



Telecom Order CRTC 2018-43

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Determination of costs award with respect to the participation of the National Pensioners Federation, the Council of Senior Citizens' Organizations of British Columbia, and the Public Interest Advocacy Centre in the proceeding that led to Telecom Regulatory Policy 2017-182

Application

1. By letter dated 23 February 2017, the National Pensioners Federation, the Council of Senior Citizens' Organizations of British Columbia, and the Public Interest Advocacy Centre (NPF-COSCO-PIAC) applied for costs with respect to their participation in the proceeding that led to Telecom Regulatory Policy 2017-182 (the proceeding). In the proceeding, the Commission set out determinations on the implementation and provision of new, enhanced, and innovative 9-1-1 services and networks in Canada with Internet Protocol (IP)-based capabilities, referred to as next-generation 9-1-1.
2. TELUS Communications Inc. (TCI)¹ filed an intervention, dated 24 February 2017, in response to NPF-COSCO-PIAC's application. NPF-COSCO-PIAC did not file a reply.
3. NPF-COSCO-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. In particular, NPF-COSCO-PIAC submitted that they represent the interests of Canadian consumers, including senior Canadians, and the public interest at large. They indicated that they advocate for public interest goals, such as public safety, transparency, and the accountability of telecommunications service providers. NPF-COSCO-PIAC also submitted that they assisted the Commission in developing a better understanding of the matters that were considered by providing

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.

well-researched arguments on consumer interest issues, such as the administration, reliability, and funding of 9-1-1 services and networks, and associated privacy issues.

5. NPF-COSCO-PIAC requested that the Commission fix their costs at \$18,193.53, consisting of \$17,074.05 for legal fees and \$1,119.48 for disbursements. NPF-COSCO-PIAC's claim included the Ontario Harmonized Sales Tax (HST) on fees less the rebate to which NPF-COSCO-PIAC are entitled in connection with the HST. NPF-COSCO-PIAC filed a bill of costs with their application.
6. Specifically, NPF-COSCO-PIAC's fees claim included the following:
 - \$2,652.55 for Mr. John Lawford, claimed at the senior external legal counsel rate (8.8 hours at \$290 per hour);
 - \$12,150.00 for Ms. Alysia Lau, claimed at the internal legal counsel rate (20.25 working days at \$600 per day);
 - \$1,309.00 for Mr. Ben Segel-Brown, claimed at the external articling student rate (18.7 hours at \$70 per hour); and
 - \$962.50 for Ms. Stefanija Savic, claimed at the internal legal assistant rate (5.5 working days at \$175 per day).
7. NPF-COSCO-PIAC submitted that all the telecommunications service providers that participated in the proceeding are the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents).
8. TCI noted that it does not oppose NPF-COSCO-PIAC's costs application, but asked that the Commission determine that NPF-COSCO-PIAC have met the criteria for an award of costs set out in section 68 of the Rules of Procedure and in the *Guidelines for the Assessment of Costs* (the Guidelines), as set out in Telecom Regulatory Policy 2010-963. TCI also agreed with NPF-COSCO-PIAC's submission regarding the appropriate costs respondents.
9. 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 legal counsel, Mr. John Lawford, and its articling students. In particular, comments were sought 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 TCI provided comments.

Commission's analysis and determinations

10. 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.
11. NPF-COSCO-PIAC have demonstrated that they represented Canadian consumers, including senior Canadians, to whom the issues raised in this proceeding were of substantial interest. Accordingly, in the present case, the Commission finds that NPF-COSCO-PIAC have met the first criterion related to representation.
 12. However, the Commission reminds NPF-COSCO-PIAC that, as set out in Telecom Information Bulletin 2016-188, a costs applicant should make clear how it determines that the positions it put forward in a proceeding reflect the interests of a group or class of subscribers. In the present case, NPF-COSCO-PIAC did not elaborate on the means of their representation along the lines set out in Telecom Information Bulletin 2016-188, and the Commission may insist upon the provision of additional information in this regard in the future.
 13. NPF-COSCO-PIAC have satisfied the remaining criteria through their participation in the proceeding. Specifically, NPF-COSCO-PIAC made well-researched and detailed submissions on a number of topics. Their submissions, especially regarding the funding and administration of next-generation 9-1-1 networks, assisted the Commission in developing a better understanding of the matters that were considered.
 14. 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. However, the Commission may depart from the Guidelines and award costs at a different rate than what the lawyer is otherwise entitled to in cases where the applicant demonstrates that exceptional circumstances exist to warrant the departure.
 15. In Telecom Order 2017-364, the Commission found that no exceptional circumstances existed. Consistent with Mr. Lawford's status as reported to the Law Society of Upper Canada, the Commission allowed the Coalition² to calculate Mr. Lawford's legal fees using the external hourly rate for costs claimed for the period after 1 January 2017 but required it to use the internal daily rate for costs claimed for the period prior to that date. The Commission also found the articling student to be a resource internal to PIAC and allowed the Coalition to claim costs for that student based on the internal daily rate.

² The Coalition consists of the Consumers' Association of Canada and NPF-COSCO-PIAC.

16. The Commission finds that the same determinations are appropriate in the present case, since the record of this costs proceeding regarding the status of Mr. Lawford and the articling student as external or internal resources is the same as that of the proceeding that led to Telecom Order 2017-364. 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 Guidelines.
17. NPF-COSCO-PIAC claimed a total of 8.8 hours for Mr. Lawford, of which 2 hours were claimed for the period prior to 1 January 2017 and 6.8 hours were claimed for the period after that date. For the 2 hours claimed for the period prior to 1 January 2017, NPF-COSCO-PIAC is eligible to calculate legal fees for Mr. Lawford's services at the internal daily rate of \$800 based on his years of practice. Accordingly, the Commission reduces the costs claimed by NPF-COSCO-PIAC for Mr. Lawford for the period prior to 1 January 2017 from \$602.85 to \$200.00. The 2 hours claimed at the external rate were converted into 0.25 days based on a 7-hour work day, in accordance with the Guidelines.
18. For the 6.8 hours claimed for the period after 1 January 2017, NPF-COSCO-PIAC are eligible to calculate legal fees for Mr. Lawford's services at the external hourly rate. Accordingly, the Commission finds that the amount of \$2,049.70 for costs claimed for the period after 1 January 2017 was necessarily and reasonably incurred and should be allowed.
19. With respect to the articling student, NPF-COSCO-PIAC are eligible to claim costs for his services at the internal daily rate. The Commission therefore reduces the costs for the articling student from \$1,309.00 to \$646.25, calculated using the daily rate of \$235. The 18.7 hours claimed at the external rate were converted into 2.75 days based on a 7-hour work day, in accordance with the Guidelines.
20. Apart from the legal fees described above, the remaining amounts claimed in respect of legal fees and disbursements do not raise concerns. Given the length and scope of the proceeding, among other things, these amounts are reasonable in the circumstances.
21. Accordingly, the total legal fees claimed are reduced from \$17,074.05 to \$16,008.45, and the Commission finds that the amount of \$17,127.93 was necessarily and reasonably incurred and should be allowed.
22. 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.
23. 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.
24. The Commission considers that all the service providers that intervened in the proceeding had a significant interest in its outcome and participated actively throughout. As such, the following parties are the appropriate costs respondents to NPF-COSCO-PIAC's application for costs: Bell Canada, on its own behalf and on behalf of Bell Mobility Inc., Bell Aliant Regional Communications, Limited Partnership, DMTS, KMTS, NorthernTel, Limited Partnership, Northwestel Inc.,

Ontera, and Télébec, Limited Partnership; Bragg Communications Incorporated, operating as Eastlink; Freedom Mobile Inc.; MTS Inc.;³ Quebecor Media Inc., on behalf of Videotron Ltd.;⁴ Rogers Communications Canada Inc. (RCCI); Saskatchewan Telecommunications; Shaw Telecom G.P.; TCI; and Zayo Canada Inc.

25. 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 telecommunications operating revenues (TORs) as an indicator of the relative size and interest of the parties involved in the proceeding.⁵
26. 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.
27. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated as follows:

Company	Percentage	Amount
Bell Canada	43.3%	\$7,416.39
TCI	29.7%	\$5,087.00
RCCI	27.0%	\$4,624.54

28. 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

29. The Commission **approves with changes** the application by NPF-COSCO-PIAC for costs with respect to their participation in the proceeding.
30. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to NPF-COSCO-PIAC at \$17,127.93.

³ In February 2017, Bell Canada received approval by federal regulators to purchase MTS Inc. However, Bell Canada and MTS Inc. participated throughout the proceeding as separate entities.

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

⁵ 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.

31. The Commission **directs** that the award of costs to NPF-COSCO-PIAC be paid forthwith by Bell Canada on behalf of the Bell companies, TCI, and RCCI according to the proportions set out in paragraph 27.

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*
- *Next-generation 9-1-1 – Modernizing 9-1-1 networks to meet the public safety needs of Canadians, Telecom Regulatory Policy CRTC 2017-182, 1 June 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*