



Telecom Order CRTC 2011-583

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Ottawa, 9 September 2011

Determination of costs award with respect to the participation of the Public Interest Advocacy Centre in the Telecom Notice of Consultation 2011-219 proceeding

File numbers: 8663-C12-201105578 and 4754-388

1. By letter dated 28 June 2011, the Public Interest Advocacy Centre (PIAC) applied for costs with respect to its participation in the proceeding initiated by Telecom Notice of Consultation 2011-219 (the proceeding).
2. On 6 July 2011, Bell Canada filed an intervention in response to PIAC's application, on behalf of itself; Bell Aliant Regional Communications, Limited Partnership; and Télébec, Limited Partnership (collectively, Bell Canada et al.). On 8 July 2011, TELUS Communications Company (TCC) filed an intervention in response to the application. PIAC did not file any reply comments.

Application

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. PIAC requested that the Commission fix its costs at \$4,895.16, consisting entirely of legal fees associated with outside legal counsel. 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.
5. PIAC submitted that Bell Canada et al., MTS Allstream Inc. (MTS Allstream), Saskatchewan Telecommunications (SaskTel), and TCC are the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents).

Answer

6. Bell Canada et al. and TCC did not object to PIAC's entitlement to costs or to the amount claimed.
7. Regarding the costs respondents, TCC submitted that, in addition to the costs respondents proposed by PIAC, the Ontario Telecommunications Association (OTA)

and the Canadian Network Operators Consortium Inc. (CNOc) should be made responsible for a portion of costs, since both organizations actively participated in the proceeding and had a significant interest in its outcome. TCC noted that, should the Commission allocate a portion of costs to the OTA and CNOc, the total number of costs respondents would still fall within the range permitted by the *Guidelines for the Assessment of Costs* (the Guidelines), as set out in Telecom Regulatory Policy 2010-963.

8. With respect to the allocation of costs, TCC noted that it is the Commission's practice to generally exclude any potential costs respondent who, according to the apportionment of costs in relation to other costs respondents, would be responsible for paying less than \$100 of a total costs award. It therefore expressed doubt as to whether the telecommunications operating revenues (TORs)¹ of the OTA member companies would be sufficiently high to make the OTA a costs respondent, as it had proposed.
9. Given this situation, TCC submitted that the Commission could depart from its usual approach of allocating the responsibility for payment of costs based on TORs, and instead assign a nominal percentage of costs to be borne by the OTA and/or CNOc. For this purpose, TCC proposed that the OTA and/or CNOc be allocated between 2.5 and 5.0 percent of the amount claimed. It further proposed that the balance of costs could be shared by the four costs respondents identified by PIAC, based on their percentage share of TORs.
10. TCC submitted that the Commission could leave it to the member companies of the OTA and/or CNOc to determine among themselves the appropriate allocation of their share of costs.
11. Bell Canada et al. submitted that costs should be allocated among costs respondents in proportion to their respective share of TORs.

Commission's analysis and determinations

12. The Commission finds that PIAC has satisfied the criteria for an award of costs set out in section 68 of the Rules of Procedure. Specifically, the Commission finds that PIAC represented a group or class of subscribers that had an interest in the outcome of the proceeding, it assisted the Commission in developing a better understanding of the matters that were considered, and it participated in a responsible way.
13. The Commission notes that the rates claimed in respect of legal fees are in accordance with the rates established in the Guidelines. The Commission finds that the total amount claimed by PIAC was necessarily and reasonably incurred and should be allowed.

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

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 costs respondents, the Commission has generally considered 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: Bell Canada et al., CNOC, MTS Allstream, the OTA, SaskTel, and TCC.
16. The Commission further notes, however, that in allocating costs among costs respondents, it has also been sensitive to the fact that if numerous costs respondents are named, the applicant may have to collect small amounts from many costs respondents, resulting in a significant administrative burden to the applicant.
17. The Commission notes that it generally allocates the responsibility for payment of costs among costs respondents based on their TORs as an indicator of the relative size and interest of the parties involved in the proceeding. The Commission also notes that it has occasionally departed from this approach to make collection of an award easier for applicants or to reflect situations in which issues may be of greater importance to certain costs respondents.
18. With regard to the present application, however, the Commission is of the view that it would not be appropriate to adopt the approach proposed by TCC. The Commission considers that TCC has not provided sufficient justification to warrant a departure from the Guidelines and from the Commission's usual practice of apportioning the responsibility for payment of costs based on TORs and excluding those costs respondents who would be responsible for paying too small a proportion of a costs award.
19. In light of the above, and given the relatively small size of the costs award and the large number of potential costs respondents in this case, the Commission considers that, consistent with section 48 of the Guidelines, it is appropriate to limit the costs respondents to Bell Canada et al., MTS Allstream, SaskTel, and TCC.
20. Further, the Commission finds that the responsibility for payment of costs should be allocated among the costs respondents in proportion to their TORs, based on their most recent audited financial statements, as follows:

Bell Canada et al.	46.7%
TCC	41.2%
MTS Allstream	7.6%
SaskTel	4.5%

21. The Commission notes that Bell Canada filed submissions in the proceeding on behalf of Bell Canada et al. 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 Bell Canada et al. to determine the appropriate allocation of the costs among themselves.

Directions regarding costs

22. The Commission **approves** the application by PIAC for costs with respect to its participation in the proceeding.
23. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to PIAC at \$4,895.16.
24. The Commission directs that the award of costs to PIAC be paid forthwith by Bell Canada on behalf of Bell Canada et al., by TCC, by MTS Allstream, and by SaskTel according to the proportions set out in paragraph 20.

Secretary General

Related documents

- *Review of the regulatory measure associated with single-line inside wire services provided by incumbent local exchange carriers to customers with no jack-ended demarcation device*, Telecom Notice of Consultation CRTC 2011-219, 29 March 2011
- *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
- *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