



Telecom Order CRTC 2010-85

Ottawa, 12 February 2010

Determination of costs awards with respect to the participation of certain parties in the Telecom Public Notice 2008-19 proceeding

File numbers: 8646-C12-200815400, 4754-356, 4754-357, 4754-358, and 4754-359

In this order, the Commission issues its determination regarding costs awards for the Council of Canadians with Disabilities and ARCH Disability Law Centre; the Canadian Internet Policy and Public Interest Clinic on behalf of the Campaign for Democratic Media; the Public Interest Advocacy Centre on behalf of the Consumers' Association of Canada, Canada Without Poverty, and Option consommateurs; and l'Union des consommateurs for their participation in the Telecom Public Notice 2008-19 proceeding.

1. By letter dated 24 August 2009, the Council of Canadians with Disabilities and ARCH Disability Law Centre (CCD/ARCH) applied for costs with respect to their participation in the proceeding initiated by Telecom Public Notice 2008-19 (the Internet traffic management practices (ITMP) proceeding).
2. By letters dated 28 August 2009, the following organizations also applied for costs with respect to their participation in the ITMP proceeding:
 - the Canadian Internet Policy and Public Interest Clinic (CIPPIC), on behalf of the Campaign for Democratic Media (CDM);¹
 - the Public Interest Advocacy Centre (PIAC), on behalf of the Consumers' Association of Canada, Canada Without Poverty, and Option consommateurs; and
 - l'Union des consommateurs (l'Union).²
3. Comments were received on these applications from:
 - Bell Aliant Regional Communications, Limited Partnership (Bell Aliant), Bell Canada, Cogeco Cable Inc. (Cogeco), Rogers Communications Inc. (RCI), Saskatchewan Telecommunications (SaskTel) and Shaw Communications Inc. (Shaw) [collectively, the Companies];
 - Barrett Xplore Inc. and Barrett Broadband Networks Inc. (Barrett);
 - the Canadian Association of Internet Providers (CAIP);
 - the Canadian Association of the Deaf (CAD); and
 - TELUS Communications Company (TCC).

¹ CIPPIC submitted an amended bill of costs on 3 September 2009.

² CCD/ARCH, CIPPIC, PIAC and l'Union will be referred to collectively as the "Costs Applicants."

Each of the Costs Applicants filed reply comments on 5 October 2009.

Applications

4. The Costs Applicants submitted that they 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 they represent a significant body of subscribers who would be affected by the outcome of the ITMP proceeding, they had participated responsibly throughout the proceeding, and they had contributed to a better understanding of the issues through their written submissions.
5. In addition, CCD/ARCH noted in their application that by participating together they had saved costs. They further submitted that the time claimed was reflective of the work required to adequately represent the interests of the disability community in the ITMP proceeding. CCD/ARCH noted that, unlike in past proceedings, they were unable to use the services of the in-house counsel for ARCH, who had expertise in telecommunications, due to her taking a leave of absence in May 2009 and due to the fact that she could not work on the proceeding prior to her leave due to other commitments. CCD/ARCH submitted that, as a result, they had to rely on the services of outside counsel.
6. CCD/ARCH requested that the Commission fix their costs at \$154,143.04, consisting of \$121,575.25 for legal fees, \$29,280 for expert witness fees, and \$3,287.79 for disbursements.
7. CIPPIC requested that the Commission fix its costs at \$118,609.48, consisting of \$81,976.75 for legal fees, \$31,680 for expert witness fees, and \$4,952.73 for disbursements.
8. PIAC requested that the Commission fix its costs at \$117,990.60, consisting of \$74,625.02 for legal fees, \$26,867.81 for consultant fees, \$15,037.50 for expert witness fees, and \$1,460.27 for disbursements.
9. L'Union requested that the Commission fix its costs at \$33,374.39, consisting of \$18,850 for legal fees, \$2,350 for analyst fees, \$11,894.39 for expert witness fees, and \$280 for disbursements.
10. The claims of CCD/ARCH, PIAC, and l'Union included the federal Goods and Services Tax (GST) on certain fees, less the rebate to which they are entitled in connection with the GST. All of the Costs Applicants filed a bill of costs with their applications.
11. The Costs Applicants made no submissions in their applications as to the appropriate costs respondents.

Answers

The Companies

12. In response to the applications, the Companies submitted that paragraph 44(6)(b) of the Rules requires that costs applications must be evaluated to determine whether costs claimants could have contributed to a better understanding through less costly means and through greater cooperation with other interveners.

13. The Companies submitted that the amounts being claimed by the Costs Applicants were excessive. The Companies noted that the total costs being claimed in the ITMP proceeding exceeded the total amount of costs awarded by the Commission for all proceedings in 2008 despite the fact that, in the Companies' view, the issues in the ITMP proceeding were not complex and were generally limited in scope in comparison with certain other Commission proceedings.
14. The Companies submitted that if the Commission were to award all of the costs claimed, it would put an unreasonable strain on their respective budgets and send an inappropriate signal to costs claimants generally. The Companies proposed that, based on the costs awarded in other more complex proceedings, the number of interventions and the low complexity of the ITMP proceeding, and taking into account the Commission's Legal Directorate's *Guidelines for the Taxation of Costs* (the Guidelines), the total costs awarded for the ITMP proceeding should not exceed \$150,000.
15. With respect to the costs claimed by CCD/ARCH, the Companies submitted that they were excessive because the Commission had already considered the accessibility of telecommunications services provided via the Internet in the recent Telecom Public Notice 2008-8 proceeding (the Accessibility proceeding). They submitted, further, that CCD/ARCH's claim was higher than what ARCH had claimed for its participation in the Accessibility proceeding, despite the fact that the scope of issues being considered was much broader in that proceeding. The Companies submitted that CCD/ARCH's claim for legal fees should be reduced by at least half and that their claim for expert witness fees should be denied on the basis that the expert evidence did not contribute to a better understanding of the issues in light of the recent Accessibility proceeding.
16. With respect to claims for costs by CIPPIC, PIAC, and l'Union, the Companies submitted that these parties should have taken reasonable steps to contain their costs by making a joint submission in the ITMP proceeding. The Companies further submitted that both CIPPIC's and PIAC's submissions were duplicative of those they had previously made in the Part VII proceeding commenced by CAIP to review the ITMPs of Bell Canada (CAIP Part VII proceeding).³ The Companies accordingly proposed that CIPPIC's and PIAC's claims for costs should be reduced by 50 percent, and that l'Union's, although much more reasonable than those of CIPPIC's and PIAC's, should be reduced by 25 percent.
17. The Companies noted that PIAC was claiming amounts that were higher than what it had claimed in the Telecom Public Notice 2006-14 proceeding (the Essential Services proceeding). The Companies submitted that, unlike the ITMP proceeding, the Essential Services proceeding dealt with highly technical issues and involved multiple rounds of interrogatories and a multi-week oral proceeding, which included inter-party cross-examination.
18. The Companies also submitted that since CIPPIC was a member of CDM, the rates claimed by CIPPIC's legal counsel should be the rates for in-house legal counsel.

³ See Telecom Decision 2008-108.

19. The Companies submitted that any costs awarded to the Costs Applicants should be allocated among all telecommunications service providers (TSPs), including organizations which represented TSPs, who had participated in the ITMP proceeding.

Barrett

20. Barrett stated that it considered the legal, consultant, and expert witness fees claimed by CIPPIC, PIAC, and CCD/ARCH to be very high given the nature of the proceeding. Barrett contrasted the legal fees claimed by these parties with those claimed by l'Union and CAD, which appeared to Barrett to be considerably more reasonable.⁴ Barrett stated that its legal fees were considerably less than those of CIPPIC, PIAC, and CCD/ARCH. Barrett submitted that consideration should be given to whether some of the costs applicants in the ITMP proceeding should have pooled their resources and minimized the duplication of expert witnesses and counsel.
21. Barrett raised the eligibility of CIPPIC to be reimbursed for its costs on a number of grounds. It noted that CIPPIC is based at the University of Ottawa, and therefore may be publicly funded already. It raised the same concern with respect to CIPPIC's expert witness, Mr. St-Arnaud, who works at an organization that receives public funding. In addition, Barrett submitted that in the ITMP proceeding, CIPPIC appeared to have also been representing the SaveOurNet.ca Coalition, whose members include for-profit businesses, including businesses with commercial interests adverse to those of Barrett.

CAIP

22. CAIP argued that it was not an appropriate costs respondent to the applications on the basis that it was made a party to the ITMP proceeding by the Commission, that it is a not-for-profit association that does not have the resources to pay costs awards, and that in the Essential Services proceeding, which was more complex than the ITMP proceeding, the Commission had refrained from naming associations as costs respondents. However, it submitted that if the Commission were to name CAIP as a costs respondent, the Costs Applicants met the test set out in subsection 44(1) of the Rules.

CAD

23. CAD supported CCD/ARCH's costs application. It noted that it had limited its participation in the ITMP proceeding because it knew CCD/ARCH would be taking an active role and that had it not limited its participation, its costs would have been similar to those of CCD/ARCH. CAD also strongly disagreed with the submission by the Companies that all accessibility-related issues should have been dealt with in the Accessibility proceeding.

⁴ The Commission notes that the total legal fees claimed by these two costs applicants were \$18,850 and \$6,851.25, respectively. The CAD's costs application was disposed of in Telecom Costs Order 2009-764.

TCC

24. TCC generally endorsed the submissions of the Companies, except on the issue of the appropriate costs respondents. TCC submitted that the ITMP proceeding was not a proceeding that required parties to retain external experts, at the expense of others, since it did not involve any sophisticated economic or expert evidence put forward by any TSP. As such, TCC submitted that the Commission should deny all costs claims relating to expert witnesses in the ITMP proceeding.
25. TCC also raised the same arguments as Barrett with respect to the eligibility of CIPPIC to be reimbursed for its costs and the costs of Mr. St-Arnaud.
26. With respect to the allocation of costs, TCC submitted that since it does not engage in traffic shaping, it should not be required to pay costs. However, TCC stated that it would not object to paying costs if all participating TSPs, and any representative organizations, were made costs respondents as well, or, at a minimum, if the five largest cable company Internet service providers were included as costs respondents.

Replies

27. In reply, the Costs Applicants submitted that the costs they were claiming were necessarily and reasonably incurred. CIPPIC, PIAC, and CCD/ARCH stated that the ITMP proceeding was complex and dealt with novel issues, many of which were highly technical in nature. CIPPIC and PIAC further submitted that the vigorous participation of public interest interveners was required because of the large number of Internet service providers participating in the ITMP proceeding.
28. CIPPIC and PIAC submitted that each party has a right to make their own submissions on their own view of the public interest, just as the Companies were permitted to make separate submissions. Furthermore, they submitted that they took steps to coordinate the expert witnesses with each other and to avoid duplication. Both CIPPIC and PIAC stated that their submissions were not duplicative of one another; they addressed the same issues but differed significantly in substance. L'Union added that the Companies had failed to identify any part of its submissions in the ITMP proceeding that were duplicative with those of CIPPIC and PIAC. CIPPIC and PIAC also stated that their submissions were not repetitive of those they had made in the CAIP Part VII proceeding because the ITMP proceeding dealt with issues that were wider in scope.
29. CCD/ARCH submitted that the relevant criterion in judging whether a costs application was excessive was the total number of hours claimed, not the total costs. In this regard, CCD/ARCH noted that the total hours they were claiming for the work of legal counsel was in fact less than what ARCH had claimed in the Accessibility proceeding. CCD/ARCH also objected to the implication by the Companies that because the Accessibility proceeding dealt with the accessibility of Internet services they were precluded from participating in the ITMP proceeding.

30. PIAC submitted that it was inappropriate to limit its costs on the basis of what it had been awarded in the Essential Services proceeding. PIAC submitted that the ITMP proceeding had a larger impact on consumers and that it had to expend more effort in this proceeding because it could not rely on competitors to introduce technical and economic evidence and challenge the incumbents, as it had in the Essential Services proceeding.
31. Regarding the use of expert witnesses, the Costs Applicants submitted that as a result of the technical issues raised in the ITMP proceeding, it was necessary to rely on expert witnesses in making their submissions. CCD/ARCH submitted that there was no overlap between the evidence given by their experts in the ITMP proceeding and any previous proceeding in which CCD and ARCH had participated.
32. The Costs Applicants submitted that it was inappropriate to reduce their costs because of alleged budgetary restraints on the part of the Companies. CIPPIC noted that it was difficult to see how the costs claimed would be prohibitive if they were allocated among the various costs respondents. CIPPIC, PIAC, and CCD/ARCH also objected to a hard cap on the costs that could be claimed. PIAC submitted that the Commission can always reduce a costs award if it considers the amount claimed to be excessive.
33. With respect to the eligibility of CIPPIC to be reimbursed for costs, CIPPIC noted that the membership of its client in this proceeding, CDM, does not include for-profit companies, and that the for-profit members of SaveOurNet.ca had no control over the executive committee of that organization and did not contribute financially to CDM's participation. CIPPIC also noted that it had not received any financial assistance from other sources for its participation in the ITMP proceeding. With respect to the argument that organizations such as CIPPIC should be compensated at in-house counsel rates, CIPPIC noted that it was not on permanent retainer with CDM, CIPPIC is not on staff with CDM, and CDM does not contribute to overhead, insurance, or bar fees of CIPPIC counsel. Finally, CIPPIC noted that Mr. St-Arnaud had participated as an expert witness in the ITMP proceeding on his own time and his intervention was not on behalf of his employer.

Commission's analysis and determinations

34. The Commission finds that the Costs Applicants have satisfied the criteria for an award of costs set out in subsection 44(1) of the Rules. Specifically, the Commission finds that the Costs Applicants represent groups or classes of subscribers that had an interest in the outcome of the proceeding, they participated in a responsible way, and they contributed to a better understanding of the issues by the Commission.
35. The Commission disagrees with TCC's submission that costs for expert witnesses should not be allowed for the ITMP proceeding. The ITMP proceeding involved, in part, technical, legal, and policy issues involving, among other things, the growth of traffic on the Internet, the definition of congestion on the Internet, the causes of congestion on the Internet, the technologies available to Internet service providers to address congestion, the effect of ITMPs on consumers, including consumers with disabilities, and how other jurisdictions have approached ITMPs. The Commission considers that the expert witnesses of the Costs Applicants contributed to a

better understanding of these issues, and that there was little, if any, duplication between them. Furthermore, the Commission considers that the evidence provided by CCD/ARCH's experts was not duplicative of any evidence provided by CCD and ARCH in the Accessibility proceeding.

36. Regarding the eligibility of CIPPIC to be reimbursed for its costs, the Commission notes CIPPIC's submission that CDM does not have for-profit members and that the for-profit members of SaveOurNet.ca did not contribute to, and were not financially responsible for, CDM's participation. The Commission also considers that CIPPIC has established that it has not and will not receive funding from the University of Ottawa or other sources in connection with its participation in the ITMP proceeding. Finally, the Commission considers that Mr. St-Arnaud participated as an expert witness in the ITMP proceeding on his own behalf and not on behalf of his employer. For these reasons, the Commission considers that CIPPIC is entitled to be reimbursed for its costs that were reasonably and necessarily incurred.
37. The Commission considers that it was appropriate for CDM to claim outside counsel rates for CIPPIC. In this regard, the Commission notes that CDM stated that it did not have a permanent retainer with CIPPIC, CIPPIC is not on staff with CDM, and CDM did not contribute to overhead, insurance, or bar fees for CIPPIC counsel.
38. The Commission notes that the rates claimed by the Costs Applicants in their applications for legal fees, consultant fees, expert witness fees, and disbursements are in accordance with the rates set out in the Guidelines, revised as of 24 April 2007, with one exception.
39. The Commission notes that PIAC claimed a rate of \$225 per hour for the consultant services of Mr. Warwick, which is the rate set out in the Guidelines for consultants who have acted for 9 or more years as a consultant. The Commission notes, however, that Mr. Warwick's CV indicates that he has been acting as a consultant only since 2002. The Commission therefore considers that, according to the Guidelines, the appropriate rate for Mr. Warwick's services is \$165 per hour.
40. With respect to the total amounts claimed by the Costs Applicants, the Commission does not agree that the costs awarded to the Costs Applicants in total should be limited by a hard cap. Determining whether a costs claim is excessive must be done on a case-by-case basis, taking into account all of the relevant circumstances, including the amount of time spent and the total amount of the claim.
41. The Commission also does not agree with the Companies' view that the ITMP proceeding was relatively simple. Telecom Public Notice 2008-19 raised a number of complex issues of a technical, legal, and policy nature that the Commission had not previously dealt with.
42. While there is no obligation on parties to participate jointly in its proceedings, the Commission may reduce a costs award if it considers that a party made submissions that were unduly duplicative of those made by other parties. With respect to the submissions of CIPPIC, PIAC, and l'Union, the Commission notes that the Companies did not identify any portion of their submissions that they considered to be duplicative. CIPPIC and PIAC addressed issues that l'Union did not address. Where these interveners addressed the same issues, they sometimes differed on the positions they took. On those issues where their overall positions were

the same, the submissions generally made different arguments or emphasized different points. Finally, the Commission notes that CIPPIC and PIAC made efforts to avoid duplication. For instance, PIAC cited the expert evidence submitted by CIPPIC as its response to several questions in Telecom Public Notice 2008-19 regarding technical and economic solutions to address network congestion.

43. The Commission also does not consider that CIPPIC's or PIAC's submissions were unduly duplicative of those they had made in the CAIP Part VII proceeding given the much narrower focus of that proceeding.
44. Nor does the Commission consider that CCD/ARCH's costs claim should be reduced simply because the Accessibility proceeding also dealt with, in part, issues surrounding the accessibility of Internet services. Given the focus of the ITMP proceeding, the Commission considers that it was entirely appropriate for CCD/ARCH to address how ITMPs affect persons with disabilities in the ITMP proceeding.
45. Nevertheless, the Commission considers that the hours claimed by CIPPIC, PIAC, and CCD/ARCH for legal and consultant work are excessive in the circumstances. The Commission notes that l'Union claimed significantly fewer hours for legal and consultant work in comparison with CIPPIC, PIAC, and CCD/ARCH.⁵ The Commission considers that l'Union's submissions in the ITMP proceeding dealt with issues that were as complex as those dealt with by the other costs applicants. Furthermore, l'Union participated at every stage of the proceeding.
46. The Commission notes, however, that CIPPIC's and PIAC's submissions dealt with more issues and were more extensive than those of l'Union, while CCD/ARCH's submissions also dealt with more issues but were less extensive than those of l'Union. CCD/ARCH and CIPPIC had to coordinate the evidence of two and three expert witnesses, respectively, while l'Union only had to coordinate the evidence of one expert witness. The Commission has taken these considerations into account and considers that they explain most but not all of the differences in the hours claimed by these costs applicants for legal and consultant fees and those claimed by l'Union.
47. Furthermore, the Commission notes that CCD/ARCH relied exclusively on the services of an outside counsel who is entitled to the highest hourly rate under the Guidelines. While CCD/ARCH has stated that it could not use the services of ARCH's in-house legal counsel with expertise in telecommunications, the Commission considers that, given the scope of the proceeding and the amount of work involved, CCD/ARCH should nevertheless have made efforts to engage the services of other in-house counsel and/or more junior counsel in order to reduce its costs. The Commission considers that, when given proper direction by senior counsel, in-house and/or more junior counsel would not have needed prior experience in telecommunications to be of assistance. The Commission notes that all of the other costs applicants used in-house counsel, junior counsel, articling students, and/or legal assistants for their legal work.

⁵ L'Union's total claim for legal and consultant work was 241.5 hours (34.5 days multiplied by 7 hours per day). In comparison, CIPPIC, PIAC, and CCD/ARCH claimed 525.6 hours, 538.57 hours, and 409 hours respectively.

48. In light of the above, the Commission considers the costs claimed by PIAC for legal and consultant work, and by CIPPIC for legal work, should be reduced by 25 percent and the costs claimed by CCD/ARCH for legal work should be reduced by 35 percent.
49. Regarding the costs claimed by CIPPIC, PIAC, and CCD/ARCH for expert witnesses and disbursements, the Commission considers that they were reasonably and necessarily incurred and should be allowed with one exception.
50. The Commission notes that PIAC claimed expenses for a full day's attendance by their expert witness at the oral hearing, despite the fact that PIAC's presentation occurred in the morning and lasted approximately one hour, after which the panel adjourned for the day. The Commission therefore considers that the amount claimed for PIAC's expert witness to attend the hearing should be reduced by half, or \$825.
51. For greater clarity, the total amount allowed for PIAC, as revised pursuant to the Commission's determinations at paragraphs 39, 48, and 50, is \$86,418.84, consisting of \$55,968.77 for legal fees, \$14,777.30 for consultant fees, \$14,212.50 for expert witness fees, and \$1,460.27 for disbursements.
52. Pursuant to paragraph 48, CIPPIC's claim for legal fees is reduced to \$61,482.56, for a total claim of \$98,115.29, and CCD/ARCH's claim for legal fees is reduced to \$79,023.91, for a total claim of \$111,591.70.
53. The Commission considers that all of the costs claimed by l'Union were reasonably and necessarily incurred and should be allowed.
54. The Commission does not consider that awarding costs to the Costs Applicants in the amounts indicated above would create an undue burden on the costs respondents, especially in light of the fact that the Commission's practice is to allocate the responsibility for costs awards among a number of costs respondents based on their telecommunications operating revenues (TORs).
55. 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.
56. 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, in this regard, that the following parties actively participated in the proceeding and had a significant interest in its outcome: Barrett, Bragg Communications Inc. (Bragg), CAIP, the Coalition of Internet Service Providers, the Companies, Cybersurf Corp., Distributel Communications Ltd., Execulink Telecom Inc., MTS Allstream Inc. (MTS Allstream), Primus Telecommunications Canada Inc. (Primus), Quebecor Media Inc. (QMI) on behalf of Videotron Ltd., RipNet Limited, and TCC.
57. The Commission notes TCC's submission that it should not be made a costs respondent because it does not engage in traffic shaping. The Commission notes, however, that TCC does employ economic ITMPs in the form of monthly capacity limit charges, that it stated in the ITMP proceeding that it reserves the right to employ non-economic ITMPs in the future, and that

it made submissions in the ITMP proceeding on the regulatory framework that should apply for both economic and non-economic ITMPs employed by ISPs. Accordingly, the Commission rejects TCC's submission that it should not be made a costs respondent.

58. The Commission also notes CAIP's submission that it should not be made a costs respondent. While it is true that CAIP was made a party to the ITMP proceeding, CAIP also chose to actively participate in the proceeding by making several submissions in writing and at the oral hearing. The Commission notes CAIP's status as a not-for-profit association. However, CAIP's members include for-profit TSPs whose interests CAIP actively represented in the ITMP proceeding. With respect to CAIP's submission that the Commission had refrained from naming CAIP as a costs respondent in the Essential Services proceeding, the Commission notes that it has ordered CAIP to pay costs in the past, regardless of the complexity of the proceeding, where CAIP has actively participated, its members were affected by the issues, and including CAIP as a costs respondent did not cause an administrative burden on the costs applicant.⁶ For the above reasons, the Commission considers that CAIP is also an appropriate costs respondent in the ITMP proceeding.
59. The Commission further notes that in allocating costs among respondents, it has 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 Costs Applicants.
60. In light of the above, the large number of potential costs respondents, and the result that if all potential costs respondents were retained, the Costs Applicants 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 Aliant and Bell Canada (collectively, the Bell Companies), Bragg, CAIP, Cogeco, MTS Allstream, Primus, QMI, RCI, SaskTel, Shaw, and TCC.
61. As noted above, the Commission has, in previous decisions, allocated the responsibility for the payment of costs among respondents on the basis of the respondents' 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.⁷ With respect to the Bell Companies and RCI, the Commission notes that these companies made representations regarding what rules should apply to ITMPs on wireless networks. For this reason, the Commission has included in the TORs of the Bell Companies the TORs of Bell Mobility Inc., and in the TORs of RCI, the TORs of Rogers Wireless Partnership and Fido Solutions Inc. Accordingly, the Commission finds that the responsibility for the payment of costs should be allocated as follows:

⁶ See, for example, Telecom Costs Order 97-12, Telecom Costs Order 98-1, Costs Order 2000-2, and Telecom Costs Order 2008-23.

⁷ In order to estimate the TORs for CAIP, the Commission has used a combination of known and estimated TORs of CAIP members.

Bell Companies	39.0%
Bragg	0.5%
CAIP	0.5%
Cogeco	0.5%
MTS Allstream	5.0%
Primus	0.5%
QMI	2.0%
RCI	22.0%
SaskTel	3.0%
Shaw	3.0%
TCC	24.0%

62. The Commission notes that the Bell Companies filed joint submissions in the ITMP proceeding. Consistent with its general approach articulated in Telecom Costs Order 2002-4, the Commission makes Bell Canada responsible for payment on behalf of the Bell Companies, and leaves it to the Bell Companies to determine the appropriate allocation of the costs between themselves.

Direction as to costs

63. The Commission **approves** the applications by the Costs Applicants for costs with respect to their participation in the ITMP proceeding.
64. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to ARCH, on behalf of CCD and ARCH, at \$111,591.70, the costs to be paid to CIPPIC at \$98,115.29, the costs to be paid to PIAC at \$86,418.84, and the costs to be paid to l'Union at \$33,374.39.
65. The Commission directs that the award of costs to the Costs Applicants be paid forthwith by Bell Canada, on behalf of the Bell Companies; Bragg; CAIP; Cogeco; MTS Allstream; Primus; QMI; RCI; SaskTel; Shaw; and TCC; according to the proportions set out in paragraph 61.

Secretary General

Related documents

- *Determination of costs award with respect to the participation of the Campaign for Democratic Media in the proceeding initiated by the Canadian Association of Petroleum Producers' Part VII application*, Telecom Costs Order CRTC 2008-23, 22 December 2008
- *Review of the Internet traffic management practices of Internet service providers*, Telecom Public Notice CRTC 2008-19, 20 November 2008
- *The Canadian Association of Internet Providers' application regarding Bell Canada's traffic shaping of its wholesale Gateway Access Service*, Telecom Decision CRTC 2008-108, 20 November 2008

- *Unresolved issues related to the accessibility of telecommunications and broadcasting services to persons with disabilities*, Broadcasting Notice of Public Hearing CRTC 2008-8 and Telecom Public Notice CRTC 2008-8, 10 June 2008
- *Review of regulatory framework for wholesale services and definition of essential service*, Telecom Public Notice CRTC 2006-14, 9 November 2006, as amended by Telecom Public Notices CRTC 2006-14-1, 15 December 2006; 2006-14-2, 15 February 2007; 2006-14-3, 16 March 2007; and 2006-14-4, 20 March 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
- *Application for costs by the Public Interest Advocacy Centre and Action Réseau Consommateur (PIAC/ARC)*, Costs Order CRTC 2000-2, 18 January 2000
- Telecom Costs Order CRTC 98-1, 20 January 1998
- Telecom Costs Order CRTC 97-12, 23 May 1997

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