior internal counsel at a rate of \$600 per day (\$5,250 with no HST), and 91.8 hours for an articling student at a rate of \$70 per hour (\$6,426 with no HST).
9. PIAC submitted that at the time the proceeding began, on 23 February 2017, its articling student articulated to Mr. John Lawford in his capacity as external general counsel to PIAC. PIAC referred the Commission to the arguments it had made on this matter in its costs applications that resulted in various Commission orders, including Telecom Order 2017-411, and the Coalition's¹ application that resulted in Telecom Order 2017-364.
10. PIAC noted that its articling student was called to the bar on 23 June 2017 and joined PIAC as internal counsel immediately thereafter. PIAC also noted that its articling student's hours associated with the proceeding prior to 23 June 2017 are billed at the external articling student rate, while his hours associated with the proceeding after that date are billed at the internal counsel rate.
11. PIAC submitted that all telecommunications service providers that participated actively and had a significant interest in the outcome of the proceeding are the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents).
12. PIAC suggested that the responsibility for payment of costs should be divided among the costs respondents based on their telecommunications operating revenues (TORs).²

Answer

13. TCI noted that the status of PIAC's senior external counsel, Mr. Lawford, and his entitlement to claim external counsel rates are under investigation by the Commission and no determination has yet been issued.

¹ In the context of the proceeding, the Coalition consisted of the Consumers' Association of Canada, the Council of Senior Citizens' Organizations of British Columbia, the National Pensioners Federation, and PIAC.

² TORs consist of Canadian telecommunications revenues from local and access, long distance, data, private line, Internet, and wireless services.

Commission's analysis and determinations

14. 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.
15. 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. It made submissions that clearly and specifically identified and described the class of subscribers it claims to represent, which comprises all consumers across Canada, with a particular focus on low-income consumers. In addition, PIAC identified its member organizations and described the specific methods by which it represents the class of subscribers.
16. PIAC has also satisfied the remaining criteria through its participation in the proceeding. Specifically, PIAC's intervention, which paid particular attention to the matters and evidence that would directly affect the interests of consumers, assisted the Commission in developing a better understanding of the matters that were considered. PIAC participated in a responsible manner throughout the proceeding.
17. In respect of Mr. Lawford's fees (which TCI raised as an issue), as noted in Telecom Order 2017-364, the appropriate test for assessing whether a lawyer is an internal or external resource is how the lawyer reports to the law society of which he or she is a member, in accordance with the *Guidelines for the Assessment of Costs* (the Guidelines), as set out in Telecom Regulatory Policy 2010-963. In the present case, the four hours for Mr. Lawford were claimed for the period after 1 January 2017, during which Mr. Lawford reported to the Law Society of Ontario as "In Private Practice."³ Accordingly, the Commission finds that the amount of \$1,205.70 for

³ On 2 November 2017, the Law Society of Upper Canada's governing body voted to change the regulator's name to the Law Society of Ontario. For ease of reference, "Law Society of Ontario" is used in this order.

Mr. Lawford's legal fees, claimed at the external hourly rate, was necessarily and reasonably incurred and should be allowed.

18. With respect to the fees claimed for an articling student, in Telecom Order 2017-364, the Commission found the articling student involved in that proceeding to be a resource internal to PIAC and allowed the Coalition to claim costs for that student based on the internal daily rate. The Commission finds that the same determinations are appropriate in the present case, since the record of this costs proceeding regarding the status of the articling student as an external or internal resource is the same as that of the proceeding that led to Telecom Order 2017-364. Therefore, PIAC is eligible to claim costs for his services at the internal daily rate. The Commission therefore reduces the costs for the articling student from \$6,426 to \$3,113.75, calculated using the daily rate of \$235. The 91.8 hours claimed at the external rate were converted into 13.25 days based on a 7-hour work day, in accordance with the Guidelines.
19. Accordingly, the total legal fees claimed are reduced from \$12,881.70 to \$9,569.45.
20. The rates claimed in respect of legal fees for senior external counsel and junior internal counsel are in accordance with the rates established in the Guidelines. The Commission finds that the total amount claimed by PIAC, as adjusted above, was necessarily and reasonably incurred and should be allowed.
21. 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.
22. 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 (on its own behalf and on behalf of Bell Mobility Inc.; Bell MTS, a division of Bell Canada; DMTS; KMTS; NorthernTel, Limited Partnership; Ontera; and Télébec, Limited Partnership) (collectively, the Bell companies); Bragg Communications Incorporated, carrying on business as Eastlink; Canadian Cable Systems Alliance Inc.; Canadian Network Operators Consortium Inc.; Cogeco Communications Inc.; Independent Telecommunications Providers Association; Northwestel Inc.; Quebecor Media Inc., on behalf of Videotron Ltd.; Rogers Communications Canada Inc. (RCCI); Saskatchewan Telecommunications, Shaw Cablesystems G.P.; Sogetel Mobilité inc.; SSi Micro Ltd.; TekSavvy Solutions Inc.; and TCI.
23. The Commission considers that, consistent with its practice, it is appropriate to allocate the responsibility for payment of costs among costs respondents based on their TORs as an indicator of the relative size and interest of the parties involved in

the proceeding.⁴ However, 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. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated as follows:

| Company | Percentage | Amount |
|----------------|-------------------|---------------|
| Bell Canada | 43.5% | \$4,162.71 |
| TCI | 29.6% | \$2,832.56 |
| RCCI | 26.9% | \$2,574.18 |

24. Consistent with its general approach articulated in Telecom Costs Order 2002-4, the Commission makes Bell Canada responsible for payment on behalf of the Bell companies. The Commission leaves it to the members of the Bell companies to determine the appropriate allocation of the costs among themselves.

Directions regarding costs

25. The Commission **approves, with changes**, the application by PIAC for costs with respect to its participation in the proceeding.
26. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to PIAC at \$9,569.45.
27. The Commission **directs** that the award of costs to PIAC be paid forthwith by Bell Canada on behalf of the Bell companies; TCI; and RCCI according to the proportions set out in paragraph 23 above.

Secretary General

Related documents

- *Review of the competitor quality of service regime*, Telecom Notice of Consultation CRTC 2017-49, 23 February 2017, as amended by Telecom Notice of Consultation CRTC 2017-49-1, 27 June 2017
- *Determination of costs award with respect to the participation of the Public Interest Advocacy Centre in the proceeding that led to Telecom Decision 2017-171*, Telecom Order CRTC 2017-411, 24 November 2017

⁴ In this order, the Commission has used the TORs of the costs respondents based on their most recent audited financial statements.

- *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*
- *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*
- *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*