



Telecom Costs Order CRTC 2005-9

Ottawa, 19 October 2005

Public Interest Advocacy Centre - Application for costs - Telecom Public Notice 2004-1

Reference: 8678-C12-200402313 and 4754-247

1. By letter dated 28 July 2005, the Public Interest Advocacy Centre (PIAC), on behalf of the Consumer Groups applied for costs with respect to their joint intervention in the proceeding initiated by *Review and disposition of deferral accounts for the second price cap period*, Telecom Public Notice CRTC 2004-1, 24 March 2004 (the PN 2004-1 proceeding) and for their participation in a Part VII application filed by Bell Canada requesting approval to use funds in its deferral account to expand its digital subscriber line footprint (Bell's Part VII Application) which was suspended pending the PN 2004-1 proceeding.
2. By letters dated 5 August 2005 and 8 August 2005 Aliant Telecom Inc. (Aliant Telecom), Bell Canada and Saskatchewan Telecommunications (SaskTel) (collectively, the Companies), Canadian Cable Telecommunications Association (CCTA), and TELUS Communications Inc. (TELUS) filed comments in response to PIAC's application for costs. By letter dated 18 August 2005 Telesat Canada filed comments in response to comments filed by TELUS. PIAC did not file reply comments.

The application

3. 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) as they represent a group of subscribers that had an interest in the outcome of the PN 2004-1 proceeding, they had participated responsibly in the PN 2004-1 proceeding, and they had contributed to a better understanding of the issues by the Commission through their participation in the PN 2004-1 proceeding.
4. The Consumer Groups also noted their efforts to coordinate intervention with other subscriber group intervenors which helped to minimize duplication of effort and focus the submissions.
5. The Consumer Groups requested that the Commission fix their costs at \$35,994.53, consisting of \$22,519.53 for legal fees and \$13,475.00 for consultant/analyst fees. The amount requested for legal fees represents 94.6 hours of work for Michael Janigan at a rate of \$230 per hour with 8.7 hours (\$2,071.03) being allocated to Bell's Part VII application and 85.9 hours (\$20,448.50) being allocated to the PN 2004-1 proceeding. The amount requested for consultant/analyst fees represents 77.0 hours of work for Johannes Bauer at a rate of \$175 per hour and is allocated entirely to the PN 2004-1 proceeding. Therefore, the total amount claimed represents \$2,071.03 in respect of Bell's Part VII application and \$33,923.50 in respect of the PN 2004-1 proceeding. PIAC's claim included the Federal Goods and Services Tax (GST) on fees less the rebate to which PIAC is entitled in connection with GST. PIAC filed a bill of costs with its application.

6. PIAC made no submission as to the appropriate respondents in this case; however, Public Notice 2004-1 made TELUS and TELUS Communications (Québec) Inc. (collectively TELUS), Aliant Telecom, Bell Canada, MTS Communications Inc. (now MTS Allstream) (MTS), SaskTel and Société en commandité Télébec (Télébec) (collectively, the incumbent local exchange carriers or ILECs) parties to the PN 2004-1 proceeding.

Answer

7. In answer to the application, the Companies, CCTA and TELUS all submitted that they did not object to PIAC's application. TELUS submitted that the costs associated with the Bell Part VII application should be borne entirely by Bell Canada, with the remainder to be apportioned among the respondents on a revenue basis. The Companies submitted that any costs award should be allocated based on the level of interest and participation, not based on each respondent's share of telecommunications revenues.
8. The Companies and TELUS submitted that, in addition to the ILECs, the appropriate costs respondents were Call-Net Enterprises Inc. (Rogers Communications Inc.), CCTA and Microcell Telecommunications Inc. as they had actively participated in the proceeding and would directly or indirectly benefit from the outcome. TELUS also submitted that Telesat Canada and Xit telecom inc. were also appropriate respondents.
9. CCTA submitted that the ILECs were the appropriate costs respondents.
10. Telesat Canada submitted that it was not a proper costs respondent as suggested by TELUS.

Commission analysis and determination

11. The Commission finds that the Consumer Groups have satisfied the criteria for an award of costs set out in subsection 44(1) of the Rules. Specifically, the Commission finds that the Consumer Groups represent a group or class of subscribers that has an interest in the outcome of the proceeding, have participated in a responsible way, and have contributed to a better understanding of the issues by the Commission. The Commission also notes the Consumer Groups' efforts to coordinate intervention with other subscriber group intervenors which helped to minimize duplication of effort and focus the submissions.
12. The Commission notes that the rates claimed in respect of consultant and legal 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 total amount claimed by PIAC was necessarily and reasonably incurred and should be allowed.
13. 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.
14. The Commission notes that it has generally determined that the appropriate respondents to an award of costs are the parties who have a significant interest in the outcome of the proceeding and have participated actively in the proceeding.

15. With respect to the \$2,071.03 in legal fees relating to Bell's Part VII Application, the Commission finds that the appropriate respondent to PIAC's application for costs is Bell Canada.
16. With respect to the \$33,923.50 in legal and consultant/analyst fees relating to the PN 2004-1 proceeding, the Commission finds that the ILECs are the appropriate costs respondents to PIAC's costs application.
17. 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 \$33,923.50 in costs relating to the PN 2004-1 proceeding among the respondents in proportion to their TORs, as reported in their most recent audited financial statements. Accordingly, the Commission finds that the responsibility for the payment of costs should be allocated as follows:

Bell Canada	51%
TELUS	32%
Aliant Telecom	8%
MTS	4%
SaskTel	4%
Télébec	1%

Direction as to costs

18. The Commission **approves** the application by PIAC for costs with respect to the participation of the Consumer Groups in the PN 2004-1 proceeding and Bell's Part VII Application.
19. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to PIAC at \$35,994.53.
20. The Commission directs that the award of costs to PIAC be paid forthwith in accordance with paragraphs 15 and 17.

Secretary General

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