



## Telecom Order CRTC 2011-179

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Ottawa, 11 March 2011

### **Determination of costs award with respect to the participation of the Public Interest Advocacy Centre in the proceeding leading to Telecom Decision 2010-632**

File numbers: 8663-C12-200907321 and 4754-371

1. By letter dated 22 July 2010, the Public Interest Advocacy Centre (PIAC), on behalf of the Consumers' Association of Canada and Canada Without Poverty (the Consumer Groups), applied for costs with respect to its participation in the proceeding leading to Telecom Decision 2010-632 (the proceeding).
2. On 30 July 2010, the following parties filed comments in response to PIAC's application: Bell Aliant Regional Communications, Limited Partnership, Bell Canada, and Télébec, Limited Partnership (collectively, Bell Canada et al.); and Bragg Communications Inc. operating as EastLink, Quebecor Media Inc. on behalf of its affiliate Videotron Ltd., Rogers Communications Inc. (RCI), Shaw Communications Inc., and Cogeco Cable Inc. (collectively, the Cable Carriers). On 3 August 2010, TELUS Communications Company (TCC) filed comments in response to the application.
3. By letter dated 23 September 2010, PIAC revised its costs application in response to a letter from Commission legal counsel identifying a mathematical error in the original application.

#### **Application**

4. PIAC submitted that it meets the criteria for an award of costs set out in subsection 44(1) of the *CRTC Telecommunications Rules of Procedure* (the Rules) because it represents a group of subscribers that had an interest in the outcome of the proceeding, it participated responsibly, and it contributed to a better understanding of the issues by the Commission through its participation in the proceeding.
5. PIAC requested that the Commission fix its costs at \$145,738.47, consisting of \$115,342.26 for legal fees,<sup>1</sup> \$28,020.95 for consultant fees, and \$2,375.26 for disbursements. PIAC filed a bill of costs with its application, which it revised and resubmitted on 23 September 2010.
6. PIAC made no submission as to the appropriate costs respondents.

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<sup>1</sup> The final figure of \$115,342.26 reflects the correction of the mathematical error mentioned above. In addition, PIAC's outside counsel stated that, as an expression of goodwill, he billed PIAC at half the rate for the 18.75 hours he worked during the oral hearing, reducing the overall bill by \$3,500.

## Answer

7. In response to the application, Bell Canada et al. submitted that they did not object to PIAC's eligibility for costs; however, they were concerned with the amount claimed. Bell Canada et al. stated that PIAC had failed to adequately contain its costs in accordance with the expectations set out in the Commission's Legal Directorate's *Guidelines for the Taxation of Costs*, revised as of 24 April 2007 (the Guidelines).<sup>2</sup> They also stated that the time claimed by PIAC appeared excessive considering the relative experience of the counsels involved. Bell Canada et al. stated further that the responsibility for the payment of costs should be allocated among the costs respondents in proportion to their respective Internet revenues rather than their telecommunications operating revenues (TORs).
8. TCC submitted that it did not dispute that PIAC meets the criteria for eligibility for costs, but it opposed the amount of costs claimed. TCC stated that PIAC did not participate responsibly, as per subsection 44(1) of the Rules, because it engaged the services of three different legal counsels, a level of representation that was not necessary given the notable absence of legal issues in the proceeding. TCC also submitted that all industry participants in the proceeding should be made costs respondents and that the allocation of responsibility for the payment of costs should take into account each party's respective participation in the proceeding, which may not be reflected in the parties' relative TORs.
9. The Cable Carriers submitted that responsibility for the payment of any costs awarded in this case should be allocated based on TORs, not on Internet revenues as proposed by Bell Canada et al.

## Commission's analysis and determinations

10. 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 responsibly, and it contributed to a better understanding of the issues by the Commission.
11. The Commission notes, however, that PIAC relied heavily on the services of an outside legal counsel in addition to two senior in-house legal counsels. Although the proceeding was extensive, encompassing multiple rounds of written submissions and interrogatories as well as an oral hearing, the Commission considers that the number of hours PIAC claimed for legal work is excessive. For example, the Commission considers that the number of hours claimed for outside counsel to prepare comments, and for in-house counsel to review that work, was beyond what would reasonably be expected given the experience level of the legal counsels involved. In addition,

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<sup>2</sup> These guidelines were updated on 23 December 2010 in Telecom Regulatory Policy 2010-963. The updated guidelines apply to costs applications submitted to the Commission on or after 23 December 2010.

the Commission notes that the issues in the proceeding were primarily of an economic and technical nature, rather than a legal nature, which lessened the need for work performed by legal counsel.

12. In light of the above, the Commission considers that the costs PIAC claimed for legal work should be reduced by 25 percent.<sup>3</sup> Thus, the total amount of legal fees allowed in this case is \$86,506.70.
13. The Commission notes that the rates claimed for disbursements are in accordance with the rates set out in the Guidelines. Subject to the above reduction, the Commission finds that the total amount claimed by PIAC 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 is named, the applicant may have to collect small amounts from many respondents, resulting in a significant administrative burden to the applicant.
16. In this case, given the large number of parties to the proceeding, the Commission notes that if all potential costs respondents were retained, PIAC would be required to collect small amounts from many respondents. Accordingly, the Commission considers that it is appropriate, in the present circumstances, to limit the respondents to Bell Canada et al., the Cable Carriers, Distributel Communications Limited (Distributel), MTS Allstream Inc. (MTS Allstream), Primus Telecommunications Inc. (Primus), Saskatchewan Telecommunications (SaskTel), and TCC, all of which actively participated in the proceeding.
17. The Commission notes that it has, in previous decisions, allocated the responsibility for the payment of costs among respondents based on 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, TORs represent a more straightforward basis for allocating responsibility for the payment of costs than either Internet revenues or the level of interest and participation of the respondents, which is difficult to quantify. The Commission therefore considers that it is appropriate to apportion the costs among the respondents in proportion to their TORs, as reported in their most recent audited financial statements, rather than on some other basis. Accordingly, the Commission finds that the responsibility for the payment of costs should be allocated as follows:

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<sup>3</sup> This is consistent with the approach taken in previous orders, including Telecom Order 2010-85 and Telecom Costs Order 2007-6.

Bell Canada et al.	35.5%
Cable Carriers	30.0%
TCC	27.9%
MTS Allstream	5.4%
Primus	0.8%
SaskTel	0.3%
Distributel	0.1%

18. Consistent with its general approach initially articulated in Telecom Costs Order 2002-4, the Commission makes Bell Canada responsible for payment on behalf of Bell Canada et al. and RCI on behalf of the Cable Carriers, and leaves it to the members of those companies to determine the appropriate allocation of the costs among themselves.

### **Directions as to costs**

19. The Commission **approves in part** the application by PIAC, on behalf of the Consumer Groups, for costs with respect to its participation in the proceeding.
20. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to PIAC at \$116,902.91.
21. The Commission directs that the award of costs to PIAC be paid forthwith by Bell Canada on behalf of Bell Canada et al., by RCI on behalf of the Cable Carriers, and by TCC, MTS Allstream, Primus, SaskTel, and Distributel according to the proportions set out in paragraph 17.

Secretary General

### **Related documents**

- *Revision of CRTC costs award practices and procedures*, Telecom Regulatory Policy CRTC 2010-963, 23 December 2010
- *Wholesale high-speed access services proceeding*, Telecom Regulatory Policy CRTC 2010-632, 30 August 2010
- *Determination of costs awards with respect to the participation of certain parties in the Telecom Public Notice 2008-19 proceeding*, Telecom Order CRTC 2010-85, 12 February 2010
- *Application for costs by British Columbia Public Interest Advocacy Centre on behalf of the British Columbia Old Age Pensioners' Organization – Review of price cap framework*, Telecom Public Notice CRTC 2006-5, Telecom Costs Order CRTC 2007-6, 5 April 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*