



## Telecom Order CRTC 2019-17

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Ottawa, 22 January 2019

*File numbers: 1011-NOC2018-0005 and 4754-594*

### **Determination of costs award with respect to the participation of the Public Interest Advocacy Centre in the Telecom Notice of Consultation 2018-5 proceeding**

#### **Application**

1. By letter dated 9 April 2018, the Public Interest Advocacy Centre (PIAC) applied for costs with respect to its participation in the proceeding initiated by Telecom Notice of Consultation 2018-5 (the proceeding). In the proceeding, the Commission required six telecommunications service providers (TSPs)<sup>1</sup> [collectively, the six TSPs] to, among other things, show cause why they should not be found in violation of the *Telecommunications Act* (the Act) for contravening the Commission for Complaints for Telecom-television Services Inc.'s (CCTS) participation requirement.
2. TELUS Communications Inc. (TCI) filed an intervention, dated 19 April 2018, in response to PIAC's application.
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 consumers across Canada, with a particular focus on low-income consumers. With respect to the specific methods by which PIAC has submitted that it represents this group or class, PIAC explained that it has conducted extensive research related to consumer interests, and relied on its internal expertise developed through its history of representing consumers in Commission proceedings.
5. PIAC also submitted that it assisted the Commission in developing a better understanding of the matters that were considered through its submissions on issues such as the personal liability of the six TSPs' directors and its reply to TCI's

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<sup>1</sup> These TSPs are BV Communications, Connexio Inc., ICA Microsystems Inc., Mazagan Telecommunications, Toronto Telecom, and VerseTEL Communications Inc.

arguments regarding how the Commission's enforcement powers should be exercised. PIAC also noted that it was the only public interest intervener in the proceeding.

6. PIAC requested that the Commission fix its costs at \$995.35, consisting entirely 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 suggested that the responsibility for payment of costs should be allocated between TCI and the six TSPs (the costs respondents), based on their telecommunications operating revenues (TORs).<sup>2</sup> However, given that its costs were minimal, PIAC submitted that the result would be that costs would be paid entirely by TCI. PIAC argued that this would be appropriate, given that (i) the costs associated with its reply in the proceeding were incurred largely due to the issues raised in TCI's intervention, and (ii) it was unlikely that any of the six TSPs would pay an award of costs.

### **Answer**

8. TCI did not dispute PIAC's eligibility for a costs award, nor did it dispute the quantum of costs that PIAC had claimed. However, TCI argued that it was improperly identified as a costs respondent and that the six TSPs are the appropriate costs respondents.
9. TCI argued that it was the six TSPs, and not TCI, that were subject to the proceeding due to allegations of improper actions. TCI noted that the Commission's general practice is to name as costs respondents those parties that have a significant interest in the outcome of the proceeding in question and have participated actively in that proceeding. Therefore, in TCI's view, the parties with a significant interest in the outcome of the proceeding are the six TSPs, who faced the prospect of an administrative monetary penalty or other sanction by the Commission. TCI argued that although it intervened in the proceeding, its interest in the outcome of the proceeding was subordinate to the interest of the six TSPs.
10. With respect to PIAC's suggestion that it was unlikely that the six TSPs would pay an award of costs, TCI argued that (i) there was no evidence to support this claim, (ii) there are remedies available to the Commission and to PIAC to secure payment, and (iii) even if those TSPs are unlikely to pay costs, this is not a legitimate reason to require TCI to assume the burden of their non-compliance.

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

## 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, PIAC has demonstrated that it meets this requirement through its representation of Canadian consumers, with a particular focus on low-income consumers. The Commission considers that, having regard to the targeted nature of the proceeding and PIAC's intervention, direct consultation or research would not necessarily have been practical in the circumstances of the proceeding. Therefore, it was reasonable for PIAC to develop its position based on its previous research related to consumer interests and its internal expertise.

13. PIAC has also satisfied the remaining criteria through its participation in the proceeding. In particular, PIAC's submissions, especially regarding director liability and how the Commission's enforcement powers should be exercised, assisted the Commission in developing a better understanding of the matters that were considered.

14. 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.

15. 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.

16. 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. Moreover, the Commission has generally allocated the responsibility for payment of costs among

costs respondents based on their TORs. Further, the Commission has generally considered \$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.

17. Based on the Commission's general approach to determining the appropriate costs respondents, the six TSPs would not be responsible for costs by reason of the fact that they chose not to actively participate in the proceeding. However, the proceeding was initiated as a result of their failure to become participants in the CCTS, and they were considered parties to the proceeding. As a result, the Commission determines that it is appropriate to depart from its general practice in this case and name these TSPs as costs respondents, despite the fact that they did not actively participate in the proceeding.
18. Although TCI actively participated in the proceeding, it was the failure of the six TSPs to become participants in the CCTS that precipitated the commencement of the proceeding, and the six TSPs were the parties that had the most significant interest in its outcome. As a result, the Commission considers that the six TSPs should be the only named costs respondents.
19. As well, the Commission considers that a departure from its general practice regarding the allocation of costs based on TORs and the minimum amount that a costs respondent should be required to pay is necessary to reflect the role that each of the six TSPs had in the initiation of the proceeding. In this case, the six TSPs should equally bear the responsibility for payment of costs between them.
20. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated as follows:

<b>Company</b>	<b>Amount</b>
BV Communications	\$165.90
Connexio Inc.	\$165.89
ICA Microsystems Inc.	\$165.89
Mazagan Telecommunications	\$165.89
Toronto Telecom	\$165.89
VerseTEL Communications Inc.	\$165.89

### **Directions regarding costs**

21. The Commission **approves** the application by PIAC for costs with respect to its participation in the proceeding.

22. Pursuant to subsection 56(1) of the Act, the Commission fixes the costs to be paid to PIAC at \$995.35.
23. The Commission **directs** that the award of costs to PIAC be paid forthwith by BV Communications, Connexio Inc., ICA Microsystems Inc., Mazagan Telecommunications, Toronto Telecom, and VerseTEL Communications Inc. according to the proportions set out in paragraph 20.

Secretary General

### **Related documents**

- *Telecommunications service providers that have failed to become participants in the Commission for Complaints for Telecom-television Services Inc.*, Telecom Notice of Consultation CRTC 2018-5, 8 January 2018
- *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