



Telecom Order CRTC 2012-684

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Ottawa, 14 December 2012

Determination of costs award with respect to the participation of the Public Interest Advocacy Centre in the proceeding regarding MTS Allstream Inc.'s application for the reclassification of wholesale Ethernet services

File numbers: 8661-M59-201115403 and 4754-398

1. By letter dated 5 March 2012, the Public Interest Advocacy Centre (PIAC) applied for costs with respect to its participation in the proceeding leading to Telecom Decision 2012-520 (the proceeding), which concerned an application from MTS Allstream Inc. for the reclassification of wholesale Ethernet services.
2. On 15 March 2012, TELUS Communications Company (TCC); Bell Aliant Regional Communications, Limited Partnership (Bell Aliant) and Bell Canada (collectively, the Bell companies); and Saskatchewan Telecommunications (SaskTel) [collectively, TCC et al.] filed an intervention in response to PIAC's application. On 20 March 2012, MTS Inc. and Allstream Inc. (collectively, MTS Allstream)¹ also filed an intervention in response to PIAC's application. PIAC filed a reply on 22 March 2012.

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 \$2,520.55, consisting entirely of legal fees. 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 TCC et al. are the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents).

¹ As of early 2012, MTS Allstream Inc. became known as two separate entities, namely, MTS Inc. and Allstream Inc.

Answer

6. In response to the application, TCC et al. argued that PIAC should not be entitled to costs since it failed to demonstrate that it represented a group or a class of subscribers that had an interest in the outcome of the proceeding. TCC et al. noted that PIAC did not identify the “Consumer Groups” it claimed to represent. TCC et al. also questioned whether PIAC or any consumers had an interest in the outcome of the proceeding since the proceeding was about the reclassification of wholesale Ethernet access and transport services, a matter that affects business customers and not consumers directly.
7. TCC et al. also argued that if the Commission were to grant costs to PIAC for the proceeding, MTS Allstream should be the cost respondent since (i) it initiated the Part 1 application, and (ii) it has an interest in the proceeding as both an incumbent local exchange carrier (ILEC) and a competitive local exchange carrier. TCC et al. submitted that it has been the Commission’s practice in dealing with small costs awards to name the ILEC filing the application as the appropriate costs respondent. TCC et al. requested that if the Commission determines that any costs awarded should be apportioned to parties other than MTS Allstream, MTS Allstream be apportioned at least 50 percent of the costs. TCC et al. indicated that an apportionment of costs based on telecommunications operating revenues (TORs)² would lead to the Bell companies and TCC paying more than MTS Allstream.
8. MTS Allstream submitted that PIAC should be entitled to costs for the proceeding because inefficient market function and uncompetitive pricing at the business level undoubtedly affect consumers. MTS Allstream did not object to being named a costs respondent; however, it argued that it should not be the sole or majority respondent, and it disputed TCC et al.’s submission that it is the Commission’s practice to apportion the majority of costs to the ILEC that filed the application. MTS Allstream argued that TCC et al. should be costs respondents and that costs should be allocated based on TORs.

Reply

9. In reply to both TCC et al. and MTS Allstream, PIAC listed the names of its member organizations and submitted that it very much represents a group of subscribers that had an interest in the outcome of the proceeding.³ PIAC argued that the proceeding is of great importance to consumers since it is of the view that more competition in the business Internet market is needed to enable more competitive pricing in the

² TORs consist of Canadian telecommunications revenues from local and access, long distance, data, private line, Internet, and wireless services.

³ As per PIAC’s reply comments, in addition to the members of PIAC’s Board of Directors, PIAC has the following members: Alberta Council on Aging, Canadian Pensioners Concerned, Consumers Fight Back Association, Dying with Dignity, Federation of Metro Tenants, Manitoba Society of Seniors, Ontario Coalition of Senior Citizen Organizations, PEI Council of the Disabled, and Rural Dignity of Canada.

downstream retail market. PIAC also argued that reclassifying wholesale Ethernet access and transport services is akin to re-establishing rate regulation in an area that was essentially forborne from regulation.

10. Regarding the apportionment of costs, PIAC indicated that since MTS Allstream did not oppose being named a costs respondent or costs being apportioned in proportion to TORs, PIAC would not oppose this proposal.

Commission's analysis and determinations

11. Regarding TCC et al.'s submission that PIAC should not qualify for an award of costs for the proceeding, the Commission notes PIAC's arguments regarding why it considered that consumers had an interest in the outcome of the proceeding. In light of the above, the Commission considers that PIAC's member organizations represent a significant body of consumers and that the group or class of subscribers that PIAC represents had an interest in the outcome of the proceeding.
12. The Commission notes that PIAC's intervention in the proceeding presented arguments in support of MTS Allstream's application, and discussed the reasons why, in PIAC's view, the reclassification sought would not be inconsistent with existing Commission regimes (such as the Essential Facilities framework) or the Policy Direction,⁴ and would promote competitive alternatives in the marketplace. The Commission considers that PIAC's input assisted the Commission in developing a better understanding of the matters that were considered, and that PIAC participated in the proceeding in a responsible way.
13. Accordingly, the Commission finds that PIAC meets the criteria for an award of costs under section 68 of the Rules of Procedure.
14. The Commission notes that the rate claimed in respect of legal fees is in accordance with the rates established in the Commission's *Guidelines for the Assessment of Costs* (the Guidelines), as set out in Telecom Regulatory Policy 2010-963. The Commission finds that the total amount claimed by PIAC was necessarily and reasonably incurred and should be allowed.
15. 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.
16. 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:

⁴ *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, P.C. 2006-1534, 14 December 2006

the Bell companies, the Canadian Network Operators Consortium Inc., Distributel Communications Limited, MTS Allstream, Primus Telecommunications Canada Inc., SaskTel, and TCC.

17. The Commission notes that in the past, it has named as a costs respondent the applicant that initiated the associated Part 1 (formerly, Part VII) proceeding. However, the Commission notes that it assesses each costs application on the application's merits to determine whether the initiator of the associated Part 1 application is to be a costs respondent or the sole costs respondent, and whether costs are to be allocated according to TORs or in some other manner.
18. The Commission further notes 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.
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, as well as the fact that the proceeding was initiated by a Part 1 application filed by MTS Allstream, the Commission considers that, consistent with section 48 of the Guidelines, it is appropriate to limit the costs respondents to MTS Allstream.
20. The Commission notes that MTS Allstream filed joint submissions in the proceeding. Consistent with its general approach articulated in Telecom Costs Order 2002-4, the Commission makes MTS Inc. responsible for payment on behalf of MTS Allstream, and leaves it to the members of MTS Allstream to determine the appropriate allocation of the costs among themselves.

Directions regarding costs

21. The Commission **approves** the application by PIAC for costs with respect to its participation in the proceeding.
22. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to PIAC at \$2,520.55.
23. The Commission directs that the award of costs to PIAC be paid forthwith by MTS Inc. on behalf of MTS Allstream.

Secretary General

Related documents

- *Bell Aliant Regional Communications, Limited Partnership / Bell Canada and MTS Allstream Inc. – Applications regarding Ethernet services*, Telecom Decision CRTC 2012-520, 27 September 2012
- *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