



Telecom Order CRTC 2012-340

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Ottawa, 21 June 2012

Determination of costs award with respect to the participation of the Public Interest Advocacy Centre in the Telecom Notice of Consultation 2011-206 proceeding

File numbers: 8643-C12-201105297 and 4754-396

1. By letter dated 14 December 2011, the Public Interest Advocacy Centre (PIAC) applied for costs with respect to its participation in the proceeding initiated by Telecom Notice of Consultation 2011-206.
2. On 16 December 2011, Bell Aliant Regional Communications, Limited Partnership; Bell Canada; and Télébec, Limited Partnership (collectively, Bell Canada et al.) filed an answer in response to PIAC's application. PIAC filed a reply on 19 December 2011.
3. The record was complete on 7 May 2012 following the submission of a revised form by PIAC, which indicated the number of years that PIAC's consultant had acted as such.

Application

4. 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.
5. PIAC requested that the Commission fix its costs at \$70,489.80, consisting of \$22,922.93 for legal fees, \$47,006.87 for consultant fees, and \$560 for disbursements. 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.
6. PIAC claimed 61 hours at a rate of \$250 per hour for legal fees for John Lawford, 6.1 hours at a rate of \$290 per hour for legal fees for Michael Janigan, 17 days at a rate of \$235 per day for legal fees for its articling student, Laman Meshadiyeva, and 201 hours at a rate of \$225 per hour for consultant fees for its consultant, Gerry Wall.
7. PIAC submitted that all parties that participated in the proceeding are the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents). PIAC noted that the Commission's *Guidelines for the Assessment of Costs* (the Guidelines), as set out in Telecom Regulatory Policy 2010-963, generally

limit the number of respondents to a claim of over \$70,000, but less than \$75,000, to a maximum of 20 parties, and that more than 20 parties had participated in the proceeding. PIAC also noted that the Commission has the discretion to expand the number of costs respondents in appropriate cases, and submitted that it would be appropriate for the Commission to increase the number of costs respondents in this case to include all parties since all parties made submissions and had an interest in the proceeding's outcome.

8. PIAC suggested that the responsibility for payment of costs be divided among the costs respondents based on their telecommunications operating revenues (TORs).¹ PIAC submitted that, in accordance with the Guidelines, any party that would be liable for an amount of less than \$100 should be excluded from the apportionment of the total costs award.

Answer

9. In response to the application, Bell Canada et al. submitted that the time claimed by PIAC was excessive relative to the experience of the personnel involved. Bell Canada et al. noted that PIAC claimed the following: 83 hours for its consultant to review the file, and 63 hours for him to prepare for the oral hearing; 17 days for PIAC's articling student to review the file and perform research; and 10.4 hours and 6.1 hours for each of PIAC's two lawyers to review the file. Bell Canada et al. argued that the amounts of time claimed could not be justified, particularly the amount of time claimed for PIAC's consultant, given his extensive experience in telecommunications regulation. Bell Canada et al. also noted that the Guidelines provide only for the award of costs that were necessarily and reasonably incurred. Because many members of PIAC's personnel appear to have carried out the same tasks in relation to the file, Bell Canada et al. argued that PIAC did not make the best use of its resources, and that not all of its costs were necessarily and reasonably incurred.
10. Bell Canada et al. noted that, under the Guidelines, in evaluating whether an applicant has contributed to a better understanding of the issues, the Commission will take into account whether the applicant filed evidence, whether the contribution was focused and structured, and whether the contribution offered a distinct point of view. Bell Canada et al. argued that, because PIAC did not file evidence as part of the proceeding, and because its submissions were generic in nature, it did not contribute substantially to a better understanding of the issues, and its claim should be reduced accordingly.

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

Reply

11. PIAC submitted that the amount of costs claimed was justified. PIAC argued that the number of hours recorded by those individuals who worked on the file did not indicate that they performed redundant work, and that PIAC did reasonably incur the costs. PIAC explained that its consultant and legal staff reported many different tasks performed under the category “file review” in the bill of costs that PIAC submitted to the Commission, and that the detailed time sheets that accompanied its application for costs provided a full breakdown of the tasks performed. PIAC also submitted that the time claimed by its consultant was necessary to prepare PIAC’s intervention and to review and respond to the submissions of other parties.
12. PIAC argued that the fact that it did not file evidence as part of the proceeding was not an appropriate consideration in evaluating whether it contributed to a better understanding of the issues because consumers are not in a position to file evidence on interconnection costs, arrangements, or facilities. PIAC further submitted that it introduced new ideas that the Commission seriously considered, that its submissions were focused, and that it represented the sole voice of consumers in a proceeding that had important consumer consequences.
13. For these reasons, PIAC submitted that its costs claims for legal counsel and consultant fees were wholly justified. However, PIAC reduced its claim for the research and review services of its articling student to 10 days from 17 days to acknowledge Bell Canada et al.’s concerns. PIAC’s total costs claim was therefore revised to \$68,779.99.

Commission’s analysis and determinations

14. 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.
15. The Commission notes Bell Canada et al.’s submission that PIAC’s award of costs should be reduced due to excessive time and because not all of PIAC’s costs were necessarily and reasonably incurred. Following analysis of the detailed time sheets PIAC submitted with its application, and considering the time claimed in other proceedings raising similarly complex issues, the Commission considers that the fees claimed by PIAC for the services of its legal counsel and consultant were necessarily and reasonably incurred. In making this finding, the Commission has taken into consideration PIAC’s voluntary reduction in the number of days claimed for the services of its articling student from 17 to 10 days.

16. The Commission also notes Bell Canada et al.'s submission that PIAC's award of costs should be reduced because PIAC did not substantially contribute to a better understanding of the issues raised in the proceeding. The Commission considers that PIAC provided a distinct point of view as the only party representing the interests of consumers, and that PIAC's submissions were structured and focused. Accordingly, the Commission finds that PIAC contributed to a better understanding of the issues raised in the proceeding.
17. The Commission further notes that the rates claimed in respect of consultant and legal fees are in accordance with the rates established in the Guidelines.
18. 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.
19. 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.; Bragg Communications Inc., operating as EastLink; Canadian Cable Systems Alliance Inc. (CCSA); Canadian Independent Telephone Company Joint Task Force (JTF); the Canadian Network Operators Consortium Inc. (CNOC); Cogeco Cable Inc. (Cogeco); Data & Audio Visual Enterprises; Distributel Communications Limited; Fibernetics Corporation; Globalive Wireless Management Corp., operating as WINDMobile; Globility Communications Corporation; MTS Inc. and Allstream Inc. (MTS and Allstream);² Public Mobile Inc.; Quebecor Media Inc., on behalf of Videotron Ltd. (Videotron); Rogers Communications Inc. (RCI); Saskatchewan Telecommunications (SaskTel); Shaw Communications Inc. (Shaw); SSi Micro Ltd.; TELUS Communications Company (TCC); and Yak Communications (Canada) Corp.
20. The Commission 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.
21. In light of the above, the Commission considers that, consistent with section 48 of the Guidelines, it is appropriate to limit the costs respondents to Bell Canada et al., CCSA, CNOC, Cogeco, JTF, MTS and Allstream, RCI, SaskTel, Shaw, TCC, and Videotron.

² MTS Allstream Inc. was the entity that participated in the proceeding. However, as of early 2012, MTS Allstream Inc. became known as two separate entities, namely, MTS Inc. and Allstream Inc.

22. The Commission notes that it generally allocates the responsibility for payment of costs among costs respondents based on their TORs. The Commission considers that, in the present circumstances, it is appropriate to apportion the costs among the costs respondents in proportion to their TORs, based on their most recent audited financial statements. The Commission notes that the TORs of CCSA, CNOC, and JTF are not readily available to the Commission, and considers it appropriate, in these circumstances, to find that CCSA, CNOC, and JTF are each responsible for the payment of one percent of the total costs awarded. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated as follows:

Bell Canada et al.	29.3%
TCC	25.8%
RCI	25.8%
MTS and Allstream	4.8%
Shaw	3.9%
Videotron	3.4%
SaskTel	2.8%
Cogeco	1.2%
CCSA	1.0%
CNOC	1.0%
JTF	1.0%

23. 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

24. The Commission **approves** the application by PIAC for costs, as amended in its reply comments, with respect to its participation in the proceeding.
25. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to PIAC at \$68,779.99.
26. The Commission directs that the award of costs to PIAC be paid forthwith by Bell Canada on behalf of Bell Canada et al., TCC, RCI, MTS and Allstream, Shaw, Videotron, SaskTel, Cogeco, CCSA, CNOC, and JTF according to the proportions set out in paragraph 22.

Secretary General

Related documents

- *Proceeding to review network interconnection matters*, Telecom Notice of Consultation CRTC 2011-206, 23 March 2011, as amended by Telecom Notice of Consultation CRTC 2011-206-1, 3 May 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 2002-4, 24 April 2002