



## Telecom Order CRTC 2023-384

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Ottawa, 20 November 2023

*File numbers: 1011-NOC2023-0048 and 4754-713*

### **Determination of costs award with respect to the participation of the Public Interest Advocacy Centre in the proceeding initiated by Telecom Notice of Consultation 2023-48**

#### **Application**

1. By letter dated 17 July 2023, the Public Interest Advocacy Centre (PIAC) applied for costs with respect to its participation in the proceeding initiated by Telecom Notice of Consultation 2023-48 (the proceeding). In the proceeding, the Commission sought comments on whether the enterprise and Internet of Things (IoT)/machine-to-machine (M2M) retail market segments should be included as part of the Commission's wholesale mobile virtual network operator (MVNO) access policy framework in order to foster wireless competition that is sufficient to protect the interests of users.
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. In particular, PIAC submitted that it represents the interests of consumers who seek competitive retail wireless services, specifically the choice and affordability of telecommunications services, and therefore advanced the interests of Canadian consumers with respect to the issues that were discussed in the proceeding. Specifically, PIAC stated that it represents the interests of all customers of telecommunication services who use or will use IoT and M2M devices, or to whom wireless providers may market retail IoT and M2M services.
5. PIAC requested that the Commission fix its costs at \$2,850.71, consisting entirely of legal 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.

6. PIAC claimed 0.5 hour for senior external counsel at a rate of \$290 per hour for work preparing for the proceeding (\$150.71 with the HST and the associated rebate), and 4.5 days for in-house counsel at a rate of \$600 per day (\$2,700).
7. PIAC suggested that the responsibility for payment of costs be allocated among all potential costs' respondents based on the most recent data provided to the Commission by the telecommunications service providers.

### **Commission's analysis**

8. 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.
9. 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. PIAC represents the interests of all customers of telecommunication services, as a class, with a particular focus on low-income consumers, and is held accountable for its representation of the public interest through a volunteer board of directors drawn across Canada.
10. PIAC has also satisfied the remaining criteria through its participation in the proceeding. PIAC's submissions assisted the Commission in developing a better understanding of the matters that were considered.
11. The rates claimed in respect of legal 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.
12. 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.

13. 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 the following parties had a significant interest in the outcome of the proceeding and participated actively throughout the proceeding: Bell Mobility Inc.; Bragg Communications Incorporated, carrying on business as Eastlink; Cogeco Communications inc.; ECOTEL Inc.; Iristel Inc.; Quebecor Media Inc.; Rogers Communications Canada Inc. (RCCI); Saskatchewan Telecommunications; Sogetel inc.; and TELUS Communications Inc. (TCI). Therefore, these parties are the appropriate costs respondents to PIAC's application for costs.
14. 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.<sup>1</sup>
15. 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.
16. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated as follows:<sup>2</sup>

Company	Proportion	Amount
RCCI	51.49%	\$1,467.88
TCI	48.51%	\$1,382.83

### 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 \$2,850.71.
19. The Commission **directs** that the award of costs to PIAC be paid forthwith by RCCI and TCI according to the proportions set out in paragraph 16.

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

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

## Related documents

- *Call for comments – Facilities-based wholesale mobile virtual network operator (MVNO) access tariffs – Considering the inclusion of additional retail market segments*, Telecom Notice of Consultation CRTC 2023-48, 1 March 2023, as modified by Telecom Notice of Consultation CRTC 2023-48-1, 17 April 2023
- *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