



Telecom Order CRTC 2022-139

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Determination of costs award with respect to the participation of the Public Interest Advocacy Centre in the proceeding initiated by Bell Mobility Inc.'s follow-up application to Telecom Decision 2020-48

Application

1. By letter dated 6 August 2021, the Public Interest Advocacy Centre (PIAC) applied for costs with respect to its participation in the proceeding initiated by Bell Mobility Inc.'s (Bell Mobility) follow-up application to Telecom Decision 2020-48. In its application, Bell Mobility requested that the Commission issue an order further to Telecom Decision 2020-48 to impose a new permanent roaming test on Videotron Ltd. (Videotron). The Commission dismissed Bell Mobility's application in a [letter](#) dated 25 May 2022.
2. Bell Mobility filed an answer, dated 13 August 2021, 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. More particularly, PIAC stated that it represented the interests of Canadian consumers as a class, with a particular focus on low-income consumers and consumers made vulnerable by the COVID-19 pandemic. It noted that, during the pandemic, extraordinary circumstances relating to health, education, and work have affected consumers' mobile usage patterns, including those of Videotron's subscribers, who may use Bell Mobility's network to roam temporarily outside Videotron's network. In making its submissions regarding the class of subscribers that it represented, PIAC referred to the Commission's guidance on that subject in Telecom Information Bulletin 2016-188.
5. Furthermore, PIAC stated that it had assisted the Commission in developing a better understanding of the issues under consideration by arguing that Bell Mobility's application was an overreach, was contrary to previous Commission decisions, and lacked evidence of wrongdoing by Videotron that would justify the requested relief;

by explaining its views on negative impacts that Bell Mobility's proposed changes to roaming tariff suspension rules could have on consumers, particularly during the pandemic; and by identifying how Bell Mobility's application could relate to proposed mobile virtual network operator access tariffs.

6. Finally, PIAC submitted that it had participated in the proceeding in a responsible way by complying with the Rules of Procedure and respecting deadlines.
7. PIAC requested that the Commission fix its costs at \$1,685.89. The costs consist entirely of legal fees, including external senior legal counsel at a rate of \$290 per hour and an articling student at a daily rate of \$235, and allowable harmonized sales tax.
8. PIAC did not name potential costs respondents, but stated that, consistent with Telecom Regulatory Policy 2010-963, it would be appropriate to allocate responsibility for payment among potential costs respondents based on the most recent data provided to the Commission by telecommunications service providers.

Bell Mobility's reply

9. Bell Mobility asked the Commission to dismiss PIAC's application for costs, because it did not meet the test for an award of costs set out in paragraph 66(1)(a) of the Rules of Procedure.
10. Bell Mobility stated that it is not clear that PIAC actually represented the interests of roaming customers who were vulnerable during the pandemic, because PIAC did not propose any changes to Videotron's approach to legitimate permanent roaming, and because Bell Mobility's proposal for a new permanent roaming test would have given roaming customers a longer assessment period (to determine whether roaming was permanent) than Videotron currently offers.
11. Further, in Bell Mobility's view, PIAC did not contribute to the Commission's understanding of the issues, because PIAC misunderstood the application in several ways. Bell Mobility stated that PIAC was wrong in saying that the application was contrary to Telecom Decision 2017-56 because, in Bell Mobility's view, in Telecom Decision 2020-48 the Commission said it would make an exception to the policy it had stated in Telecom Decision 2017-56, such that an *ex ante* threshold for permanent roaming should be applied to Videotron. Bell Mobility also submitted that PIAC's objections on privacy grounds were unfounded, because the application did not trigger privacy issues. Finally, Bell Mobility stated that PIAC's argument concerning the company's proposed changes to the roaming suspension rules was baseless, because the proposed changes were in line with Commission decisions and tariff language.
12. Bell Mobility also submitted that PIAC did not participate responsibly, stating that PIAC had misrepresented the company's application by making it appear as though Bell Mobility were proposing a change to the Commission's policy allowing for legitimate permanent roaming when, in fact, no such changes were proposed.

13. Bell Mobility argued that any costs awarded to PIAC should be paid equally by Bell Mobility and Videotron due to the latter's admitted and repeated violations of the roaming tariff prohibition on permanent roaming.

Commission's analysis and determinations

14. 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.
15. 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. Specifically, PIAC represented a group of subscribers with an interest in the proceeding, namely, the interests of all Canadian consumers, including low-income and vulnerable consumers, by explaining its views on the impact of Bell Mobility's proposed orders on that group, and its views on the impact of the pandemic on roaming usage.
16. PIAC has also satisfied the remaining criteria through its participation in the proceeding. It assisted the Commission in developing a better understanding of the various issues under consideration by explaining its views on Bell Mobility's arguments in light of Commission decisions and policies, and the facts on the record, and by explaining its views on the impact of the company's proposed relief on consumers. The Commission notes Bell Mobility's substantive objections to PIAC's costs award application, but considers that those views do not negate the fact that PIAC contributed a distinct and considered perspective on the issues in the application, and that the interests of the above-mentioned group of consumers were not otherwise represented in the proceeding.
17. Finally, PIAC participated in the proceeding in a responsible way, according to the procedures set out for the process. Accordingly, the Commission finds that PIAC meets the criteria for an award of costs under section 68 of the Rules of Procedure.
18. 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. The Commission finds that the total amount claimed by PIAC was necessarily and reasonably incurred and should be allowed. The

Commission notes that Bell Mobility did not take specific issue with PIAC's claimed costs or rates.

19. 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.
20. 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 Bell Mobility, Videotron, and TELUS Communications Inc. had a significant interest in the outcome of the proceeding and participated actively in the proceeding. Therefore, they are the appropriate costs respondents to PIAC's application for costs.
21. It is the Commission's general practice to allocate the responsibility for the payment of costs among costs respondents based on their telecommunications operating revenues (TORs).¹ In general, the Commission considers that TORs are indicators of the relative size and interest of the parties involved in proceedings.
22. However, the Commission's past practice has been to deviate from this standard approach and use wireless revenues market share instead of TORs where proceedings relate to wireless service matters alone. In this case, the entirety of the relevant proceeding related to wireless roaming tariffs, policy, and customers. The Guidelines set out the key principles that the Commission seeks to implement through its costs regime. These include ensuring that the process has the flexibility to take account of particular circumstances where they are relevant and that the approach taken is fair, efficient, and effective. Accordingly, given that the focus of the proceeding was restricted to the wireless industry, wireless service providers, and consumers of wireless services, the Commission considers that a deviation from the use of TORs is justified, and that it would be appropriate to allocate costs among the costs respondents based on wireless revenue market share.
23. 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.
24. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated entirely to Bell Mobility.

2019 Policy Direction

25. The Governor in Council issued a policy direction in which it directed the Commission to consider how its decisions can promote competition, affordability, consumer interests, and innovation (the 2019 Policy Direction).² The Commission

¹ TORs consist of Canadian telecommunications revenues from local and access, long distance, data, private line, Internet, and wireless services.

² *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

considers that in exercising its powers to approve PIAC's application for costs, the Commission is promoting consumer interests by ensuring appropriate access to Commission proceedings on matters regarding competition for telecommunications service providers that are new, regional, or smaller than the incumbent national service providers, and on matters regarding consumers' rights in their relationships with telecommunications service providers. Therefore, the Commission considers that its determinations regarding PIACs application are consistent with the 2019 Policy Direction.

Directions regarding costs

26. The Commission **approves** the application by PIAC for costs with respect to its participation in the proceeding.
27. Pursuant to subsection 56(1) of the *Telecommunications Act* the Commission fixes the costs to be paid to PIAC at \$1,685.89.
28. The Commission **directs** that the award of costs to PIAC be paid forthwith by Bell Mobility.

Secretary General

Related documents

- *RE: Bell Mobility Inc. – Application for various orders regarding Videotron Ltd.'s use of Bell Mobility's wholesale roaming service (Abridged version)*, Telecom - Commission Letter addressed to the Distribution List, 25 May 2022
- *Videotron Ltd. (Videotron) – Application for the Commission to order Bell Canada, on behalf of Bell Mobility Inc., not to suspend wholesale roaming services offered to Videotron – Final relief*, Telecom Decision CRTC 2020-48, 5 February 2020
- *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