



Telecom Order CRTC 2022-158

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Ottawa, 10 June 2022

File numbers: 1011-NOC2019-0406 and 4754-670

Determination of costs award with respect to the participation of the Public Interest Advocacy Centre in the proceeding initiated by Telecom Notice of Consultation 2019-406

Application

1. By letter dated 4 April 2021, the Public Interest Advocacy Centre (PIAC) applied for costs with respect to its participation in the proceeding initiated by Telecom Notice of Consultation 2019-406 (the proceeding). In the proceeding, the Commission invited comments on potential barriers and/or regulatory solutions to building new facilities or interconnecting to existing broadband facilities in underserved areas of Canada.
2. The Commission did not receive any interventions in response to the application for costs.
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. Specifically, PIAC submitted that it represents all consumers across Canada, with a particular focus on low-income consumers. PIAC explained that the specific method it used to represent this group or class of subscribers was to conduct extensive research in relation to consumer interests.
5. PIAC requested that the Commission fix its costs at \$40,240.37, consisting entirely of legal fees. PIAC's claim included the federal Goods and Services Tax (GST) on fees less the rebate to which PIAC is entitled in connection with the GST. PIAC filed a bill of costs with its application.
6. PIAC claimed 130.8 hours for senior external counsel at a rate of \$290 per hour for work preparing for and drafting its intervention, its responses to interrogatories, and its reply comments. It also claimed 2.7 hours for separate senior external counsel at a rate of \$290 per hour for work drafting its final submission/reply.

7. PIAC submitted that major carriers that participated in the proceeding are the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents).
8. 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.

Commission's analysis

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 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, as it represents the interests of consumers across Canada, with a particular concern for vulnerable and rural consumers.
11. PIAC has also satisfied the remaining criteria through its participation in the proceeding. In particular, PIAC's submissions, especially with regard to the lack of consideration of consumer affordability mechanisms, and to the fact that subsidy is crucial to the success of any measures to remove purely technical, legal, and physical barriers to rural broadband rollout, assisted the Commission in developing a better understanding of the matters that were considered. Furthermore, PIAC 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 2019-406 and in the Commission's procedural amendments to the process.
12. 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.

13. 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.
14. In its application, PIAC named “major carriers” that participated in the proceeding as the appropriate costs respondents. The Commission has generally determined, however, 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.
15. The Commission 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: Bell Canada (including Bell Aliant, Bell MTS, DMTS and KMTS) on behalf of itself and on behalf of Bell Mobility Inc., Groupe Maskatel LP, NorthernTel Limited Partnership (including Ontera), Northwestel Inc., and Télébec, Société en commandite (collectively, Bell et al.); Bragg Communications Inc., carrying on business as Eastlink; Cogeco Communications Inc. on behalf of its subsidiary Cogeco Connexion Inc.; Rogers Communications Canada Inc. (RCCI); Saskatchewan Communications (SaskTel); Shaw Cablesystems G.P.; TBayTel; TekSavvy Solutions Inc.; TELUS Communications Inc. (TCI); Quebecor Media Inc on behalf of its subsidiary Vidéotron ltée.; (Videotron), and Xplornet Communications Inc.
16. 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 telecommunications operating revenues (TORs) as an indicator of the relative size and interest of the parties involved in the proceeding.¹

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.

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

| Company | Proportion | Amount |
|----------------|-------------------|---------------|
|----------------|-------------------|---------------|

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

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

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|--------------------|-------|-------------|
| Bell Canada et al. | 39.9% | \$16,055.91 |
| TCI | 26.4% | \$10,623.46 |
| RCCI | 25.4% | \$10,221.05 |
| Videotron | 5.8% | \$2,333.94 |
| SaskTel | 2.5% | \$1,006.01 |

17. Consistent with its general approach articulated in Telecom Costs Order [2002-4](#), the Commission makes Bell Canada responsible for payment on behalf of Bell et al. The Commission leaves it to the members of Bell et al. to determine the appropriate allocation of the costs among themselves.

2019 Policy Direction

18. 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.
19. 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

20. The Commission **approves** the application by PIAC for costs with respect to its participation in the proceeding.
21. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to PIAC at \$40,240.37.

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

22. The Commission **directs** that the award of costs to PIAC be paid forthwith by Bell Canada on behalf of Bell et al., TCI, RCCI, Videotron, and SaskTel according to the proportions set out in paragraph 16.

Secretary General

Related documents

- *Call for comments regarding potential barriers to the deployment of broadband-capable networks in underserved areas in Canada*, Telecom Notice of Consultation CRTC 2019-406, 10 December 2019
- *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
- *Action Réseau Consommateur, the Consumer's Association of Canada, Fédération des associations coopératives d'économie familiale and the National Anti-Poverty Organization application for costs – Public Notice CRTC 2001-60*, Telecom Costs Order CRTC 2002-4, 24 April 2002