



Telecom Order CRTC 2011-471

PDF version

Ottawa, 4 August 2011

Determination of costs award with respect to the participation of the Public Interest Advocacy Centre and Canada Without Poverty in the proceeding initiated by their Part VII application regarding Telecom Regulatory Policy 2010-632

File numbers: 8622-P8-201015925 and 4754-378

1. By letter dated 4 January 2011, the Public Interest Advocacy Centre (PIAC) and Canada Without Poverty (collectively, the Consumer Groups) applied for costs with respect to their participation in the proceeding initiated by their Part VII application, dated 25 October 2010, regarding Telecom Regulatory Policy 2010-632 (the proceeding).
2. On 14 January 2011, Bragg Communications Inc., operating as EastLink, filed comments in response to the Consumer Groups' application for costs. The Consumer Groups filed reply comments on 21 January 2011.
3. In a letter dated 15 March 2011 addressed to the parties to the proceeding, Commission staff issued various requests for information. As a consequence of the Consumer Groups' participation in this additional process, they applied for supplementary costs on 17 May 2011.

Application

4. The Consumer Groups 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 represented a group of subscribers that had an interest in the outcome of the proceeding, they had participated responsibly, and they had contributed to a better understanding of the issues by the Commission through their participation in the proceeding.
5. In particular, the Consumer Groups submitted that they had contributed to a better understanding of the issues by filing structured and focused evidence that offered a distinct point of view about issues of public importance. The Consumer Groups also submitted that, because of their extensive participation in the proceeding and their use of experienced legal counsel with expertise in telecommunications, their participation was efficient and effective. Lastly, the Consumer Groups submitted that the time claimed in their application was similar to that claimed in comparable Part VII applications.

6. The Consumer Groups initially requested that the Commission fix their costs at \$4,214.36, consisting of fees associated with outside legal counsel, plus the Ontario Harmonized Sales Tax (HST) on fees less the rebate to which they are entitled in connection with the HST. The Consumer Groups filed a bill of costs with their application.
7. Following their initial application for costs, the Consumer Groups completed additional work pursuant to the Commission's requests for information. As a result of this additional work, the Consumer Groups filed a supplementary costs application in which they claimed a revised total amount of \$5,088.50, consisting entirely of legal fees plus the Ontario HST.
8. The Consumer Groups submitted that the appropriate respondent in this case is EastLink.

Answer

9. In response to the initial application, EastLink submitted that it objected to the Consumer Groups' eligibility for costs and that the amount of costs claimed was excessive. EastLink stated that the Consumer Groups did not meet the criteria for an award of costs under subsection 44(1) of the Rules since they failed to participate responsibly and they did not contribute to a better understanding of the issues by the Commission.
10. EastLink argued that the Consumer Groups' Part VII application was unnecessary and did not represent the least costly means of addressing the issues in question. EastLink submitted that the Consumer Groups could have sent a short letter to the Commission requesting that the Commission take immediate steps to proceed to a show-cause hearing, instead of filing a formal Part VII application, which EastLink argued was both excessive and unjustified. EastLink noted that, should the Commission decide to proceed to a show-cause hearing, EastLink will have to participate in that process in addition to participating in the current proceeding, resulting in an unnecessary duplication of time and effort.
11. EastLink further submitted that the amount of costs claimed was excessive considering the straightforward issues involved. It also stated that the nature of the proceeding did not necessitate outside legal counsel or 15 hours of time at the rate sought.
12. EastLink submitted that, for these reasons, the costs application should be dismissed in its entirety; however, in the alternative, the amount of costs claimed should be reduced. Lastly, EastLink noted that the Canadian Network Operators Consortium Inc. (CNOC) also participated in the proceeding and will be affected by its outcome, and that, accordingly, CNOC should share in the responsibility for costs.
13. EastLink did not comment on the Consumer Groups' subsequent costs application.

Reply

14. In reply, the Consumer Groups submitted that contacting the Commission by means other than a Part VII application, such as sending a short letter, would have been inappropriate and ineffective. They submitted that, had they sent a letter to the Commission instead of initiating the proceeding, they risked having EastLink accuse them of failing to adequately support their claims, or of failing to contribute to a better understanding of the issues by the Commission. The Consumer Groups noted that they supported their Part VII application with an analysis of relevant evidence. They argued that their submissions contributed to a better understanding of the issues by the Commission, and that by initiating a proceeding through a Part VII application, they helped bring attention to the deficient wholesale environment in EastLink's serving territory.

Commission's analysis and determinations

15. The Commission notes EastLink's submission that the Consumer Groups do not qualify for an award of costs.
16. The Commission considers that the Consumer Groups' submissions, which were structured and focused, offered a distinct point of view and contributed to a better understanding of the issues by the Commission. The Commission finds that the Consumer Groups represented a group or class of subscribers that had an interest in the outcome of the proceeding. The Commission also finds that the Consumer Groups participated responsibly by filing a Part VII application to request that the Commission apply to EastLink the directives it had issued in Telecom Regulatory Policy 2010-632. Accordingly, the Commission finds that the applicants meet the criteria for an award of costs under subsection 44(1) of the Rules.
17. The Commission notes EastLink's submissions that the amount of costs claimed by the Consumer Groups should be reduced given the straightforward issues involved in the proceeding, and that their application could have been prepared using less time and fewer resources than those being claimed.
18. The Commission notes that the rates claimed in respect of legal fees are 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 Consumer Groups' submissions were comprehensive and well structured, and that they offered a distinct point of view. Accordingly, the Commission finds that the total amount claimed by the Consumer Groups was necessarily and reasonably incurred and should be allowed.
19. 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.

20. The Commission notes that it has generally determined that the appropriate respondents to an award of costs are the parties that have a significant interest in the outcome of the proceeding in question and have participated actively in that proceeding. The Commission considers that EastLink had a significant interest in the outcome of the proceeding and participated actively throughout the proceeding. While CNOC also participated actively, the Commission considers that CNOC's interest in the proceeding was indirect. The Commission notes that the proceeding was initiated by a Part VII application directed only towards EastLink in which the Consumer Groups requested that the Commission apply the directives it had issued in Telecom Regulatory Policy 2010-632 to EastLink. The Commission therefore finds that CNOC is not an appropriate respondent for this costs application.
21. Accordingly, the Commission finds that the only appropriate respondent to the Consumer Groups' costs application is EastLink.

Directions regarding costs

22. The Commission **approves** the application by the Consumer Groups for costs with respect to their participation in the proceeding.
23. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to the Consumer Groups at \$5,088.50.
24. The Commission directs that the award of costs to the Consumer Groups be paid forthwith by EastLink.

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
- *New procedure for Telecom costs awards*, Telecom Public Notice CRTC 2002-5, 7 November 2002