



Telecom Order CRTC 2018-350

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Determination of costs award with respect to the participation of the National Pensioners Federation and the Public Interest Advocacy Centre in the Telecom Notice of Consultation 2017-112 proceeding

Application

1. By letter dated 2 February 2018, the National Pensioners Federation (NPF) and the Public Interest Advocacy Centre (PIAC) [collectively, NPF-PIAC] applied for costs with respect to their participation in the proceeding initiated by Telecom Notice of Consultation 2017-112 (the proceeding). In the proceeding, the Commission examined matters related to the establishment of the broadband funding regime, including its governance, operating, and accountability frameworks, as well as eligibility and assessment criteria for proposed projects.
2. TELUS Communications Inc. (TCI)¹ filed an intervention, dated 14 February 2018, in response to NPF-PIAC's application. NPF-PIAC and Bell Canada filed replies dated 23 and 26 February 2018, respectively.
3. NPF-PIAC submitted that they 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 they represented a group or class of subscribers that had an interest in the outcome of the proceeding, they had assisted the Commission in developing a better understanding of the matters that were considered, and they had participated in a responsible way.
4. NPF-PIAC submitted that they represent the interests of consumers across Canada, particularly vulnerable and low-income consumers, including seniors.
5. With respect to the group or class of subscribers that NPF-PIAC have submitted they represent, NPF-PIAC explained that NPF is an organization made up of 350 groups and individuals across Canada, with a collective membership of one million seniors, devoted entirely to the welfare and best interests of aging Canadians. They added that PIAC represents a number of individual and organizational members, which currently

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.

are the following: the 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.

6. With respect to the specific methods by which NPF-PIAC have submitted that they represent the group or class of subscribers, NPF-PIAC explained that their positions in the proceeding were based on those developed over the course of the proceeding that led to Telecom Regulatory Policy 2016-496. In that proceeding, PIAC commissioned two representative surveys and compiled testimonials from low-income members of the Association of Community Organizations for Reform Now Canada, and consulted with each member organization of the Affordable Access Coalition. NPF-PIAC added that in order to understand how to best advance consumers' interests, they retained a leading expert, surveyed programs available internationally, and reviewed the applicable literature. NPF-PIAC also submitted that they relied on PIAC's experience and expertise in telecommunications consumer matters as well as NPF-PIAC's professional expertise in consumer interests.
7. NPF-PIAC requested that the Commission fix their costs at \$43,132.12, consisting of \$42,650.17 for legal fees and \$481.95 for disbursements. NPF-PIAC's claim included the Ontario Harmonized Sales Tax (HST) on fees less the rebate to which NPF-PIAC are entitled in connection with the HST. NPF-PIAC filed a bill of costs with their application.
8. NPF-PIAC claimed 18.1 hours for senior external counsel at a rate of \$290 per hour (\$5,455.81 with the HST and the associated rebate), 57.7 hours for another external counsel at a rate of \$165 per hour (\$9,895.61 with the HST and the associated rebate), 36 days for in-house junior counsel at a rate of \$600 per day (\$21,600), 9 days for an in-house articling student at a rate of \$235 per day (\$2,115), and 15.25 days for another articling student at a rate of \$235 per day (\$3,583.75).
9. NPF-PIAC submitted that all the 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).

Answer

10. TCI submitted that the costs claimed by NPF-PIAC in relation to their collaboration with Bell Canada to develop joint statements of principles, meeting with Bell Canada representatives, and drafting and reviewing related submissions regarding a reverse auction model should be borne exclusively by Bell Canada. TCI argued that Bell Canada was the only industry beneficiary of the collaboration and that, accordingly, Bell Canada should be responsible for the costs associated with the joint effort.
11. TCI argued that, in the alternative, NPF-PIAC's costs award should be reduced given its collaboration with Bell Canada. TCI referred to paragraph 17 of the *Guidelines for*

the Assessment of Costs (the Guidelines), as set out in Telecom Regulatory Policy 2010-963, which provides the following:

17. When an applicant has coordinated with a commercial entity or industry group in making submissions before the Commission, the applicant shall declare the extent to which coordination of submissions was made, and allowable costs may be reduced accordingly.
12. TCI suggested that the Commission inquire as to whether any of NPF-PIAC's costs in relation to collaborating with partners include the costs of its collaboration with Bell Canada.

Reply

13. NPF-PIAC requested that the Commission award full costs and submitted that their collaboration with Bell Canada regarding, among other things, the reverse auction model
 - (i) was intended exclusively to advance NPF-PIAC's view of the public interest, not Bell Canada's view;
 - (ii) reduced NPF-PIAC's costs by avoiding duplication of effort and saving time, particularly with respect to technical requests for information issued by the Commission;
 - (iii) helped give more prominence to important issues such as affordability for low-income Canadians and subsidy effectiveness, which might otherwise have been overlooked;
 - (iv) benefited the record of the proceeding by producing a single statement of shared principles to guide the Commission's design of the broadband fund;
 - (v) should not be deterred, since clear statements of shared principles make it easier for the Commission and other parties to understand what is proposed and to respond to those proposals, the result being in the public interest; and
 - (vi) was conducted in such a closely coordinated manner that it is impossible to parse exactly which costs NPF-PIAC incurred when collaborating with Bell Canada.
14. Bell Canada submitted that TCI's arguments should be dismissed.
15. First, Bell Canada submitted that the Commission should apply its standard costs allocation process to NPF-PIAC's claim.
16. According to Bell Canada, the joint efforts with NPF-PIAC were made to (i) simplify the record and allow for an easier comparison of the positions that were being independently developed by Bell Canada and NPF-PIAC, and (ii) articulate areas of broad consensus. The company submitted that the collaboration was intended to

benefit all interveners by reorganizing the record of the proceeding and enabling interveners to make more meaningful comments and ultimately provide the Commission with a richer record on which to base its determinations. Bell Canada argued that since this type of collaboration furthers the public interest, it ought to be encouraged. Bell Canada also submitted that its individual position, as well as those of NPF-PIAC, existed on the record regardless of whether it and NPF-PIAC undertook to articulate the areas of consensus.

17. Second, Bell Canada submitted that NPF-PIAC's claim should not be reduced because they filed a joint statement with the company. Bell Canada indicated that paragraph 17 of the Guidelines states only that the Commission "may" reduce costs in cases where there is coordination between an applicant and a commercial entity. For Bell Canada, it is not appropriate to reduce costs in the present case, for the reasons stated above.

Commission's analysis and determinations

18. 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.

19. 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, NPF-PIAC have demonstrated that they meet this requirement. They clearly identified and described the group or class of subscribers they purported to represent. NPF-PIAC also explained the specific methods by which they represented that group or class of subscribers in the proceeding, such as relying on positions developed over the course of the proceeding that led to Telecom Regulatory Policy 2016-496, PIAC's experience and expertise in telecommunications consumer matters, and NPF-PIAC's professional expertise in consumer interests.

20. NPF-PIAC have also satisfied the remaining criteria through their participation in the proceeding. In particular, NPF-PIAC's submissions assisted the Commission in

developing a better understanding of the matters that were considered because they were focused, structured, offered the only public-interest intervention supporting a reverse auction model, and provided the distinct point of view of low-income telecommunications consumers. NPF-PIAC also participated in a responsible way throughout the proceeding.

21. With respect to whether the Commission should consider Bell Canada's reply, section 27 of the Rules of Procedure provides that the applicant may file a reply to an answer – not an intervener. In this case, only NPF-PIAC was entitled to file a reply to TCI's answer.
22. However, section 7 of the Rules of Procedure provides that if the Commission is of the opinion that if considerations of public interest or fairness permit, it may dispense with or vary the Rules. In the present case, the Commission considers that Bell Canada's reply addressed considerations of public interest and, since TCI's answer adversely affects the interests of Bell Canada, fairness permits accepting Bell Canada's reply. Therefore, the Commission has considered Bell Canada's reply.
23. With respect to whether NPF-PIAC's costs in relation to their collaboration with Bell Canada should be borne exclusively by Bell Canada, the Commission has generally determined that (i) 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, and (ii) it is appropriate to allocate the responsibility for payment for costs according to each costs respondent's telecommunications operating revenues (TORs).²
24. The public record of the proceeding shows that throughout the proceeding, Bell Canada and NPF-PIAC maintained autonomous views and filed submissions together when their views happened to align. Moreover, Bell Canada and NPF-PIAC's joint efforts helped other parties and the Commission to attain a clearer perspective of their positions on a complex issue, namely the reverse auction model, and saved NPF-PIAC days of work.
25. Therefore, the Commission determines that, in the present case, there are no exceptional circumstances to warrant a departure from the general practice in determining the appropriate costs respondents and allocating the responsibility for payment of costs according to each costs respondent's TORs.
26. With respect to whether the Commission should reduce NPF-PIAC's costs award given its collaboration with Bell Canada, paragraph 17 of the Guidelines provides that the Commission has the discretion to reduce a costs award when an applicant coordinated with a commercial entity in making submissions before the Commission, and that the applicant must declare the extent to which coordination of submissions occurred.

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

27. The purpose of paragraph 17 of the Guidelines, as stated in paragraph 27 of Telecom Regulatory Policy 2010-963, is to deter commercial entities or industry groups from advocating their own interests through a costs applicant and having a costs respondent fund the participation of a competitor who has made submissions jointly with the costs applicant.
28. In this case, the intention behind Bell Canada and NPF-PIAC's collaboration and joint submissions was to help other parties and the Commission attain a clearer perspective of their positions on a complex issue and avoid duplication of tasks. Further, the public record shows that, although NPF-PIAC shared some views with Bell Canada, they also disagreed on other points. Their joint submission only expressed shared views that Bell Canada and NPF-PIAC held independently.
29. Given all of the above, the Commission exercises its discretion not to reduce NPF-PIAC's costs award.
30. The rates claimed in respect of legal fees and disbursements are in accordance with the rates established in the Guidelines. The Commission finds that the total amount claimed by NPF-PIAC was necessarily and reasonably incurred and should be allowed.
31. 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.
32. As noted above, 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 all the telecommunications service providers that participated in the proceeding had a significant interest in the outcome of the proceeding and participated actively in the proceeding.
33. 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.³ 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.
34. Accordingly, the Commission finds that the parties responsible for payment of costs are Bell Canada, on its own behalf and on behalf of Bell Mobility Inc., NorthernTel, Limited Partnership, Northwestel Inc., and Télébec, Limited Partnership (collectively, the Bell companies); Quebecor Media Inc., on behalf of Videotron Ltd. (Videotron); Rogers Communications Canada Inc. (RCCI); Saskatchewan

³ In this order, the Commission has used the TORs of the costs respondents based on their most recent audited financial statements.

Telecommunications (SaskTel); Shaw Cablesystems G.P. (Shaw); and TCI. The Commission finds that the responsibility for payment of costs should be allocated as follows:

Company	Percentage	Amount
Bell companies ⁴	39.4%	\$16,994.06
TCI	25.6%	\$11,041.82
RCCI	24.2%	\$10,437.97
Videotron	4.9%	\$2,113.48
Shaw	3.4%	\$1,466.49
SaskTel	2.5%	\$1,078.30

35. 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

36. The Commission **approves** the application by NPF-PIAC for costs with respect to their participation in the proceeding.
37. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to NPF-PIAC at \$43,132.12.
38. The Commission **directs** that the award of costs to NPF-PIAC be paid forthwith by Bell Canada, on behalf of the Bell companies; TCI; RCCI; Videotron; Shaw; and SaskTel according to the proportions set out in paragraph 34 above.

Secretary General

Related documents

- *Development of the Commission's broadband funding regime*, Telecom Notice of Consultation CRTC 2017-112, 25 April 2017; as amended by Telecom Notice of Consultation CRTC 2017-112-1, 24 July 2017
- *Modern telecommunications services – The path forward for Canada's digital economy*, Telecom Regulatory Policy CRTC 2016-496, 21 December 2016

⁴ Bell Canada's TORs include those of MTS Inc. On 1 April 2017, Bell Canada amalgamated with MTS Inc., which is now operating as Bell MTS, a division of Bell Canada.

- *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