



Telecom Costs Order CRTC 2006-19

Ottawa, 22 December 2006

Application for costs by the Public Interest Advocacy Centre on behalf of the Consumers' Association of Canada – *Proceeding to establish a national do not call list framework and to review the telemarketing rules*, Telecom Public Notice CRTC 2006-4

Reference: 8665-C12-200601626 and 4754-274

1. By letter dated 1 August 2006, the Public Interest Advocacy Centre (PIAC), on behalf of the Consumers' Association of Canada (CAC), applied for costs with respect to its participation in the proceeding initiated by *Proceeding to establish a national do not call list framework and to review the telemarketing rules*, Telecom Public Notice CRTC 2006-4, 20 February 2006 (the Public Notice 2006-4 proceeding).
2. By letter dated 3 August 2006, Rogers Communications Inc. (Rogers) filed comments in response to PIAC's costs application. By letter dated 4 August 2006, Bell Aliant Regional Communications, Limited Partnership; Bell Canada; Saskatchewan Telecommunications; and Société en commandite Télébec (collectively, the Companies) filed comments in response to the application. By letter received 8 August 2006, Shaw Communications Inc. (Shaw) filed comments in response to PIAC's costs application. By letter dated 14 August 2006, TELUS Communications Company (TCC) filed comments in response to PIAC's costs application. By letter dated 24 October 2006, the Canadian Marketing Association (CMA) filed comments in response to the application. By letter dated 7 November 2006, the Canadian Newspaper Association (CNA) filed comments in response to the application.

The application

3. PIAC submitted that CAC 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 it represented a group of subscribers that had an interest in the outcome of the Public Notice 2006-4 proceeding, it had participated responsibly in the Public Notice 2006-4 proceeding, and it had contributed to a better understanding of the issues by the Commission.
4. PIAC requested that the Commission fix its costs at \$12,937.22, consisting of legal fees.
5. PIAC submitted that the appropriate costs respondents should be the major incumbent local exchange carriers (the ILECs) and Shaw and Rogers (the cable companies). PIAC did not suggest how to allocate the costs between these parties. PIAC submitted that, in principle, all the telemarketers who participated in the Public Notice 2006-4 proceeding should be responsible for paying the costs of the consumer organizations, but that it is neither reasonable nor practical to burden the applicants with collecting their costs from a multitude of respondents.

Answers

6. The Companies submitted that they did not object to PIAC's entitlement to costs, nor to the amount claimed, but submitted that PIAC had miscalculated the federal Goods and Services Tax (GST). They claimed that the appropriate amount should be \$357.42 as opposed to \$714.84. The Companies submitted that the appropriate costs respondents should be the ILECs and the cable companies. The Companies proposed that the ILECs and the cable companies share the costs equally. The Companies submitted that the ILECs' portion should be allocated in accordance with their telecommunications operating revenues (TORs). The Companies submitted that, in principle, the telemarketers should be named as costs respondents, but that it is not practical to do so.
7. Rogers stated that it did not oppose PIAC's costs application nor the amount claimed. Rogers did not agree that the costs should be shared between the ILECs and the cable companies. Rogers suggested that all participants in the proceeding who represented commercial interests, including telemarketers and prospective Do Not Call List (DNCL) operators, should be costs respondents. Rogers submitted that the Commission has the jurisdiction to name entities not regulated by the Commission as costs respondents, and has previously done so.
8. Shaw stated that it did not oppose PIAC's costs application nor the amount claimed. Shaw stated that it supported Rogers' proposal noted above.
9. TCC submitted that it did not oppose PIAC's costs application nor the amount claimed. TCC stated that in principle, all telemarketers should be named as costs respondents, but that it is neither reasonable nor practical to burden the costs applicants with the administrative burden of collecting small amounts from the multitude of parties who participated in the proceeding. TCC submitted that an appropriate framework for this costs application could be found in *Action Réseau Consommateur, Fédération des Associations Coopératives d'économie familiale, and the Public Interest Advocacy Centre application for costs – Public Notice CRTC 2001-34, Telecom Costs Order CRTC 2002-10, 13 September 2002 (Costs Order 2002-10)*. TCC stated that Rogers and Shaw's suggestion to pass on the recovery of costs to the DNCL operator would cause a significant delay for the costs applicant.
10. The CMA submitted that it should not be named as a costs respondent. The CMA submitted that it would be inappropriate to assign costs to any interested parties that did not enjoy the benefits of a regulated marketplace, particularly not-for-profit organizations such as itself. According to the CMA, the Commission does not have the authority to name it as a costs respondent since it does not fall under the definition of a regulated company found in subsection 44(1) of the Rules. Finally, the CMA considered that if the Commission intends to allocate costs against unregulated interveners, it should, at the commencement of each proceeding, notify all respondents with commercial interests that costs may be awarded against them.
11. The CNA submitted that not-for-profit organizations should not be named as costs respondents.

Commission's analysis and determination

12. The Commission finds that CAC has satisfied the criteria for a costs award set out in subsection 44(1) of the Rules. Specifically, the Commission finds that CAC is representative of a group or class of subscribers that has an interest in the outcome of the Public Notice 2006-4

proceeding, has participated in a responsible way, and has contributed to a better understanding of the issues by the Commission.

13. The Commission notes that the rates claimed in respect of 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. Subject to the comments below with respect to the GST, the Commission finds that the total amount claimed by PIAC was necessarily and reasonably incurred, and should be allowed.
14. The Commission notes that there is a discrepancy with regard to the amount of GST claimed by PIAC. The appropriate amount should be \$357.42 as opposed to the \$714.84 that PIAC has claimed.
15. 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.
16. The Commission notes that there are a large number of potential costs respondents who actively participated in and are affected by the outcome of the proceeding, including ILECs, the cable companies, and those representing telemarketing interests.
17. The Commission notes Rogers' suggestion that, once selected, the DNCL operator should pay PIAC the costs awarded it and, as part of the tabulation of the operator's overall costs, recover the costs from telemarketers. The Commission considers that this would cause undue delay and hardship for PIAC.
18. The Commission notes that the CMA actively participated in the proceeding on behalf of many telemarketers and that its members will be affected by the outcome of the proceeding. The Commission is of the view that subsection 56(2) of the *Telecommunications Act* (the Act) grants the Commission broad discretion to identify appropriate costs respondents. The Commission has availed itself of this discretionary power to name the CMA as a costs respondent in Costs Order 2002-10, with respect to a previous telemarketing proceeding, and considers that it has the authority to do so with regard to the Public Notice 2006-4 proceeding.
19. The Commission considers that it would be an undue administrative burden on PIAC if it were required to collect small amounts from a multitude of costs respondents. Therefore, in the Commission's view, it is appropriate to limit the costs respondents to the Companies, TCC and MTS Allstream Inc. (the ILECs), Shaw and Rogers (the cable companies), and the CMA. The Commission determines that the allocation of costs be as follows:

ILECs	60%
Cable Companies	30%
CMA	10%

20. The Commission is of the view that the ILECs' portion should be allocated as follows, in accordance with their current TORs, as reported in their most recent audited financial statements: the Companies 66 percent, TCC 24 percent, and MTS Allstream Inc. 10 percent. The Commission directs that the cable companies' portion be paid as follows: 50 percent by Shaw and 50 percent by Rogers.
21. Consistent with its general approach articulated in *Action Réseau Consommateur, the Consumers' Association of Canada, Fédération des associations coopératives d'économie familiale and the National Anti-Poverty Organization application for costs – Public Notice CRTC 2001-60*, Telecom Costs Order CRTC 2002-4, 24 April 2002, the Commission makes Bell Canada responsible for payment on behalf of the Companies and leaves it to the Companies to determine the appropriate allocation of the costs among themselves.

Direction as to costs

22. The Commission **approves** the application by PIAC, on behalf of CAC, for an award of costs with respect to its participation in the Public Notice 2006-4 proceeding.
23. Pursuant to subsection 56(1) of the Act, the Commission fixes the costs to be paid to PIAC, on behalf of CAC, at \$12,579.22.
24. The Commission directs that the costs award to PIAC, on behalf of CAC, be paid forthwith by Bell Canada on behalf of the Companies, TCC, MTS Allstream Inc., Rogers, Shaw, and the CMA according to the proportions set out in paragraph 19.

Secretary General

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