



Telecom Order CRTC 2022-156

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Ottawa, 10 June 2022

File numbers: 1011-NOC2020-0187 and 4754-660

Determination of costs award with respect to the participation of the Public Interest Advocacy Centre in the proceeding initiated by Telecom Notice of Consultation 2020-187

Application

1. By letter dated 12 January 2021, the Public Interest Advocacy Centre (PIAC) applied for costs with respect to its participation in the proceeding initiated by Telecom Notice of Consultation 2020-187 (the proceeding). In the proceeding, the Commission issued a notice of consultation to address the appropriate network and service configurations for the disaggregated wholesale high-speed access (HSA) service regime for all wholesale HSA service providers across the country.
2. TELUS Communications Inc. (TCI) filed an intervention, dated 26 January 2021, in response to PIAC's application. The Competitive Network Operators of Canada (CNOC) filed a reply dated 27 January 2021.
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 concern for vulnerable and rural consumers, including seniors, especially in light of increased consumer demand for Internet access services in Canada due to the COVID-19 pandemic and the resultant exacerbation of problems with the availability of competitive services.
5. PIAC highlighted that it had participated in the proceeding in a responsible way by complying with the Rules of Procedure and by respecting the deadlines and processes set out in Telecom Notice of Consultation 2020-187 and in the Commission's procedural amendments to the process.
6. PIAC requested that the Commission fix its costs at \$15,998.50, consisting of \$9,947.25 for legal fees and \$6,051.25 for articling student fees. PIAC's claim included Ontario's 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 12.1 hours for senior external counsel at a rate of \$290 per hour for work drafting and editing its intervention and its reply (\$3,647.25 with the HST and the associated rebate), 10.5 days for internal counsel at a rate of \$600 per day for legal research and the preparation of its intervention, and 16.0 days for articling students at a rate of \$235 per day for legal research, intervention assistance, and review.
8. PIAC submitted that the major carriers who participated in the proceeding are the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents).
9. PIAC suggested that the responsibility for payment of costs should be divided among the costs respondents on the basis of their gross revenues or another similar factor.

Positions of parties

10. In its response, TCI submitted that, in addition to the costs respondents proposed by PIAC, CNOC should be made responsible for a portion of costs. TCI argued that the proceeding was a direct result of CNOC's application to review and vary Telecom Regulatory Policy 2015-326 and Telecom Decision 2016-379. TCI submitted that CNOC should therefore be responsible for at least a portion of PIAC's costs.
11. TCI suggested that the Commission could depart from its usual approach of allocating the responsibility for payment of costs based on telecommunications operating revenues (TORs),¹ and instead assign a percentage of costs to be borne by CNOC. For this purpose, TCI proposed that CNOC pay 25% of PIAC's costs, or, in the alternative, that each of CNOC's members be included in the costs calculation, based on their TORs.
12. In its reply to TCI, CNOC stated that its application arose as a result of broader industry conduct as opposed to the regulatory activities of itself and its members. CNOC argued that TCI's justifications to depart from the standard Commission practice of awarding costs based on the TORs of all parties with an interest in the proceeding were therefore insufficient.

Commission's analysis

13. The criteria for an award of costs are set out in section 68 of the Rules of Procedure, which reads as follows:

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

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.
14. 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 by representing vulnerable and rural consumers, including seniors, who have been impacted by the COVID-19 pandemic.
15. PIAC has also satisfied the remaining criteria through its participation in the proceeding. PIAC's submissions, especially with regard to increased consumer demand for Internet access services further demonstrating the need for competitive availability, the necessity of continued access to mandated aggregated frameworks by small cooperative Internet service providers, costs for connection to points of interconnection, and the timing of setting final tariff rates, assisted the Commission in developing a better understanding of the matters that were considered.
16. 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.
17. 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.
18. 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.
19. Although PIAC did not name CNOC as a costs respondent, the Commission considers that CNOC participated actively in the proceeding and possessed a significant interest in its outcome, because the proceeding stemmed from questions raised by CNOC's application, dated 13 November 2018, to review and vary Telecom Regulatory Policy 2015-326 and Telecom Decision 2016-379.

20. The Commission therefore considers that the following parties had a significant interest in the outcome of the proceeding and participated actively in the proceeding, and are therefore the appropriate costs respondents to PIAC's application for costs: Allstream Business Inc.; Bell Canada; Bragg Communications Incorporated, carrying on business as Eastlink; Cogeco Communications Inc. on behalf of its subsidiary Cogeco Connexion Inc.; CNOC; Distributel Communications Limited; Quebecor Media Inc., on behalf of Videotron Ltd. (Videotron); Rogers Communications Canada Inc. (RCCI); Saskatchewan Telecommunications; Shaw Communications Inc.; TekSavvy Solutions Inc.; and TCI.
21. The Commission considers that, consistent with its practice, it is appropriate to allocate the responsibility for payment of costs among costs respondents based on their TORs as an indicator of the relative size and interest of the parties involved in the proceeding.
22. TCI has requested that CNOC pay 25% of PIAC's costs in order to reflect that the fact that the proceeding resulted from CNOC's application. The Commission considers, however, that CNOC's application raised serious questions with respect to the regulatory framework for wholesale wireline services and to the deployment of, and transition to, disaggregated HSA services that required a fulsome analysis with wide participation from the industry across Canada. Therefore, the Commission considers that CNOC's relative interest in the proceeding was no greater than that of any other costs respondent and that TCI has not provided sufficient reason for the Commission to deviate from its standard practice of dividing costs based on TORs.
23. 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.

Accordingly, the Commission finds that the responsibility for payment of costs should be allocated as follows:²

Company	Proportion	Amount
TCI	33.7%	\$5,391.50
RCCI	32.6%	\$5,215.51
Bell Canada	26.3%	\$4,207.60
Videotron	7.4%	\$1,183.89

² In this order, the Commission has used the TORs of the costs respondents based on their most recent audited financial statements.

2019 Policy Direction

24. 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).³ The Commission considers that the awarding of costs in this instance is consistent with subparagraph 1(a)(iv) of the 2019 Policy Direction.
25. By facilitating the participation of a group that represents consumer interests, this order contributes to enhancing and protecting the rights of consumers in their relationships with telecommunications service providers. Since consumer groups often require financial assistance to effectively participate in Commission proceedings, the Commission is of the view that its practice of awarding costs, as exercised in this instance, enables such groups to provide their perspectives on how consumer interests may be affected by the outcomes of the proceedings. In light of the above, the Commission considers that its determination to award costs to PIAC promotes consumer interests.

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 \$15,998.50.
28. The Commission **directs** that the award of costs to PIAC be paid forthwith by TCI, RCCI, Bell Canada, and Videotron to PIAC according to the proportions set out in paragraph 23.

Secretary General

Related documents

- *Call for comments – Appropriate network configuration for disaggregated wholesale high-speed access services*, Telecom Notice of Consultation CRTC 2020-187, 11 June 2020
- *Follow-up to Telecom Regulatory Policy 2015-326 – Implementation of a disaggregated wholesale high-speed access service, including over fibre-to-the*

³ *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

premises access facilities, Telecom Decision CRTC 2016-379, 20 September 2016

- *Guidance for costs award applicants regarding representation of a group or a class of subscribers*, Telecom Information Bulletin CRTC 2016-188, 17 May 2016
- *Review of wholesale wireline services and associated policies*, Telecom Regulatory Policy CRTC 2015-326, 22 July 2015
- *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