



Telecom Order CRTC 2018-75

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Determination of costs award with respect to the participation of the Public Interest Advocacy Centre in the proceeding initiated by Bell Canada regarding forbearance from the regulation of Pay Telephone Basic Access Line Service

Application

1. By letter dated 1 September 2016, the Public Interest Advocacy Centre (PIAC) applied for costs with respect to its participation in the proceeding initiated by Bell Canada's request for the Commission to find its Pay Telephone Basic Access Line Service to be non-essential and subject to forbearance for itself (including the former Bell Aliant Regional Communications, Limited Partnership; NorthernTel, Limited Partnership; and Télébec, Limited Partnership) in their serving territories in Ontario, Quebec, and Atlantic Canada (the proceeding).
2. Bell Canada filed an intervention, dated 12 September 2016, in response to PIAC's costs application.
3. As in the proceeding that led to Telecom Order 2017-364, there was additional process in this costs proceeding whereby Commission staff requested information from PIAC regarding the status of its legal counsel, Mr. John Lawford, and its articling student. In particular, Commission staff sought comments on whether it was appropriate for PIAC to claim legal fees for these individuals as internal or external resources. PIAC responded to the request, and Bell Canada and TELUS Communications Company¹ provided comments.
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. In particular, PIAC submitted that it represented the interests of Canadian consumers and users of telecommunications services, as well as the public interest at large. It

¹ Effective 1 October 2017, TELUS Communications Company's (TCC) assets were legally transferred to TELUS Communications Inc. and TCC ceased to exist.

also submitted that it provided a fuller understanding of the matters that were considered in the proceeding through its concise intervention and distinct point of view, and that it was the only party representing consumer interests in the proceeding.

6. PIAC requested that the Commission fix its costs at \$954, consisting solely 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.
7. PIAC claimed 1.4 hours for senior external counsel at a rate of \$290 per hour (\$422 with the HST and the associated rebate), 1.7 hours for intermediate external counsel at a rate of \$206 per hour (\$364 with the HST and the associated rebate), and 2.4 hours for an articling student at the external rate of \$70 per hour (\$168 with no HST claimed).
8. PIAC submitted that Bell Canada is the appropriate party to be required to pay any costs awarded by the Commission (the costs respondent) because Bell Canada initiated the proceeding.

Answer

9. Bell Canada noted that PIAC is claiming costs for its legal counsel, including its articling student, as external resources and that this practice was the subject of considerable discussion in the context of the proceeding that led to Telecom Order 2017-95. The company requested that if the Commission were to determine that PIAC's resources should be considered internal in that costs proceeding, a similar modification should be made in the present costs proceeding.
10. Bell Canada added that cost respondents should be determined in accordance with the *Guidelines for the Assessment of Costs* (the Guidelines), as set out in Telecom Regulatory Policy 2010-963. It argued that, consistent with the Commission's general practice, (i) costs should be allocated according to the telecommunications operating revenues (TORs)² of the telecommunications service providers participating in the proceeding in question, and (ii) the Commission should limit the costs respondents to exclude any party that would be responsible for paying less than \$100 of a total costs award.

Commission's analysis and determinations

11. The criteria for an award of costs are set out in section 68 of the Rules of Procedure, which reads as follows:

² As set out in previous orders, TORs consist of Canadian telecommunications revenues from local and access, long distance, data, private line, Internet, and wireless services.

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.
12. In Telecom Information Bulletin 2016-188, the Commission provided guidance regarding how an applicant may demonstrate that it satisfies the first criterion with respect to its representation of interested subscribers. In particular, applicants are required to both identify the specific group of subscribers represented and describe the methods by which they determined that the positions put forward in the substantive proceeding reflected the interests of the represented group, whether by directly consulting the group or by other means, such as research.
13. PIAC did not directly address the information bulletin in its submissions. However, it did identify the group of subscribers it represented as being Canadian consumers and users of telecommunications services, as well as the public at large. Although PIAC did not explain how it determined that the positions it put forward reflected the interests of those consumers, the Commission considers that since the proceeding occurred only in writing over a relatively short period of time, direct consultation or research would not necessarily have been practical in the circumstances.
14. PIAC has also satisfied the remaining criteria through its participation in the proceeding. In particular, PIAC assisted the Commission in developing a better understanding of the matters that were considered through its intervention regarding Bell Canada's evidence and whether the company had met its evidentiary burden, as well as through its distinct point of view representing the interests of Canadian consumers and users of telecommunications services.
15. As noted in Telecom Order 2017-364, the appropriate test for assessing whether a lawyer is an internal or external resource is how the lawyer reports to the law society of which he or she is a member, in accordance with the Guidelines. However, the Commission may depart from the Guidelines and award costs at a different rate than what the lawyer is otherwise entitled to in cases where the applicant demonstrates that exceptional circumstances exist to warrant the departure.
16. In relation to Bell Canada's argument regarding the status of PIAC's resources, in Telecom Order 2017-364, the Commission found that no exceptional circumstances existed. Consistent with Mr. Lawford's status as reported to the

Law Society of Upper Canada, the Commission allowed the Coalition³ to calculate Mr. Lawford's legal fees using the external hourly rate for costs claimed for the period after 1 January 2017 but required it to use the internal daily rate for costs claimed for the period prior to that date. The Commission also found the articling student to be a resource internal to PIAC and allowed the Coalition to claim costs for that student based on the internal daily rate.

17. The Commission finds that the same determinations are appropriate in the present case, since the record of this costs proceeding regarding the status of Mr. Lawford and the articling student as external or internal resources is the same as that of the proceeding that led to Telecom Order 2017-364. The Commission also finds that there are no exceptional circumstances in this case that would justify a deviation from the normal rate scale for costs applicable under the Guidelines.
18. In the present case, the 1.4 hours for Mr. Lawford were claimed for the period prior to 1 January 2017. Therefore, the Commission finds that PIAC is eligible to calculate legal fees for Mr. Lawford's services at the internal daily rate of \$800 based on his years of practice. Accordingly, the Commission reduces the costs claimed from \$422 to \$200. The 1.4 hours claimed at the external rate were converted into 0.25 days based on a 7-hour work day, in accordance with the Guidelines.
19. With respect to the articling student, PIAC is eligible to claim costs for his services at the internal daily rate. The Commission therefore reduces the costs for the articling student from \$168.00 to \$117.50, calculated using the daily rate of \$235.00. The 2.4 hours claimed at the external rate were converted into 0.5 days based on a 7-hour work day, in accordance with the Guidelines.
20. Accordingly, the total legal fees claimed are reduced from \$954.00 to \$681.50.
21. The rates claimed in respect of legal fees for intermediate external counsel are in accordance with the rates established in the Guidelines. The Commission finds that the total amount claimed by PIAC, as adjusted above, was necessarily and reasonably incurred and should be allowed.
22. 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.
23. The Commission 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 Canada had a significant interest in the outcome of the proceeding and participated actively in the proceeding. Therefore, Bell Canada is the appropriate costs respondent to PIAC's application for costs.

³ In the proceeding that led to Telecom Order 2017-364, the Coalition consisted of the Consumers' Association of Canada, the Council of Senior Citizens' Organizations of British Columbia, the National Pensioners Federation, and PIAC.

Directions regarding costs

24. The Commission **approves with changes** the application by PIAC for costs 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 \$681.50.
26. The Commission **directs** that the award of costs to PIAC be paid forthwith by Bell Canada.

Secretary General

Related documents

- *Determination of costs award with respect to the participation of the Coalition in the proceeding leading to Telecom Regulatory Policy 2017-200*, Telecom Order CRTC 2017-364, 16 October 2017
- *Determination of costs award with respect to the participation of the Affordable Access Coalition in the proceeding leading to Telecom Regulatory Policy 2016-496*, Telecom Order CRTC 2017-95, 11 April 2017
- *Guidance for costs award applicants regarding representation of a group or a class of subscribers*, Telecom Information Bulletin CRTC 2016-188, 17 May 2016
- *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