



Telecom Order CRTC 2014-559

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and 4754-447*

Determination of costs award with respect to the participation of the Public Interest Advocacy Centre (PIAC) in the proceeding initiated by the applications of Benjamin Klass requesting fair treatment of Internet services by Bell Mobility Inc. and of PIAC regarding Rogers Communications Partnership's Anyplace TV service and Videotron G.P.'s illico mobile service

1. By letter dated 12 June 2014, the Public Interest Advocacy Centre (PIAC), on behalf of itself, the Consumers' Association of Canada, and the Council of Senior Citizens' Organizations of British Columbia, applied for costs with respect to their participation in the proceeding initiated by the application of Benjamin Klass to request fair treatment of Internet services by Bell Mobility Inc. (Bell Mobility) [the Klass application].
2. In this letter, PIAC also applied for costs with respect to two applications it filed on 10 January 2014 (the PIAC applications) regarding the mobile television services offered by Rogers Communications Partnership (RCP) and Videotron G.P. (Videotron) [an affiliate of Quebecor Media Inc. (QMI)] that raised similar issues as those raised in the Klass application.
3. By procedural letter dated 31 January 2014, Commission staff indicated that it would consider the three applications within a single proceeding (the proceeding).¹
4. By letter dated 27 June 2014, Commission staff requested further information from PIAC regarding its application for costs. PIAC responded by letter dated 10 July 2014.
5. QMI filed an intervention on 20 June 2014, to which PIAC did not file a reply.

Application

6. PIAC noted that it had filed its application for costs with the Commission one day beyond the deadline prescribed by the *Canadian Radio-television and*

¹ By procedural letter dated 5 September 2014, Commission staff indicated that due to a change that RCP made in its billing practices regarding access to its mobile television service, PIAC's application relating to this service would be closed. However, Commission staff further indicated that this closure would not impact PIAC's application for costs.

Telecommunications Commission Rules of Practice and Procedure (the Rules of Procedure). PIAC requested that the Commission consider the application despite the delay, citing lack of prejudice to other parties.

7. PIAC submitted that it had met the criteria for an award of costs set out in section 68 of 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.
8. In particular, PIAC submitted that the proceeding dealt with important issues related to the pricing of telecommunications services and associated competitive issues, and that consumers have an interest in these matters. PIAC further submitted that in responding to the Klass application and in filing its own applications, it helped bring important issues before the Commission that warranted further exploration, and it helped define these issues. Finally, PIAC submitted that it participated responsibly in the proceeding, in part by advocating that the three applications should be combined into a single proceeding.
9. PIAC requested that the Commission fix its costs at \$39,324.66, consisting entirely of external 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. Specifically, PIAC claimed 134.6 hours for an external counsel at a rate of \$165 per hour (which comes to \$23,084.03 with HST and the associated rebate); 48.4 hours for an external counsel at a rate of \$290 per hour (which comes to \$14,589.02 with HST and the associated rebate); and 22.7 hours for an external articling student at a rate of \$70 per hour (which comes to \$1,651.61 with HST and the associated rebate). PIAC filed a bill of costs with its application.
10. PIAC submitted that Bell Mobility, RCP, and Videotron should be the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents), since they are the respondents to the Klass and PIAC applications.
11. Commission staff's 27 June 2014 letter noted that the proceeding is being conducted pursuant to both the *Telecommunications Act* and the *Broadcasting Act*, and that the Commission may only award costs under the *Telecommunications Act*. Consequently, Commission staff requested in the letter that PIAC make submissions concerning the appropriateness of a requirement for PIAC to apportion the time it claimed in its costs application between time claimed for telecommunications matters and for broadcasting matters.
12. In response, PIAC argued that its entire application for costs should be considered solely under the *Telecommunications Act*. It submitted that any apportionment of time after the fact would pose considerable practical difficulties, and that the result would be both subjective and arbitrary. PIAC noted that a significant portion of the proceeding focused on how mobile television services should be classified, which makes it impractical to categorize the time PIAC spent on purely telecommunications matters and purely broadcasting matters.

Answer

13. QMI submitted that while it did not oppose PIAC's application for costs, if costs were awarded to PIAC, and if QMI were named as a costs respondent, the allocation of responsibility for QMI's payment of costs should be made based only on the company's telecommunications operating revenues (TORs)² and not on its broadcasting revenues.

Commission's analysis and determinations

14. As a preliminary matter, the Commission finds that it is appropriate to accept and consider PIAC's application for costs in this case. However, the Commission reminds costs applicants that they are expected to file their applications within the prescribed deadline and that, if they fail to do so, the Commission has a range of options, including reduction of the amount claimed and denial of the application.
15. Secondly, the Commission finds it appropriate to consider the entirety of PIAC's application for costs under the *Telecommunications Act*. The Commission notes that the Klass and PIAC applications were filed pursuant to the *Telecommunications Act*. The Commission considers PIAC's arguments concerning the arbitrariness of any after-the-fact apportionment of the time it claimed in its costs application to be convincing.
16. The criteria for an award of costs are set out in section 68 of the Rules of Procedure, which reads as follows:
 68. The Commission must determine whether to award final costs and the maximum percentage of costs that is to be awarded on the basis of the following criteria:
 - (a) whether the applicant had, or was the representative of a group or a class of subscribers that had, an interest in the outcome of the proceeding;
 - (b) the extent to which the applicant assisted the Commission in developing a better understanding of the matters that were considered; and
 - (c) whether the applicant participated in the proceeding in a responsible way.
17. The Commission finds that PIAC has satisfied these criteria through its participation in the proceeding. In particular, the Commission considers that the PIAC

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

applications helped bring to light practices that merited further investigation by the Commission and that, on the whole, PIAC's participation in the proceeding helped define the issues to be considered by the Commission. The Commission also considers that PIAC participated responsibly.

18. The Commission notes that PIAC's use of an articling student for a portion of the legal work in respect of which it is claiming fees is consistent with paragraph 23 of the Commission's *Guidelines for the Assessment of Costs* (the Guidelines), as set out in Telecom Regulatory Policy 2010-963.
19. The Commission notes that the rates claimed in respect of legal fees are in accordance with the rates established in the Guidelines.
20. However, for the reasons set out below, the Commission considers that the total amount claimed by PIAC was not necessarily and reasonably incurred. The Commission considers that PIAC has claimed excessive time in respect of its legal fees. Consequently, the Commission has reduced the amount of time allowed for PIAC's external counsel.
21. Under the Guidelines, the Commission may take into account, among other things, the degree of duplication of substantive submissions among costs claimants to assess whether the time claimed is excessive.
22. In this case, PIAC participated in the Klass application and filed its own two applications, all of which address essentially the same matter but with respect to different service providers.
23. The Commission notes that the PIAC applications involved a significant degree of duplication, differing only in their statements of the facts concerning their respective respondent's mobile television services. Further, a significant portion of PIAC's intervention in the Klass application repeats submissions PIAC made regarding its own applications.
24. In light of the above, the Commission finds that the time claimed by PIAC in respect of its legal fees should be reduced. Specifically, the Commission reduces the time allowed in respect of PIAC's two external counsels by 30 percent, to 94.2 and 33.9 hours from 134.6 and 48.4 hours respectively. Consequently, the Commission finds that the amount of \$28,025.34 was necessarily and reasonably incurred and should be allowed.
25. 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.
26. The Commission notes that it has generally determined that the appropriate costs 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 Bell Mobility, RCP, and Videotron, the

three named respondents to the Klass and PIAC applications, had a significant interest in the outcome of the proceeding and participated actively throughout the proceeding. The Commission therefore finds that these companies are the appropriate costs respondents to PIAC's application for costs.

27. 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 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. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated as follows:

Company	Percentage	Amount
RCP	57.8%	\$16,190.39
Bell Mobility	32.8%	\$9,204.10
Videotron	9.4%	\$2,630.85

Directions regarding costs

28. The Commission **approves with changes** the application by PIAC for costs with respect to its participation in the proceeding.
29. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to PIAC at \$28,025.34.
30. The Commission **directs** that the award of costs to PIAC be paid forthwith by Bell Mobility, RCP, and Videotron according to the proportions set out in paragraph 27.

Secretary General

Related documents

- *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