



Telecom Order CRTC 2018-77

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Determination of costs award with respect to the participation of the Public Interest Advocacy Centre in the proceeding initiated by TELUS Communications Inc. regarding forbearance from the regulation of Pay Telephone Access Line Service

Application

1. By letter dated 11 October 2016, the Public Interest Advocacy Centre (PIAC) applied for costs with respect to its participation in the proceeding initiated by TELUS Communications Inc.'s (TCI)¹ request for the Commission to find its Pay Telephone Access Line Service in British Columbia and Alberta to be non-essential and subject to forbearance (the proceeding).
2. TCI filed an intervention, dated 21 October 2016, in response to PIAC's costs application. PIAC filed a reply dated 21 October 2016.
3. 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 articling student. In particular, Commission staff sought comments on whether it was appropriate for PIAC to claim legal fees for this individual as an internal or external resource. PIAC responded to the request, and Bell Canada and TCI provided comments.
4. 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.
5. In particular, PIAC submitted that it represented the interests of Canadian consumers and users of telecommunications services, as well as the public interest at large. It also submitted that it provided a fuller understanding of the matters that were considered in the proceeding through its concise intervention and distinct

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.

point of view, and that it was the only party representing consumer interests in the proceeding.

6. PIAC requested that the Commission fix its costs at \$1,170.23, consisting solely 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.
7. PIAC claimed 2 hours for intermediate external counsel at a rate of \$206 per hour (\$428.23 with the HST and the associated rebate), and 10.6 hours for an articling student at the external rate of \$70 per hour (\$742.00 with no HST claimed).
8. PIAC submitted that TCI is the appropriate party to be required to pay any costs awarded by the Commission (the costs respondent) because TCI initiated the proceeding.

Answer

9. TCI submitted that PIAC failed to participate responsibly in preparing its comments in the proceeding. According to TCI, PIAC relied on arguments in the proceeding comparable to those it had made in an earlier similar proceeding initiated by Bell Canada. In that earlier proceeding, Bell Canada, like TCI, requested forbearance from the regulation of Bell Canada's Pay Telephone Basic Access Line Service (the Bell Canada proceeding).
10. TCI noted that (i) its and Bell Canada's applications concerned the same subject matter and raised similar facts, (ii) TCI's application followed Bell Canada's application, (iii) some of the arguments PIAC made in the Bell Canada proceeding were nearly identical to those it provided in the TCI proceeding, and (iv) PIAC's intervention regarding the TCI proceeding took more than twice as long to produce than its intervention regarding the Bell Canada proceeding (12.6 hours compared to 5.5 hours) and cost 18.5% more (\$1,170.23 compared to \$954.00).
11. TCI argued that given that its application should have been easier to respond to due to the recent experience of PIAC's staff on the issues raised, it would be reasonable to assume that PIAC's intervention regarding the TCI proceeding would have cost significantly less than its intervention regarding the Bell Canada proceeding. Accordingly, TCI proposed that PIAC's costs claim for the TCI proceeding be adjusted to \$477, i.e. half of the costs PIAC claimed regarding the Bell Canada proceeding.
12. In addition, TCI noted that PIAC claimed costs for its articling student as an external resource and that this practice was the subject of considerable discussion in the context of the proceeding that led to Telecom Order 2017-95. The company requested that if the Commission were to determine that PIAC's resources should be considered internal in that costs proceeding, a similar modification should be made in the present costs proceeding.

Reply

13. PIAC submitted that it represented the public interest in the proceeding in a responsible way, and that contrary to TCI's argument, the amount claimed by a costs applicant is not indicative of responsible participation in a proceeding. PIAC added that the adjustment amount that TCI proposed is arbitrary.
14. PIAC further argued that (i) TCI mistakenly assumed that the issues in its and Bell Canada's applications were the same, yet the issues were in fact different in some respects, (ii) in representing the public interest, PIAC was free to add public interest considerations regarding TCI's application that were not considered in the context of Bell Canada's application, and (iii) the amount under dispute is very small and the present costs claim is reasonable.
15. PIAC noted that there is no Commission-established internal articling student rate and that if the Commission were to establish such a rate, it should be equivalent to the external articling student rate. PIAC also noted that the articling student prepared the majority of its intervention in the proceeding.
16. Finally, PIAC indicated that although it has the right to modify its costs claim to add costs for time spent on the present costs proceeding and drafting its reply to TCI's answer, it did not do so.

Commission's analysis and determinations

17. 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.
18. 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 particular, applicants are required to both identify the specific group of subscribers represented and describe the methods by which they determined that the positions put forward in the substantive proceeding reflected the interests of the represented group, whether by directly consulting the group or by other means, such as research.

19. PIAC did not directly address the information bulletin in its submissions. However, it did identify the group of subscribers it represented as being Canadian consumers and users of telecommunications services, as well as the public at large. Although PIAC did not explain how it determined that the positions it put forward reflected the interests of those consumers, the Commission considers that since the proceeding occurred only in writing over a relatively short period of time, direct consultation or research would not necessarily have been practical in the circumstances.
20. Regarding TCI's submission that PIAC failed to participate responsibly in preparing its comments in the proceeding, the Commission finds that PIAC has met the responsible participation criterion, since it (i) demonstrated that it filed a focused, concise intervention; (ii) complied with the Rules of Procedure; and (iii) made efficient use of less senior counsel and an articling student. In particular, PIAC demonstrated responsible participation through its intervention regarding TCI's evidence and whether the company had met its evidentiary burden, as well as through its distinct point of view representing the interests of Canadian consumers and users of telecommunications services.
21. Nonetheless, TCI's submission raises the issue of whether the time spent by PIAC is excessive under the circumstances. In the *Guidelines for the Assessment of Costs* (the Guidelines), as set out in Telecom Regulatory Policy 2010-963, the Commission established some considerations that it generally takes into account in evaluating excessive time.
22. In the present case, PIAC participated actively in the proceeding, it leveraged research it had done regarding Bell Canada's application, and the amount of time for which it claimed costs is not significantly different from its costs claim regarding the Bell Canada proceeding. Moreover, the Commission finds that the issues in the Bell Canada proceeding and the TCI proceeding differ in some respects.
23. With respect to TCI's argument regarding the articling student's status in relation to PIAC, in Telecom Order 2017-364, the Commission determined that the articling student was a resource internal to PIAC and that the Coalition² was eligible to claim costs for the student's services based on the internal daily rate. The Commission finds that the same determination is appropriate in the present case, since the record of this costs proceeding on this issue is the same as that of the proceeding that led to Telecom Order 2017-364.
24. 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.

² 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 National Pensioners Federation, and PIAC.

25. PIAC is eligible to claim costs for the articling student using the internal daily rate. The Commission therefore reduces the costs for the articling student from \$742.00 to \$411.25, calculated using the daily rate of \$235. The 10.6 hours claimed at the external rate were converted into 1.75 days based on a 7-hour work day, in accordance with the Guidelines.
26. Accordingly, the total legal fees claimed are reduced from \$1,170.23 to \$839.48.
27. The rates claimed in respect of legal fees for intermediate external 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.
28. 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.
29. 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 TCI had a significant interest in the outcome of the proceeding and participated actively in the proceeding. Therefore, TCI is the appropriate costs respondent to PIAC's application for costs.

Directions regarding costs

30. The Commission **approves with changes** the application by PIAC for costs with respect to its participation in the proceeding.
31. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to PIAC at \$839.48.
32. The Commission **directs** that the award of costs to PIAC be paid forthwith by TCI.

Secretary General

Related documents

- *Determination of costs award with respect to the participation of the Coalition in the proceeding leading to Telecom Regulatory Policy 2017-200, Telecom Order CRTC 2017-364, 16 October 2017*
- *Determination of costs award with respect to the participation of the Affordable Access Coalition in the proceeding leading to Telecom Regulatory Policy 2016-496, Telecom Order CRTC 2017-95, 11 April 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
- *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