



Telecom Order CRTC 2010-510

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Ottawa, 23 July 2010

Determination of costs award with respect to the participation of the Public Interest Advocacy Centre in the Broadcasting and Telecom Notice of Consultation 2009-602 proceeding

File number: 4754-365

1. By letter dated 23 February 2010, the Public Interest Advocacy Centre (PIAC) applied for costs with respect to its participation in the proceeding initiated by Broadcasting and Telecom Notice of Consultation 2009-602 (the proceeding).
2. The Commission received comments, dated 8 March 2010, from Bell Canada on behalf of itself, Bell Aliant Regional Communications, Limited Partnership (Bell Aliant), and Télébec, Limited Partnership (Télébec) [collectively, Bell Canada et al.]. PIAC filed reply comments dated 12 March 2010.

Application

3. PIAC 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) because it represented a group of subscribers that had an interest in the outcome of the proceeding, it had participated responsibly, and it had contributed to a better understanding of the issues by the Commission through its participation in the proceeding.
4. PIAC requested that the Commission fix its costs at \$5,112.70, 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.
5. PIAC claimed 17 hours at a rate of \$290 per hour for legal fees for Michael Janigan.
6. PIAC made no submission as to the appropriate costs respondents.

Answer

7. In response to the application, Bell Canada et al. did not object to PIAC being awarded costs. However, they argued that the costs claimed for the counsel acting for PIAC, Michael Janigan, should have been calculated based on in-house rather than outside counsel rates. In support, Bell Canada et al. submitted that Mr. Janigan's position as Executive Director and General Counsel of PIAC indicated that he was in-house counsel. They also noted that PIAC's website lists Mr. Janigan under the

heading “Lawyers and Staff.” In addition, Bell Canada et al. noted that Mr. Janigan had signed PIAC’s comments and reply comments in his capacity as Executive Director and General Counsel of PIAC. Finally, Bell Canada et al. noted that in the Law Society of Upper Canada’s (LSUC) directory, Mr. Janigan’s status is recorded as “Practising Law – Employed.”

Reply

8. In reply, PIAC stated that the issues raised by Bell Canada et al. had been dealt with previously in Telecom Costs Order 2008-11, and that the status of Mr. Janigan’s retainer with PIAC had not changed since that determination. PIAC also stated that the only new information Bell Canada et al. provided was about Mr. Janigan’s employment status in the LSUC directory.
9. In response to the classification of Mr. Janigan’s status on the LSUC website, PIAC submitted that the classification system used by the LSUC did not properly reflect Mr. Janigan’s relationship with PIAC and, as a compromise, Mr. Janigan had chosen one that reflected the nature of his work instead of the nature of his relationship with PIAC. Furthermore, Mr. Janigan stated that he would change his employment status in the LSUC directory in order to avoid further confusion.
10. PIAC also stated that Mr. Janigan pays the full LSUC fees and the Lawyers Professional Indemnity Company for Errors and Omissions Insurance, an obligation that is required only of non-in-house lawyers.

Commission’s analysis and determinations

11. The Commission finds that PIAC has satisfied the criteria for an award of costs set out in subsection 44(1) of the Rules. Specifically, the Commission finds that PIAC represented a group or class of subscribers that had an interest in the outcome of the proceeding, it participated in a responsible way, and it contributed to a better understanding of the issues by the Commission. Accordingly, the Commission finds that the applicant meets the criteria for an award of costs under subsection 44(1) of the Rules.
12. In response to Bell Canada et al.’s argument that Mr. Janigan should have been billed as in-house counsel, the Commission notes that in Telecom Costs Order 2008-11, it found that Mr. Janigan was properly characterized as outside counsel. As noted in that order, the Commission considers that for the purposes of determining the appropriate costs to be awarded, any determination of the relationship between an organization and counsel should be based on a variety of factors, and not solely on any single determinant, such as the titles used by parties to a proceeding.
13. In Telecom Costs Order 2008-11, the Commission determined that Mr. Janigan’s costs should be calculated based on outside counsel rates. The Commission explained that:

...This conclusion is based on several factors, including PIAC's statements that Michael Janigan provides legal services in his individual capacity, bills PIAC for services rendered, pays his own overhead to PIAC, pays his own insurance, pays GST on any services provided for PIAC, and is not exempted from having to pay the Lawyers Professional Indemnity Company for Errors and Omissions Insurance.

14. Regarding the additional evidence provided by Bell Canada et al. in their answer concerning Mr. Janigan's employment status in the LSUC Directory, the Commission notes that Mr. Janigan's status is correctly listed as "In Private Practice."
15. The Commission finds that the evidence submitted by Bell Canada et al. is substantially the same as the evidence submitted in the proceeding leading to Telecom Costs Order 2008-11. Accordingly, the Commission considers that PIAC has correctly classified Mr. Janigan as outside counsel acting on PIAC's behalf and that no modification to PIAC's cost claim is required.
16. The Commission notes that the rates claimed in respect of legal fees are in accordance with the rates set out in the Commission's 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 PIAC was necessarily and reasonably incurred and should be allowed.
17. 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.
18. 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.
19. The Commission further 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 many respondents, resulting in a significant administrative burden to the applicant.
20. In light of the above and given the relatively small size of the costs award in this case, the large number of potential costs respondents, and the result that if all potential costs respondents were retained, PIAC 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 this award of costs to Bell Canada et al., MTS Allstream Inc. (MTS Allstream), TELUS Communications Company (TCC), Rogers Communications Inc. (RCI), Shaw Cablesystems (Shaw), and Quebecor Media Inc. (QMI).
21. The Commission notes that it has, in previous decisions, allocated the responsibility for the payment of costs among respondents on the basis of the respondents' telecommunications operating revenues (TORs), as an indicator of the relative size

and interest of the parties involved in the proceeding. The Commission considers that, in the present circumstances, it is appropriate to apportion the costs among the respondents in proportion to their TORs, as reported in their most recent audited financial statements. Accordingly, the Commission finds that the responsibility for the payment of costs should be allocated as follows:

Bell Canada et al.	36%
TCC	28%
RCI	25%
MTS Allstream	5.3%
Shaw	3%
QMI	2.7%

22. Consistent with its general approach articulated in Telecom Costs Order 2002-4, the Commission makes Bell Canada responsible for payment on behalf of Bell Aliant and Télébec, and leaves it to Bell Canada et al. to determine the appropriate allocation of the costs among themselves.

Directions as to costs

23. The Commission **approves** the application by PIAC for costs with respect to its participation in the proceeding.
24. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to PIAC at \$5,112.70.
25. The Commission directs that the award of costs to PIAC be paid forthwith by Bell Canada on behalf of Bell Aliant and Télébec, TCC, RCI, MTS Allstream, Shaw, and QMI, according to the proportions set out in paragraph 21.

Secretary General

Related documents

- *Call for comments on new draft regulations concerning CRTC Rules of Practice and Procedure*, Broadcasting and Telecom Notice of Consultation CRTC 2009-602, 30 September 2009, as amended by Broadcasting and Telecom Notices of Consultation CRTC 2009-602-1, 23 November 2009, 2009-602-2, 17 December 2009, and 2009-602-3, 23 December 2009
- *Determination of costs award with respect to the participation of the Public Interest Advocacy Centre in the Telecom Public Notice 2006-14 proceeding*, Telecom Costs Order CRTC 2008-11, 13 June 2008

- *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*