



## Telecom Order CRTC 2020-100

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*File numbers: 8620-P8-201800756 and 4754-593*

### **Determination of costs award with respect to the participation of the Public Interest Advocacy Centre and the National Pensioners Federation in the proceeding that led to Telecom Decision 2020-91**

#### **Application**

1. By letter dated 20 April 2018, the Public Interest Advocacy Centre (PIAC) and the National Pensioners Federation (NPF) [collectively, PIAC-NPF] applied for costs with respect to their participation in the proceeding that led to Telecom Decision 2020-91 (the proceeding). In the proceeding, the Commission considered a Part 1 application from PIAC-NPF in which they requested clarification and enforcement of the Wireless Code,<sup>1</sup> in particular, section J as it relates to the wireless prepaid account balance policies of Rogers Communications Canada Inc. (RCCI) and of wireless service providers in general.
2. TELUS Communications Inc. (TCI) filed an intervention, dated 30 April 2018, in response to PIAC-NPF's application for costs.
3. PIAC-NPF 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. With respect to the first criterion, PIAC-NPF submitted that they represented the interests of a group or class of consumers across Canada, with a particular concern for low-income consumers and ageing Canadians, seniors, and retirees. They did so through their respective representation of individuals and multiple member groups, which themselves represent the interests of consumers across Canada, particularly low-income consumers and ageing Canadians, seniors, and retirees.

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<sup>1</sup> The Wireless Code was set out in Telecom Regulatory Policy 2013-271 and revised in Telecom Regulatory Policy 2017-200.

5. With respect to the specific methods by which PIAC-NPF submitted that they represent this group or class, PIAC-NPF stated that their concerns about RCCI's policy were developed based on monitoring news and social media content. They submitted that from PIAC's monitoring of the research and activities of the Commission for Complaints for Telecom-television Services Inc. (CCTS) and the Commission, PIAC knew that "top-up rules" were a growing source of complaints to the CCTS and that the revised Wireless Code had broadened the rules regarding the expiry of prepaid balances.
6. Regarding the second criterion, PIAC-NPF submitted that they had assisted the Commission in developing a better understanding of the matters that were considered in the proceeding. PIAC-NPF stated that they had notified the Commission of RCCI's upcoming policy change and thereby gave the Commission the opportunity to clarify whether the policy was permitted before it was implemented and costs associated with its implementation were incurred. They further stated that they provided relevant contextual information and cogent legal arguments within the applicable legal framework set out in the revised Wireless Code.
7. Regarding the third criterion, PIAC-NPF submitted that they participated responsibly in the proceeding, but did not elaborate on this submission.
8. PIAC-NPF noted that some interveners supported their Part 1 application.
9. PIAC-NPF requested that the Commission fix their costs at \$3,380.67, consisting entirely of legal fees. PIAC-NPF'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-NPF filed a bill of costs with their application.
10. They submitted that their costs in respect of the proceeding are minimal, and noted that the majority of the fees claimed were for external legal fees.
11. In particular, PIAC-NPF claimed 22.6 hours for junior external counsel (0-2 years) at a rate of \$135 per hour (\$3,171.21 including HST, less the associated rebate); 0.5 hours for senior external counsel (20+ years) at a rate of \$290 per hour (\$150.71 including HST, less the associated rebate); and 0.25 days for an in-house articling student at a rate of \$235 per day (\$58.75).
12. PIAC-NPF presented two proposals as to the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents). First, they submitted that costs associated with their Part 1 application were primarily attributable to RCCI's proposed policy change and should therefore be allocated to RCCI. However, the costs associated with their reply in the proceeding were primarily attributable to their reply to TCI's intervention, so those costs should be allocated to TCI. In support of their request to apportion costs to RCCI and TCI, they submitted that the *Telecommunications Act* (the Act) provides the Commission with broad discretion in regard to costs. Further, they argued that TCI's intervention constituted a

broad-ranging attack that would keep consumers from having an effective mechanism to seek clarification or enforcement of regulatory obligations.

13. In the alternative, PIAC-NPF submitted that the proper cost respondents are all wireless service providers that participated in the proceeding, and that costs should be allocated in proportion to those companies' wireless service revenues. PIAC-NPF stated that this approach was taken in Telecom Order 2017-364.

### **Answer**

14. TCI opposed PIAC-NPF's primary proposal that TCI be made responsible for nearly half of PIAC-NPF's costs incurred, in particular the entirety of the costs associated with their reply. TCI took no position on the amount of costs that PIAC-NPF claimed.
15. TCI submitted that PIAC-NPF's Part 1 application was underpinned by facts relating only to RCCI, but that they nevertheless requested that the Commission impose an order that would apply to all wireless service providers, including TCI. As a result, TCI was directly implicated in the proceeding. The company contested PIAC-NPF's characterization of TCI's intervention as a "broad attack on the ability of consumer groups to address systemic issues" as untrue and argued that it must be dismissed. TCI objected to the Part 1 application on the basis that it lacked evidence of a systemic issue, since PIAC-NPF provided no facts other than those relating to RCCI, and the requested relief was without purpose since it was premature and overly broad in scope.
16. TCI submitted that it would be incorrect to find that all of PIAC-NPF's reply-related costs were attributable to TCI, since the reply was not restricted to responding to TCI's intervention. TCI submitted that allocating costs based on which party's comments generated the most consideration by an applicant would be an unusual result and novel approach.

### **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 the present case, PIAC-NPF have demonstrated that they meet this requirement. They identified the groups and classes of persons they represented and the regions of Canada represented by these members. They submitted that through research conducted by PIAC, they determined that the issues that were considered were of importance to PIAC's and NPF's members. The research included, among other things, reviews of news reports, social media, and terms of service of wireless service providers; primary contact with customer service representatives; and legal research and review of Commission decisions.
19. Further, PIAC-NPF have satisfied the second criterion for an award of costs through their participation in the proceeding. In particular, PIAC-NPF provided the Commission with information about a particular practice encompassed by the Wireless Code, insight into the practical effect of the Wireless Code on the persons they represent and on a practice in the wireless service marketplace, and a distinct point of view regarding certain wireless services by the persons PIAC-NPF represent, all of which assisted the Commission in developing a better understanding of the matters that were considered.
20. Although PIAC-NPF did not elaborate on the third criterion in their application for costs, the record of the proceeding shows that throughout the aspects of the proceeding for which costs have been claimed, PIAC-NPF conformed to the Rules of Procedure. Further, the documentation attached to the application for costs demonstrates that PIAC-NPF relied on cost-efficient resources (namely, junior external counsel and an in-house articling student) to a greater extent than senior external counsel. Accordingly, PIAC-NPF have satisfied the third criterion.
21. The rates claimed in respect of legal fees are in accordance with the rates established in the *Guidelines for the Assessment of Costs* (the Guidelines), as set out in Telecom-Regulatory Policy 2010-963.
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. In addition, the Commission's general practice is 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>2</sup>

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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.

24. PIAC-NPF's two proposals regarding the naming of cost respondents and the allocation of costs among them depart from the Commission's general approaches. PIAC-NPF's primary request was for the Commission to name RCCI and TCI as the costs respondents since PIAC-NPF incurred costs primarily through responding to RCCI and TCI. PIAC-NPF further submitted that the costs should be allocated among these two companies in proportion to the incurred costs that are attributable to either company. The alternative proposal involved naming all wireless service providers that participated in the proceeding as costs respondents, and allocating the responsibility for payment of costs among them in proportion to their wireless service revenues, rather than their TORs.
25. The record does not support PIAC-NPF's justification for its primary proposal that RCCI and TCI alone be named as costs respondents. In the proceeding, PIAC-NPF sought an order and declaration to be applied not only to RCCI, but to all other wireless service providers. PIAC-NPF's application implicated all wireless service providers, even though it was RCCI's policy that instigated PIAC-NPF's application. Further, PIAC-NPF's reply was not limited to nor did it primarily address TCI's or RCCI's submissions in the proceeding.
26. It is appropriate in the circumstances of this case for the Commission to apply its general approach to naming of costs respondents, i.e. to name those parties that have a significant interest in the outcome of the proceeding in question and have participated actively in that proceeding. All the wireless service providers that participated in the proceeding did so in a similar manner, in accordance with the Rules of Procedure, and had a similar interest in the outcome of the proceeding. The proceeding related uniquely to issues affecting wireless service providers, in particular, the interpretation and application of the Wireless Code. Accordingly, it would be appropriate in the circumstances of this case for costs to be allocated among all the wireless service providers that had a significant interest in the outcome of the proceeding and participated actively in the proceeding. This is in keeping with PIAC-NPF's alternative request.
27. Accordingly, in the present case, the Commission considers that the wireless service providers Bell Mobility Inc. (Bell Mobility), RCCI, and TCI had a significant interest in the outcome of the proceeding and participated actively in the proceeding.
28. With regard to the allocation of costs, the Commission notes that it has broad discretion pursuant to subsection 56(2) of the Act, in determining the revenues on which to allocate costs. While the general approach is to allocate costs on the basis of TORs, the Commission has exercised its broad discretion to allocate costs on the basis of wireless revenue market share (WRS) in the past. Notably, this occurred in several orders<sup>3</sup> related to participation in the Wireless Code review proceeding<sup>4</sup> as

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<sup>3</sup> See Telecom Orders 2017-362, 2017-363, 2017-364, 2017-378, 2017-379, and 2017-380. In those orders, the Commission used the WRS set out in the Commission's 2015 *Communications Monitoring Report*.

<sup>4</sup> That proceeding resulted in Telecom Regulatory Policy 2017-200.

well as in Telecom Decision 2020-33, which related to participation in a proceeding about the unlocking of mobile devices and the associated requirements set out in the Wireless Code.

29. In those previous cases, the Commission indicated that a deviation from the general practice for allocation was justified, considering that the Guidelines include the principles of ensuring that the costs award process has the flexibility to take into account particular circumstances where they are relevant and that the approach taken is fair, efficient, and effective. In those cases, the Commission held that WRS were more suitable indicators than TORs to determine the appropriate allocation, since the proceedings focused on the wireless industry. Similarly, the proceeding to which PIAC-NPF's cost application applies related solely to the Wireless Code, specifically section J. The focus was restricted to the wireless industry – wireless service providers and consumers of these services.
30. In light of the above, the Commission considers that in this instance, it would be appropriate to adopt the same approach and allocate costs among the costs respondents on the basis of WRS. This is as requested in PIAC-NPF's alternative approach. This approach would reflect the circumstances of the proceeding and the interests of the parties that participated in the proceeding.
31. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated as follows:<sup>5</sup>

Company	Proportion	Amount
RCCI	36.7%	\$1,240.71
Bell Mobility	32.6%	\$1,102.10
TCI	30.7%	\$1,037.87

### Directions regarding costs

32. The Commission **approves** the application by PIAC-NPF for costs with respect to their participation in the proceeding.
33. Pursuant to subsection 56(1) of the Act, the Commission fixes the costs to be paid to PIAC-NPF at \$3,380.67.

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<sup>5</sup> In this order, the Commission has used the wireless service revenues of the costs respondents based on the 2019 [Communications Monitoring Report](#) and the underlying data supporting that report (see Table T10.2 – “Retail mobile revenue market share by service provider” on [Open Data](#)).

34. The Commission **directs** that the award of costs to PIAC-NPF be paid forthwith by RCCI, Bell Mobility, and TCI according to the proportions set out in paragraph 31 above.

### **2019 Policy Direction**

35. The 2019 Policy Direction<sup>6</sup> applies to this order, since the record of the proceeding associated with PIAC-NPF's application for costs closed prior to 17 June 2018.<sup>7</sup> The Commission considers that that in exercising its powers to approve PIAC-NPF's application for costs, it is promoting consumers' interests by ensuring appropriate access to Commission proceedings on matters of public interest. Accordingly, the Commission's determinations in this order are consistent with the 2019 Policy Direction.

Secretary General

### **Related documents**

- *Wireless Code – Application by the Public Interest Advocacy Centre and the National Pensioners Federation seeking clarification and enforcement of rules regarding prepaid balances*, Telecom Decision CRTC 2020-91, 11 March 2020
- *TELUS Communications Inc. – Application to review and vary Telecom Orders 2019-170 and 2019-171*, Telecom Decision CRTC 2020-33, 29 January 2020
- *Determination of costs award with respect to the participation of the Deaf Wireless Canada Consultative Committee in the proceeding that led to Telecom Regulatory Policy 2017-200*, Telecom Order CRTC 2017-380, 25 October 2017
- *Determination of costs award with respect to the participation of Media Access Canada in the proceeding that led to Telecom Regulatory Policy 2017-200*, Telecom Order CRTC 2017-379, 25 October 2017
- *Determination of costs award with respect to the participation of the Consumers Council of Canada in the proceeding that led to Telecom Regulatory Policy 2017-200*, Telecom Order CRTC 2017-378, 25 October 2017

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<sup>6</sup> *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives to Promote Competition, Affordability, Consumer Interests and Innovation*, SOR/2019-227, 17 June 2019

<sup>7</sup> The 2019 Policy Direction applies with respect to applications received on or after 17 June 2019, or to applications for which the record of the proceeding closed more than one year before the date that the 2019 Policy Direction took effect.

- *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*
- *Determination of costs award with respect to the participation of l'Union des consommateurs in the proceeding that led to Telecom Regulatory Policy 2017-200, Telecom Order CRTC 2017-363, 16 October 2017*
- *Determination of costs award with respect to the participation of the Forum for Research and Policy in Communications in the proceeding that led to Telecom Regulatory Policy 2017-200, Telecom Order CRTC 2017-362, 16 October 2017*
- *Review of the Wireless Code, Telecom Regulatory Policy CRTC 2017-200, 15 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*
- *The Wireless Code, Telecom Regulatory Policy CRTC 2013-271, 3 June 2013*
- *Revision of CRTC costs award practices and procedures, Telecom Regulatory Policy CRTC 2010-963, 23 December 2010*
- *New procedure for Telecom cost awards, Telecom Public Notice CRTC 2002-5, 7 November 2002*