



Telecom Order CRTC 2019-421

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Ottawa, 16 December 2019

File numbers: 8662-B2-201905316 and 4754-627

Determination of costs award with respect to the participation of the Public Interest Advocacy Centre in the proceeding that led to Telecom Decision 2019-419

Application

1. By letter dated 19 September 2019, the Public Interest Advocacy Centre (PIAC) applied for costs with respect to its participation in the proceeding that led to Telecom Decision 2019-419 (the proceeding). In the proceeding, the Commission considered a Part 1 application by Bell Canada to review, vary, rescind, and stay certain elements of Telecom and Broadcasting Decision 2019-218 and Telecom Notice of Consultation 2019-219.
2. Bell Canada filed an intervention, dated 30 September 2019, 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 all Canadian consumers, with a particular focus on vulnerable 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 wireless services and roaming, and has participated in several recent Commission proceedings on retail and wholesale wireless services.
5. PIAC indicated that it had assisted the Commission in developing a better understanding of the matters that were considered in Bell Canada's application through its legal arguments addressing Bell Canada's interim stay request and the legal grounds advanced in the application. PIAC also noted that it was the only intervener in the proceeding that was concerned with competition and consumer interests regarding in-building wire and multi-dwelling units.
6. PIAC requested that the Commission fix its costs at \$3,268.66, consisting of \$2,622.41 for legal fees and \$646.25 for in-house articling student 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 submitted that Bell Canada is the appropriate party to be required to pay any costs awarded by the Commission (the costs respondent). PIAC argued that a 50%-50% split with the respondent to Bell Canada's application, Cloudwifi Inc. (Cloudwifi), is not appropriate because Cloudwifi was successful at first impression and Bell Canada chose to review and vary Telecom and Broadcasting Decision 2019-218. Further, PIAC argued that a split based on the market shares of all participating telecommunications service providers and broadcasting distribution undertakings is not appropriate in this case because the dispute at issue in the original decision was largely between Cloudwifi and Bell Canada.

Answer

8. Bell Canada argued that PIAC did not demonstrate that it had assisted the Commission in developing a better understanding of the matters that were considered. First, Bell Canada argued that PIAC misunderstood and mischaracterized the issues underlying the company's interim stay request. Second, Bell Canada argued that PIAC's submission had failed to assist the Commission in developing a better understanding of whether its prior policies, rules, and regulations applied to fibre in-building wire, because it confused the issues under consideration and erroneously referred to the *Broadcasting Distribution Regulations*.

Commission's analysis and determinations

9. 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.
10. In Telecom Information Bulletin 2016-188, the Commission provided guidance on 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. PIAC was the only consumer group that intervened in the proceeding, and the Commission is satisfied that, in the context of Bell Canada's application, PIAC was well positioned to advance consumer interests and did, in fact, do so.

11. The Commission is of the view that PIAC assisted it in developing a better understanding of the matters that were considered. In particular, PIAC advanced legal arguments addressing Bell Canada's interim stay request and the legal grounds put forth in the application that were focused and structured. Additionally, PIAC's legal arguments offered a distinct competition and consumer point of view that assisted the Commission in developing a better understanding of the matters that were considered.
12. The Commission also considers that PIAC participated in the proceeding in a responsible way. Accordingly, the Commission finds that PIAC meets the criteria for an award of costs under section 68 of the Rules of Procedure.
13. The rates claimed in respect of legal and in-house articling student 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.
14. 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.
15. 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. While Bell Canada; the Canadian Network Operators Consortium Inc.; Cloudwifi; Cogeco Communications inc.; the Independent Telecommunications Providers Association; Quebecor Media Inc., on behalf of Videotron Ltd.; Rogers Communications Canada Inc.; Shaw Communications Inc.; and TELUS Communications Inc. participated actively in the proceeding, the Commission considers that Bell Canada had the most significant interest in its outcome. Specifically, Bell Canada initiated the proceeding and sought relief regarding Telecom and Broadcasting Decision 2019-218, in which the Commission directed Bell Canada to provide access to its in-building wire to all carrier Internet service providers, including Cloudwifi.
16. In the circumstances, and given the relatively small amount claimed, Bell Canada is the appropriate costs respondent to PIAC's application for costs.

Directions regarding costs

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

18. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to PIAC at \$3,268.66.
19. The Commission **directs** that the award of costs to PIAC be paid forthwith by Bell Canada.

Secretary General

Related documents

- *Bell Canada – Request for the Commission to review, vary, and rescind certain elements of Telecom and Broadcasting Decision 2019-218 and Telecom Notice of Consultation 2019-219*, Telecom Decision CRTC 2019-419, 16 December 2019
- *Applicability of the Commission’s preliminary view set out in Telecom and Broadcasting Decision 2019-218 to all telecommunications service providers*, Telecom Notice of Consultation CRTC 2019-219, 21 June 2019
- *Cloudwifi Inc. – Application to prevent Bell Canada from interfering with customer use of Bell Canada’s inside wire*, Telecom and Broadcasting Decision CRTC 2019-218, 21 June 2019
- *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