



## Telecom Order CRTC 2018-69

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Ottawa, 20 February 2018

*File numbers: 8662-P8-201702853 and 4754-567*

### **Determination of costs award with respect to the participation of the Association of Community Organizations for Reform Now Canada, the National Pensioners Federation, and the Public Interest Advocacy Centre in the proceeding that led to Telecom Decision 2018-31**

#### **Application**

1. By letter dated 20 June 2017, the Association of Community Organizations for Reform Now Canada (ACORN), the National Pensioners Federation (NPF), and the Public Interest Advocacy Centre (PIAC) [collectively, ACORN-NPF-PIAC] applied for costs with respect to their participation in the review and vary proceeding that led to Telecom Decision 2018-31 (the proceeding). In that decision, the Commission determined that ACORN-NPF-PIAC did not demonstrate that the Commission made any errors in law or in fact in its determinations set out in Telecom Regulatory Policy 2016-496 regarding the affordability of telecommunications services.
2. TELUS Communications Inc. (TCI)<sup>1</sup> filed an intervention, dated 30 June 2017, in response to ACORN-NPF-PIAC's application. ACORN-NPF-PIAC filed a reply dated 4 July 2017, and TCI filed an answer dated 5 July 2017.
3. ACORN-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. In particular, ACORN-NPF-PIAC submitted that they represented the interests of Canadian consumers – especially low-income consumers – of telecommunications services. They also submitted that they provided the Commission with a better understanding of the matters that were considered in the proceeding through their detailed and comprehensive submissions and their distinct point of view.

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<sup>1</sup> 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.

5. ACORN-NPF-PIAC requested that the Commission fix their costs at \$8,676.44, consisting entirely of legal fees. ACORN-NPF-PIAC's claim included the Ontario Harmonized Sales Tax (HST) on fees less the rebate to which ACORN-NPF-PIAC are entitled in connection with the HST.
6. ACORN-NPF-PIAC claimed 14.5 hours for senior external counsel (Mr. John Lawford) at a rate of \$290 per hour (\$4,370.68 with the HST and the associated rebate), 6.5 hours for junior external counsel at a rate of \$165 per hour (\$1,114.76 with the HST and the associated rebate), 2.25 days for in-house counsel at a rate of \$600 per day (\$1,350), and 26.3 hours for an articling student at a rate of \$70 per hour (\$1,841).
7. ACORN-NPF-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).

### **Answer**

8. TCI noted that in the present costs application, two lawyers and one articling student associated with PIAC claimed external counsel rates, but that there was an ongoing investigation regarding the status of PIAC's resources for the purpose of costs claims.<sup>2</sup> The company submitted that the Commission should first clarify whether lawyers and articling students associated with PIAC are entitled to charge external counsel rates before disposing of the present costs application.

### **Reply**

9. ACORN-NPF-PIAC argued that TCI's request for the Commission to stay the present costs application until it clarifies the issue in question is unreasonable and should be denied. Further, ACORN-NPF-PIAC argued that TCI was compromising PIAC's financial situation by restricting cash flow, and that the Commission could still process costs applications but reserve the awarded amounts until it makes determinations on the status of PIAC's resources.

### **Answer**

10. TCI argued that ACORN-NPF-PIAC's allegation that the company was compromising PIAC's financial situation is very serious and unfounded. TCI submitted that it was acting in good faith and that it was not opposed to the granting of costs awards through the established process, but that the issue of resource status needs to be determined before the Commission can dispose of costs applications.

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<sup>2</sup> In the proceeding that led to Telecom Order 2017-364, Commission staff requested information from PIAC regarding the status of its legal counsel, Mr. John Lawford, and 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 TCI provided comments.

## Commission's analysis and determinations

11. 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.
12. 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, ACORN-NPF-PIAC have demonstrated that they meet this requirement. ACORN-NPF-PIAC did not directly address the information bulletin in their submissions. However, they did identify the group of subscribers they purported to represent as being low-income Canadian consumers of telecommunications services.
13. ACORN-NPF-PIAC have also satisfied the remaining criteria through their participation in the proceeding. In particular, ACORN-NPF-PIAC's submissions in the proceeding resulted in the Commission clarifying issues regarding (i) its decision-making approach, including the various factors and legislation considered, (ii) its broadband funding mechanism, and (iii) the relationships between Innovation, Science and Economic Development Canada's Innovation Agenda, the 22 March 2017 Federal Budget, and Telecom Regulatory Policy 2016-496 (the Commission's decision on its review of basic telecommunications services), thereby assisting the Commission in developing a better understanding of the matters that were considered. ACORN-NPF-PIAC participated in a responsible manner throughout the proceeding.
14. In respect of Mr. Lawford's fees, 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, as set out in Telecom Regulatory Policy 2010-963 (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 in the proceeding that led to Telecom Regulatory Policy 2017-200 (the Commission's decision on its review of the Wireless Code) to warrant a departure from the Guidelines. Consistent with Mr. Lawford's status as reported to the Law Society of Upper Canada, the Commission allowed the Coalition<sup>3</sup> 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.
16. The Commission finds that the same determinations are appropriate in the present case, since the issue raised by TCI in the present costs application 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. In the present case, ACORN-NPF-PIAC claimed a total of 14.5 hours for Mr. Lawford for the period after 1 January 2017. Accordingly, the Commission finds that the amount of \$4,370.68 for 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 articling student, ACORN-NPF-PIAC are eligible to claim costs for his services using the internal daily rate. The Commission therefore reduces the costs for the articling student from \$1,841 to \$940, calculated using the daily rate of \$235. The 26.3 hours claimed at the external rate were converted into 4 days based on a 7-hour work day, in accordance with the Guidelines.
19. Accordingly, the total legal fees claimed are reduced from \$8,676.44 to \$7,775.44.
20. The rates claimed in respect of legal fees for junior external counsel are in accordance with the rates established in the Guidelines. The Commission finds that the total amount claimed by ACORN-NPF-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

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<sup>3</sup> In the proceeding that led to Telecom Order 2017-364, the Coalition consisted of the Consumers' Association of Canada, the Council of Senior Citizens' Organizations of British Columbia, the NPF, and PIAC.

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 Aliant Regional Communications, Limited Partnership; Bell Mobility Inc; Bell MTS; Câblevision du Nord de Québec inc.; DMTS; KMTS; NorthernTel, Limited Partnership; Northwestel Inc.; Ontera; and Télébec, Limited Partnership); the Canadian Network Operators Consortium Inc.; Cogeco Connexion Inc.;<sup>4</sup> Quebecor Media Inc., on behalf of Videotron Ltd.;<sup>5</sup> Rogers Communications Canada Inc. (RCCI); Shaw Communications Inc.; TCI; and TekSavvy Solutions Inc.

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 telecommunications operating revenues (TORs) as an indicator of the relative size and interest of the parties involved in the proceeding.<sup>6</sup>
24. 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.
25. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated as follows:

<b>Company</b>	<b>Percentage</b>	<b>Amount</b>
Bell Canada	45.5%	\$3,537.83
TCI	28.5%	\$2,216.00
RCCI	26.0%	\$2,021.61

26. 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.

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<sup>4</sup> Cogeco Connexion Inc. holds all the business activities, including assets and liabilities, of the former Cogeco Cable Canada GP Inc., which ceased to exist on 1 September 2016. For ease of reference, “Cogeco Connexion Inc.” is used in this order.

<sup>5</sup> 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.

<sup>6</sup> 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.

## Directions regarding costs

27. The Commission **approves with changes** the application by ACORN-NPF-PIAC for costs with respect to their participation in the proceeding.
28. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to ACORN-NPF-PIAC at \$7,775.44.
29. The Commission **directs** that the award of costs to ACORN-NPF-PIAC be paid forthwith by Bell Canada on behalf of the Bell companies, TCI, and RCCI according to the proportions set out in paragraph 25.

Secretary General

## Related documents

- *Association of Community Organizations for Reform Now Canada, the National Pensioners Federation, and the Public Interest Advocacy Centre – Application to review and vary Telecom Regulatory Policy 2016-496 regarding affordability*, Telecom Decision CRTC 2018-31, 25 January 2018
- *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
- *Review of the Wireless Code*, Telecom Regulatory Policy CRTC 2017-200, 15 June 2017
- *Modern telecommunications services – The path forward for Canada’s digital economy*, Telecom Regulatory Policy CRTC 2016-496, 21 December 2016
- *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