



Telecom Costs Order CRTC 2005-7

Ottawa, 26 September 2005

Application for costs by Union des consommateurs, Public Interest Advocacy Centre and Option Consommateurs - *Union des consommateurs, Public Interest Advocacy Centre and Option Consommateurs - Automatic dialers and modem hijacking, Telecom Decision CRTC 2005-13*

Reference: 8665-U11-200407090 and 4754-246

1. By letter dated 8 April 2005, Union des consommateurs, the Public Interest Advocacy Centre (PIAC) and Option Consommateurs (collectively, the Consumer Groups) applied for costs with respect to their Part VII application, dated 7 July 2004, and for their participation in the oral hearing that led to *Union des consommateurs, Public Interest Advocacy Centre and Option Consommateurs - Automatic dialers and modem hijacking, Telecom Decision CRTC 2005-13*, 9 March 2005 (Decision 2005-13).
2. On 18 April 2005, Aliant Telecom Inc. (Aliant Telecom), Bell Canada and TELUS Communications Inc. (TELUS) filed comments in answer to the Consumer Groups application for costs. The Consumer Groups filed reply comments on 29 April 2005.

The application

3. The Consumer Groups submitted that they met the criteria for an award of costs as set out in subsection 44(1) of the *CRTC Telecommunications Rules of Procedure* (the Rules), as they:
 - a) represented a group or class of subscribers that has an interest in the outcome of the proceeding of such a nature that the intervener or group or class of subscribers will receive a benefit or suffer a detriment as a result of the order or decision resulting from the proceeding;
 - b) participated in a responsible way; and
 - c) contributed to a better understanding of the issues by the Commission.
4. The Consumer Groups, collectively, submitted a bill of costs with the application, claiming a total amount of \$74,663.28. This amount represents \$67,623.50 in legal fees, \$5,484.71 in analyst fees and \$1,553.98 in disbursements.
5. PIAC's portion of the costs amounted to \$51,902.72, consisting of \$50,823.68 in legal fees and \$1,079.04 in disbursements. PIAC's claim included the Federal Goods and Services Tax (GST) on legal fees less the 50% rebate to which PIAC is entitled to in connection with the GST.
6. Union des consommateurs' portion of the costs amounted to \$11,146.36, consisting of \$5,485.71 in legal fees, \$5,485.71 in analyst fees, and \$174.94 in disbursements.

7. Option Consommateurs' portion of the costs amounted to \$11,614.20, consisting of \$11,314.20 in legal fees and \$300.00 in disbursements. Option Consommateurs filed a bill of costs with the Consumer Groups' application.
8. The Consumer Groups submitted that the appropriate respondents in this case were Aliant Telecom, Bell Canada, MTS Allstream Inc. (MTS Allstream), Saskatchewan Telecommunications (SaskTel), Société en commandite Télébec (Télébec) and TELUS (collectively, the incumbent local exchange carriers or ILECs), as they had participated in the Part VII application process and the oral hearing.
9. The Consumer Groups suggested that the responsibility for payment of costs should be apportioned among the ILECs on the basis of telecommunications operating revenues, as an indicator of the relative size and interest of the parties involved in the proceeding.

Answer

10. In answer to the application, Aliant Telecom, Bell Canada and TELUS submitted that they did not object to some reimbursement of reasonable costs incurred by the Consumer Groups. Aliant Telecom, Bell Canada and TELUS, however, did not consider that all the costs submitted by the Consumer Groups were reasonable given the nature of the issues involved, the ultimate outcome of the proceeding, and the manner in which the Consumer Groups participated in the proceeding.
11. Bell Canada and TELUS both asserted that the Consumer Groups had not acted responsibly in that they attempted to introduce new evidence four days before the hearing.
12. TELUS also took issue with the Consumer Groups' decision to proceed to an oral hearing knowing that the Commission did not have the jurisdiction to award retroactive compensation.
13. Bell Canada submitted that the Consumer Groups should not be awarded costs for the witness Mr. Cox, whose evidence was excluded by the Commission.
14. Aliant Telecom generally supported Bell Canada and in particular Bell Canada's assertion that the Consumer Groups should not be compensated for costs after 15 November 2004 when negotiations between the parties had broken off as the Consumer Groups were aware at that point of all the consumer protection measures implemented by the ILECs.
15. Aliant Telecom, Bell Canada and TELUS were of the view that the expenses were excessive and that the application and ensuing process were unnecessary and unproductive. TELUS submitted that further examination of the time submitted by the Consumer Groups was warranted given the potential for duplicative work. Aliant Telecom and Bell Canada submitted that the Consumer Groups should provide more detail in respect of the claimed expenses.

Reply

16. In a letter dated 29 April 2005, the Consumer Groups submitted their response to the answers of Aliant Telecom, Bell Canada and TELUS.

17. In response to the assertion by Aliant Telecom, Bell Canada and TELUS that there was a lack of merit in the arguments and evidence submitted by the Consumer Groups, as demonstrated by their failure to obtain any additional relief as a result of the hearing, the Consumer Groups submitted that success on the merits is not a criterion to qualify for costs under subsection 44(1) of the Rules.
18. In response to Aliant Telecom's and Bell Canada's submission that the Consumer Groups should not be awarded costs incurred after 15 November 2004, as the ILECs had already voluntarily implemented effective consumer protection measures, the Consumer Groups maintained that the most important remedy they were seeking for the subscribers was 100% "forgiveness" of long distance charges resulting from modem hijacking and that this remedy had not been universally implemented by the ILECs.
19. The Consumer Groups disputed Bell Canada's and TELUS' assertion that they had not participated in a responsible manner by seeking to introduce evidence four days before the oral hearing. The Consumer Groups submitted that they were not able to obtain the evidence until shortly before the hearing and that they had notified the other parties as soon as possible. The Consumer Groups believed that had the evidence been accepted it would likely have affected the outcome of the proceeding.
20. In response to TELUS' assertion that they had not participated in a responsible manner by requesting an oral hearing the Consumer Groups noted that the oral hearing was imposed by the Commission; therefore, it was legitimate for the Consumer Groups to claim compensation for the costs to prepare for it.
21. In response to Bell Canada's submission that the Commission declined to hear from Mr. Cox and that, therefore, these related costs should not be awarded, the Consumer Groups submitted that Mr. Cox had already departed the United Kingdom to travel to Canada prior to the Commission giving its decision and his costs were kept to a minimum as Mr. Cox's flight was not submitted and his time was given *pro bono*.
22. The Consumer Groups submitted that, in reviewing its claim for costs, PIAC had discovered an error in its calculation of counsel fees. PIAC determined that it had double counted some counsel fees resulting in an over charge of \$16,000.00. (The amounts claimed by the Consumer Groups and set out above in this order have been reduced by \$16,000.00). Accordingly, the Consumer Groups submitted a revised statement of fees, which included detailed timesheets for PIAC personnel as requested by Aliant Telecom and Bell Canada. In light of the above, the Consumer Groups asserted that they had adequately responded to Aliant Telecom's, Bell Canada's and TELUS' request for greater detail in respect of the claimed expenses.

Commission analysis and determination

23. The Commission is of the view that the Consumer Groups should be awarded costs in part, as they have met the criteria as set out in subsection 44(1) of the Rules as follows:
 - a) the Consumer Groups represented a significant group of subscribers who had an interest in the outcome of the proceeding, some of whom had large long distance bills as a result of modem hijacking;

- b) the Consumer Groups pursued a responsible dispute resolution strategy in that they sought the Commission's intervention by filing a Part VII application while negotiating with the ILECs up until the point where it became clear to the Consumer Groups that they would not be able to obtain their most sought after remedy which was 100% forgiveness for the long distance charges; and
 - c) the Consumer Groups contributed to a better understanding of the issues by the Commission. In the course of the proceeding they brought to light the fact that the potential for telephone subscribers to suffer losses as a result of connecting a computer to the Internet over a telephone line is on the increase. The Commission is also of the view that this proceeding served an important function in helping to clarify that the primary responsibility for these losses resides with the telephone subscriber while at the same time underscoring the important and ongoing role that the ILECs play in implementing consumer protection measures aimed at reducing the risk of these losses. The Commission considers that this determination is of significance to all parties including the ILECs.
24. The Commission notes that Aliant Telecom, Bell Canada and TELUS submitted that the Consumer Groups' costs seemed excessive. The Commission however, is of the view that the costs were not excessive as the Consumer Groups in this proceeding were not simply interveners, but were the applicants representing a coalition of three separate consumer rights organizations. In addition, they had to prepare their case in respect of six separate ILECs. The issues addressed by the Consumer Groups in the proceeding were complex and were not the same in respect of each ILEC as the ILECs had each implemented different responses to the problem.
25. The Commission is of the view, however, that costs should not be awarded in respect of the procedural motions, including the motion to admit the evidence of Mr. Cox, nor any of the costs claimed in respect of Mr. Cox as it was not in accordance with the procedures in *Expedited procedure for resolving competitive issues*, Telecom Circular CRTC 2004-2, 10 February 2004. It is clear from the wording of the Circular that in order for the expedited process to work efficiently, last minute filing of evidence and the introduction of witnesses six days after the cut-off date for the filing of materials run directly counter to the core objectives of the expedited process.
26. The Commission notes that the rates claimed in respect of legal and analyst fees are in accordance with the rates set out in the Legal Directorate's *Guidelines for the Taxation of Costs*, revised as of 15 May 1998. The Commission also finds that the amounts claimed by the Consumer Groups, except for the costs related to Mr. Cox referred to in paragraph 25, were necessarily and reasonably incurred and should be allowed.
27. The Commission is of the view 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 *New procedure for Telecom costs awards*, Telecom Public Notice CRTC 2002-5, 7 November 2002.
28. The Commission finds that the appropriate respondents to the Consumer Groups' costs application are Aliant Telecom, Bell Canada, MTS Allstream, SaskTel, Télébec and TELUS.

29. The Commission notes that it has, in previous decisions, allocated the responsibility for the payment of costs among respondents on the basis of the respondents' telecommunications operating revenues (TORs), as an indicator of the relative size and interest of the parties involved in the proceeding. The Commission is of the view that, in the present circumstances, it is appropriate to apportion the costs among the respondents in proportion to their TORs, as reported in their most recent audited financial statements. Given the relative differences in telecommunications revenues between the respondents, the Commission finds that the responsibility for the payment of costs should be allocated as follows:

Aliant Telecom	7%
Bell Canada	50%
MTS Allstream	8%
SaskTel	4%
Télébec	1%
TELUS	30%

Direction as to costs

30. The Commission **approves** the application by the Consumer Groups for costs with respect to their participation in the Part VII application proceeding and oral hearing, subject to the exclusions referred to in paragraph 25.
31. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to PIAC at \$50,475.83, to Union des consommateurs at \$11,146.36 and Option Consommateurs at \$11,614.20.
32. The Commission directs that the award of costs be paid forthwith by Aliant Telecom, Bell Canada, MTS Allstream, SaskTel, Télébec and TELUS according to the proportions set out in paragraph 29.

Secretary General

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