



Telecom Order CRTC 2018-156

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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 2018-97

Application

1. By letter dated 15 January 2018, the Public Interest Advocacy Centre (PIAC) applied for costs with respect to its participation in the proceeding that led to Telecom Decision 2018-97 (the proceeding). In the proceeding, the Commission, as a result of Order in Council P.C. 2017-0557, reconsidered Telecom Decision 2017-56 regarding final terms and conditions for wholesale mobile wireless roaming service.
2. Bell Mobility Inc. (Bell Mobility) and TELUS Communications Inc. (TCI)¹ filed interventions, dated 25 January 2018, in response to PIAC's application. PIAC filed a reply dated 29 January 2018.
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 the interests of mobile wireless consumers in Canada, with particular concern for vulnerable and low-income consumers. PIAC also submitted that it represents a number of organizations.² With respect to the specific methods by which PIAC has submitted that it represents this group or class, PIAC explained that its positions in the proceeding were developed based on primary research regarding wireless consumer issues and the affordability of communications services for low-income users; secondary research on wireless

¹ In the proceeding, submissions were received from TELUS Communications Company (TCC). However, effective 1 October 2017, TCC's assets were legally transferred to TCI and TCC ceased to exist. For ease of reference, "TCI" is used in this order.

² PIAC's current group members are: Alberta Council on Aging, Pensioners Concerned, Dying with Dignity Canada, the Federation of Metro Tenants' Associations, the Ontario Society of Senior Citizens' Organizations, the PEI Council of People with Disabilities, and Rural Dignity of Canada.

markets, competition, and policies; and PIAC's historical experience and expertise in telecommunications and consumer matters.

5. PIAC further submitted that it assisted the Commission in developing a better understanding of the matters considered in the proceeding by making submissions and filing evidence on behalf of the interests of consumers, including regarding wholesale wireless access policies, wireless competition, and the affordability of wireless service.
6. PIAC requested that the Commission fix its costs at \$14,363.92, consisting entirely of legal fees. PIAC's claim included the Ontario Harmonized Sales Tax (HST) on external 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 77.3 hours for external counsel at the intermediate rate of \$165 per hour (\$13,257.03 with the HST and the associated rebate), 2.2 hours for external counsel at the senior rate of \$290 per hour (\$663.14 with the HST and the associated rebate), 0.25 days for in-house counsel at a rate of \$600 per day (\$150), and 1.25 days for an in-house articling student at a rate of \$235 per day (\$293.75).
8. PIAC submitted that all telecommunications service providers that participated actively in 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).
9. PIAC suggested that the responsibility for payment of costs should be divided among the costs respondents based on their telecommunications operating revenues (TORs),³ as reported in their most recent audited financial statements.
10. In response to a request for information to potential costs respondents seeking comment on how any costs awarded in this case should be allocated, Bell Mobility; Bragg Communications Incorporated, carrying on business as Eastlink (Eastlink); the Canadian Network Operators Consortium Inc. (CNO); Ice Wireless Inc. (Ice Wireless); Quebecor Media Inc., on behalf of Videotron Ltd. (Videotron);⁴ and TCI provided additional comments.

Answer

11. Bell Mobility noted that the time claimed by PIAC for external counsel at the intermediate rate was claimed in respect of a lawyer whose time has historically been claimed by PIAC at the in-house rate. Bell Mobility argued that the Commission

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

⁴ In the proceeding, submissions were received from Videotron G.P. However, on 29 December 2017, all of Videotron G.P.'s assets and operations were transferred to Videotron Ltd., and Videotron G.P. was subsequently dissolved. For ease of reference, "Videotron Ltd." is used in this order.

should require evidence that the lawyer in question was in fact in private practice during the relevant period of time.

12. TCI asked the Commission to review PIAC's request to determine whether PIAC has met all the costs criteria set out in section 68 of the Rules of Procedure. TCI submitted that if the Commission determines that PIAC is entitled to an award of costs, it supported PIAC's position that all telecommunications service providers that participated actively in and had a significant interest in the outcome of the proceeding are the appropriate costs respondents.
13. However, TCI argued that costs should not be allocated among costs respondents based on their TORs. In TCI's view, since the entirety of the proceeding was a review of the Commission's mandated wireless roaming policy and related exclusively to wireless issues, costs should be allocated based on wireless revenues. TCI also argued that it would be unfair for subscribers of non-wireless services to bear the cost of consumer advocacy in a proceeding dealing exclusively with wireless issues.
14. Videotron agreed with TCI's proposal. Videotron argued that it would be unfair under the circumstances of this case to allocate costs on the basis of TORs. Doing so would require those companies that report wireless and wireline revenues in respect of the same corporate entity to pay a greater portion of costs than those that report wireless and wireline revenues in respect of separate corporations within their corporate structure.
15. With respect to TCI's proposal, Bell Mobility argued that there was no reason to deviate from the Commission's general practice of allocating costs on the basis of TORs. It submitted that potential costs respondents are free to structure their corporate affairs as they see fit. Bell Mobility also noted that certain telecommunications service providers who had a significant interest in the outcome of the proceeding and actively participated do not report wireless revenues; accordingly, adopting TCI's proposal would inappropriately exclude such companies from having to pay any costs.
16. CNOC also opposed TCI's proposal. CNOC argued that unlike the costs orders associated with the proceeding initiated by Telecom Notice of Consultation 2016-293,⁵ where the Commission deviated from its general practice of allocating costs on the basis of TORs and allocated costs based on wireless revenue market share, the present proceeding dealt with the broader question of whether Wi-Fi networks could constitute "home networks" for the purpose of wholesale roaming. In CNOC's view, the proceeding initiated by Telecom Notice of Consultation 2016-293 dealt exclusively with wireless services, whereas in the present proceeding, there was no clear delineation between wireless and wireline services. Therefore, CNOC

⁵ The Telecom Notice of Consultation 2016-293 proceeding culminated with the issuance of Telecom Regulatory Policy 2017-200 (Review of the Wireless Code).

argued that it would be appropriate for the Commission to allocate costs based on TORs.

17. Eastlink submitted that the present proceeding looked at whether non-wireless service providers should have mandated access to mobile wireless networks and, therefore, impacted a broader range of telecommunications service providers than just existing wireless service providers. Accordingly, in Eastlink's view, the Commission should allocate costs based on TORs.
18. Ice Wireless submitted that the proceeding examined the use of Wi-Fi in conjunction with wireless services and that Wi-Fi service is typically an extension of Internet service provided by wireline technology. As a result, Ice Wireless argued that the proceeding did not deal exclusively with the provision of wireless services and, therefore, costs should be awarded based on TORs.

Reply

19. In response to Bell Mobility, PIAC noted that the Law Society of Ontario does not provide a point-in-time tool to query a lawyer's status as of a certain past date. However, PIAC submitted that the counsel in respect of whom they claimed at the intermediate rate was in private practice during the proceeding and filed, in confidence, a LAWPRO⁶ insurance document as evidence that she changed her status to private practice in 2017.

Commission's analysis and determinations

20. 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.

21. 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

⁶ LAWPRO is a Canadian-owned insurance company that provides professional liability insurance to lawyers in Ontario.

demonstrated that it meets this requirement. In the proceeding, PIAC represented the interests of mobile wireless consumers in Canada, who have an interest in telecommunications policy and regulation concerning market entry and, accordingly, an interest in the outcome of the proceeding. PIAC developed its positions through its research regarding wireless consumer issues and affordability, as well as relying on its experience and expertise in telecommunications and consumer matters.

22. PIAC has also satisfied the remaining criteria through its participation in the proceeding. In particular, PIAC's comments in the proceeding focused on the issues that would directly affect the interest of consumers, and its submissions regarding wholesale wireless access policies, wireless competition, and the affordability of wireless service assisted the Commission in developing a better understanding of the matters that were considered.
23. With respect to the time claimed by PIAC for its intermediate counsel, the Commission generally relies on the status of counsel as reported to their respective law society to determine whether they are external or internal counsel for the purposes of costs claims. In this case, the status of PIAC's counsel in question, at the time PIAC's costs application was filed, appears to be employed in-house with the federal government. However, this is of limited utility in determining her status during the proceeding.
24. In order to demonstrate that its intermediate counsel self-reported as being in private practice during the relevant time period, PIAC submitted to the Commission, in confidence, a LAWPRO insurance document. This document indicates that PIAC's intermediate counsel was insured as a private practice lawyer during the period of time relevant to the costs claim and is evidence of her change in status to external counsel in 2017.
25. In this case, the Commission considers that since the Law Society of Ontario does not provide a point-in-time tool to query a lawyer's status, the LAWPRO insurance document is reliable evidence of how the lawyer in question self-reported to her law society during the relevant period. In the circumstances, this evidence supports PIAC's claim at the external counsel rate. Accordingly, the Commission considers that PIAC is eligible to claim costs in respect of this lawyer at the external rate.
26. The rates claimed in respect of legal fees are in accordance with the rates established in the *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.
27. 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.
28. 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 Mobility; Canadian Cable Systems Alliance Inc.; CNOC; Cogeco Communications Inc.; Déry Télécom inc.; Distributel Communications Limited; Eastlink; Execulink Telecom Inc.; Ice Wireless; Quantum Republic Inc.; Rogers Communications Canada Inc. (RCCI); Saskatchewan Telecommunications; Shaw Communications Inc.; SSi Micro Ltd.; TCI; TNW Wireless Inc.; Videotron; and Xplornet Communications Inc.

29. The Commission's general practice is to allocate the responsibility for payment of costs among costs respondents based on their TORs. In general, the Commission considers that TORs are indicators of the relative size and interest of the parties involved in the proceeding.
30. However, TCI and Videotron argued that it would be inappropriate, in the circumstances, to allocate costs on the basis of revenues derived from the provision of all telecommunications services. Rather, they advocated for costs to be allocated on the basis of wireless revenues. Bell Mobility, CNOC, Eastlink, and Ice Wireless opposed TCI's proposal and argued that TORs remain the appropriate basis for allocation in this case.
31. With respect to Videotron's argument that certain parties may be disadvantaged in this case as a result of the Commission's costs award process due to their corporate structure, the Commission does not generally involve itself in the corporate organization of telecommunications service providers. Parties to Commission proceedings who may be required to pay costs are generally free to structure their businesses in any manner they wish.
32. Further, although the proceeding examined the Commission's wireless roaming policy, the issues in the proceeding were not restricted exclusively to matters related to wireless services in the same manner as Telecom Notice of Consultation 2016-293⁷ such that an approach to allocation relying exclusively on wireless revenue would be appropriate.
33. In this case, the proceeding examined, among other things, how the use of a combination of Wi-Fi and cellular networks to offer wireless services would interact with the Commission's wholesale roaming policies. Wi-Fi networks are commonly a private extension of a telecommunication service provider's wireline technology involving a telecommunications service provider's access network or the access network of an underlying telephone or cable company.
34. Given the above, the Commission is of the view that allocating costs based on wireless revenues would not appropriately reflect the nature of the proceeding.

⁷ In the costs awards emanating from the Telecom Notice of Consultation 2016-293 proceeding, the Commission allocated costs based on wireless revenue market share (see Telecom Orders 2017-362, 2017-363, 2017-364, 2017-378, 2017-379, and 2017-380).

Therefore, the Commission considers that its general practice of allocating costs based on TORs is the most suitable indicator on which to allocate costs in the circumstances.⁸

35. As set out in Telecom Order 2015-160, the Commission also 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.
36. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated as follows:

Company	Percentage	Amount
TCI	38.3%	\$5,501.38
RCCI	36.2%	\$5,199.74
Bell Mobility	25.5%	\$3,662.80

Directions regarding costs

37. The Commission **approves** the application by PIAC for costs with respect to its participation in the proceeding.
38. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to PIAC at \$14,363.92.
39. The Commission **directs** that the award of costs to PIAC be paid forthwith by TCI, RCCI, and Bell Mobility according to the proportions set out in paragraph 36 above.

Secretary General

Related documents

- *Reconsideration of Telecom Decision 2017-56 regarding final terms and conditions for wholesale mobile wireless roaming service*, Telecom Decision CRTC 2018-97, 22 March 2018
- *Determination of costs award with respect to the participation of the Deaf Wireless Canada Consultative Committee in the proceeding that led to Telecom Regulatory Policy 2017-200*, Telecom Order CRTC 2017-380, 25 October 2017

⁸ 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 Media Access Canada in the proceeding that led to Telecom Regulatory Policy 2017-200, Telecom Order CRTC 2017-379, 25 October 2017*
- *Determination of costs award with respect to the participation of the Consumers Council of Canada in the proceeding that led to Telecom Regulatory Policy 2017-200, Telecom Order CRTC 2017-378, 25 October 2017*
- *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*
- *Determination of costs award with respect to the participation of l'Union des consommateurs in the proceeding that led to Telecom Regulatory Policy 2017-200, Telecom Order CRTC 2017-363, 16 October 2017*
- *Determination of costs award with respect to the participation of the Forum for Research and Policy in Communications in the proceeding that led to Telecom Regulatory Policy 2017-200, Telecom Order CRTC 2017-362, 16 October 2017*
- *Review of the Wireless Code, Telecom Regulatory Policy CRTC 2017-200, 15 June 2017*
- *Wholesale mobile wireless roaming service tariffs – Final terms and conditions, Telecom Decision CRTC 2017-56, 1 March 2017*
- *Review of the Wireless Code, Telecom Notice of Consultation CRTC 2016-293, 28 July 2016; as amended by Telecom Notices of Consultation CRTC 2016-293-1, 23 September 2016; 2016-293-2, 26 October 2016; 2016-293-3, 5 January 2017; 2016-293-4, 24 January 2017; and 2016-293-5, 17 February 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*