



## Telecom Costs Order CRTC 2008-14

Ottawa, 15 August 2008

### **Determination of costs award with respect to the participation of the Canadian Internet Policy and Public Interest Clinic in the proceeding initiated by the Part VII applications by Bell Canada et al. and Bragg et al. to review and vary Telecom Decision 2007-130**

Reference: 8662-B54-200801911; 8662-B60-200801862 and 4754-318

1. By letter dated 5 May 2008, the Canadian Internet Policy and Public Interest Clinic (CIPPIC) applied for costs with respect to its participation in the proceeding initiated by two Part VII applications to review and vary Telecom Decision 2007-130. Both Part VII applications were submitted 4 February 2008; one by Bell Aliant Regional Communications, Limited Partnership, Bell Canada, Northwestel Inc. and Télébec, Société en commandite (collectively, Bell Canada et al.), and one by Bragg Communications Inc., Cogeco Cable Canada Inc., Quebecor Media Inc. on behalf of Videotron Ltd., Rogers Cable Communications Inc. and Shaw Communications Inc. (collectively, Bragg et al.).
2. On 13 May 2008, Bell Aliant Regional Communications, Limited Partnership, Bell Canada and Saskatchewan Telecommunications (collectively, the Companies) filed comments in response to CIPPIC's application.
3. CIPPIC did not file a reply to the comments submitted regarding its costs application.

### **Application**

4. CIPPIC submitted that it had met the criteria for an award of costs set out in subsection 44(1) of the *CRTC Telecommunications Rules of Procedure* (the Rules), as it represents a body of subscribers that had an interest in the outcome of the proceeding initiated by the two Part VII applications, it participated responsibly, and it contributed to a better understanding of the issues by the Commission through its comments in the proceeding.
5. CIPPIC claimed a total of \$7,713.75 for its intervention in the two Part VII applications, consisting entirely of legal fees for in-house counsel (including articling students). CIPPIC filed a bill of costs with its application.
6. CIPPIC submitted that the appropriate respondents in this case were Bell Canada et al., Bragg et al., and Saskatchewan Telecommunications Inc.
7. CIPPIC suggested that the responsibility for payment of costs should be divided among the respondents in rough proportion to their telecommunications service revenues.

## **Answer**

8. In response to the application, the Companies submitted that, while they had no objections to the amount claimed by CIPPIC nor to its proposed allocation, they did question CIPPIC's entitlement to costs and the proportion of its claim that would be eligible for a costs award. The Companies argued that CIPPIC has access to alternate forms of funding and that this militates against its entitlement to claim the entirety of its costs. The Companies further questioned CIPPIC's claim to represent a body of subscribers as contemplated by subsection 44(1)(a) of the Rules.

## **Commission's analysis and determinations**

9. The Commission notes that in Telecom Costs Order 2008-5, CIPPIC was awarded costs for its participation in the proceeding initiated by Telecom Public Notice 2007-16 (Public Notice 2007-16 proceeding). The Commission further notes that it was the Public Notice 2007-16 proceeding that led to Telecom Decision 2007-130.
10. In Telecom Costs Order 2008-5, the Commission noted that it had previously awarded costs to parties that did not represent a body of subscribers with whom the parties had a formal relationship. The Commission also noted that CIPPIC's mandate includes intervening on issues with broad public interest implications. As the Commission considers that CIPPIC's intervention in the current proceeding also falls within this mandate, the Commission reiterates that the fact that CIPPIC did not represent a specifically delineated body of subscribers is not a bar to an award of costs.
11. The Commission also notes that most of CIPPIC's funding is for specific research projects rather than advocacy of the nature now in question. Furthermore, in Telecom Costs Order 2008-5 the Commission considered that CIPPIC had established that it had not and would not receive financial assistance from other sources in connection with its participation in the Public Notice 2007-16 proceeding. In light of the foregoing, and as the two Part VII applications giving rise to CIPPIC's present claim both relate to the decision reached in the Public Notice 2007-16 proceeding, the Commission considers that CIPPIC remains likewise eligible to claim the entirety of its present costs.
12. The Commission finds that CIPPIC has satisfied the criteria for an award of costs set out in subsection 44(1) of the Rules. Specifically, the Commission finds that CIPPIC is representative of a group or class of subscribers that has an interest in the outcome of the proceeding, it has participated in a responsible way, and it has contributed to a better understanding of the issues by the Commission.
13. The Commission notes that the rates claimed in respect of legal fees are in accordance with the rates set out in the Legal Directorate's *Guidelines for the Taxation of Costs*, revised as of 24 April 2007. The Commission also finds that the total amount claimed by CIPPIC was necessarily and reasonably incurred and should be allowed.

14. The Commission considers that 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.
15. In determining the appropriate respondents to an award of costs, the Commission has generally looked at which parties are affected by the issues and have actively participated in the proceeding. The Commission notes, however, that in allocating costs among respondents, it has also been sensitive to the fact that if too large a number of respondents are named, the applicant may have to collect small amounts from certain respondents, resulting in a significant administrative burden to the applicant.
16. In light of the above and given the size of the costs award in this case, and the result that if all potential costs respondents were retained CIPPIC would be required to collect small amounts from certain respondents, the Commission considers that it is appropriate, in the present circumstances, to limit the respondents to Bell Canada et al. and Bragg et al.
17. With respect to the proper method of apportioning costs awarded among the respondents, given the relative number of arguments raised by the parties, and the relative proportion and number of pages of CIPPIC's submission addressing these arguments, Bell Canada et al. will be responsible for 40% of the costs and Bragg et al. will be responsible for the remaining 60%.
18. Accordingly, Bell Canada et al. are to share \$3,085.50, which represents 40% of the awarded cost. Consistent with its general approach articulated in Telecom Costs Order 2002-4, the Commission makes Bell Canada responsible for payment on behalf of Bell Canada et al. and leaves it to the members of this group to determine the appropriate allocation of costs among themselves.
19. With respect to Bragg et al., the Commission considers that they should equally share \$4,628.25, which represents the remaining 60% of the costs, such that each pays \$925.65.

### **Direction as to costs**

20. The Commission **approves** the application by CIPPIC for costs with respect to its intervention in the proceeding initiated by the Part VII applications by Bell Canada et al. and Bragg et al. to review and vary Telecom Decision 2007-130.
21. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to CIPPIC at \$7,713.75.
22. The Commission directs that the award of costs to CIPPIC be paid forthwith by Bell Canada on behalf of the applicant telephone companies, and by Bragg et al., in the proportions indicated above in paragraphs 17, 18 and 19.

Secretary General

## Related documents

- *Determination of costs award with respect to the participation of the Canadian Internet Policy and Public Interest Clinic in the Telecom Public Notice CRTC 2007-16 proceeding*, Telecom Costs Order CRTC 2008-5, 30 May 2008
- *Proceeding to consider the organization and mandate of the Commissioner for Complaints for Telecommunications Services*, Telecom Public Notice CRTC 2007-16, 22 August 2007
- *Establishment of an independent telecommunications consumer agency*, Telecom Decision CRTC 2007-130, 20 December 2007
- *New procedure for Telecom costs awards*, Telecom Public Notice CRTC 2002-5, 7 November 2002
- *Action Réseau Consommateur, the Consumers' 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

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