



Telecom Costs Order CRTC 2007-14

Ottawa, 30 November 2007

Public Interest Advocacy Centre on behalf of the Consumers' Association of Canada, the National Anti-Poverty Organization and l'Union des consommateurs – Application for costs – *Continued need for the regulatory constraints applicable to toll and toll-free services,* Telecom Public Notice CRTC 2006-10

Reference: 8661-C12-200608672 and 4754-292

1. By letter dated 28 March 2007, the Public Interest Advocacy Centre (PIAC) on behalf of the Consumers' Association of Canada, the National Anti-Poverty Organization and l'Union des consommateurs applied for costs with respect to its participation in the proceeding initiated by Telecom Public Notice 2006-10 (the Public Notice 2006-10 proceeding).
2. By letter dated 13 April 2007, Bell Canada filed comments on behalf of Bell Aliant Regional Communications, Limited Partnership, Bell Canada, and Saskatchewan Telecommunications (collectively, the Companies).
3. By letter dated 16 April 2007, PIAC filed a reply to the comments submitted by the Companies regarding the application.

The application

4. PIAC submitted that it 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 represents a group of subscribers that had an interest in the outcome of the Public Notice 2006-10 proceeding, it had participated responsibly, and it had contributed to a better understanding of the issues by the Commission through its participation in the Public Notice 2006-10 proceeding.
5. PIAC filed a bill of costs with its application, claiming a total amount of \$18,020.77 in legal fees. PIAC did not make any representations with regard to the appropriate costs respondents or take any position as to the allocation of its costs.

The response

6. In response to the application, the Companies objected to PIAC's entitlement to the full amount claimed and requested that the Commission reduce the amount by 25 percent. The Companies submitted that PIAC failed to meet the criteria for costs because a significant portion of PIAC's participation was not responsible and did not contribute to a better understanding of the issues. More precisely, the Companies alleged that PIAC unnecessarily delayed and confused the proceeding by persistently misrepresenting the evidence and arguments of other parties and persistently making allegations unsupported by any evidence.

7. In support of their allegation that PIAC has persistently misrepresented the evidence and arguments of other parties, the Companies submitted that PIAC misrepresented Bell Canada's response to an interrogatory and inaccurately stated that Bell Canada and TELUS Communications Company (TCC) had admitted that prices will rise upon discontinuance of Basic Toll Constraints for low-volume users.
8. With respect to their allegation that PIAC persistently made unsupported allegations, the Companies submitted that: PIAC challenged the Commission's market definition ruling that discount and basic toll are part of the same product market, yet never provided any evidence in support of its assertion that these are separate markets; PIAC repeatedly made factual claims regarding the circumstances of low-income, elderly and less-educated consumers but never adduced any evidence to support its assertions; and PIAC denied the substitutability of access-dependent voice over Internet Protocol (VoIP) service for circuit-switched telephone service, despite the Commission's and the Governor in Council's clear pronouncements to the contrary. Finally, the Companies submitted that, at the deficiency stage, PIAC effectively tried to re-write its original interrogatory.

The reply

9. In reply, PIAC denied the Companies' allegation that PIAC misrepresented Bell Canada's answer to an interrogatory and the Companies' position with respect to whether basic toll service rates would go up.
10. PIAC further submitted that it was entitled to make submissions that run contrary to any previously taken position of the Commission in decisions on market definition or VoIP substitutability (as the Commission is not fettered in its jurisdiction or discretion by past decisions), especially when these decisions arise in a new context.
11. Regarding the circumstances of some low-income and elderly users, PIAC alleged that it was entitled to rely upon its general experience in dealing with such persons and to inform the Commission of that experience.
12. Finally, PIAC submitted that its alleged "re-writing" of one of its interrogatories was simply a forceful argument for the relevance of the information requested. Therefore, PIAC reiterated that it is entitled to the full costs claimed.

Commission's analysis and determinations

13. The Commission disagrees with the Companies' submission that a significant portion of PIAC's participation was not responsible and did not contribute to a better understanding of the issues by the Commission. Further, the Commission is of the view that PIAC's behavior in the proceeding did not unnecessarily delay or confuse the proceeding.
14. The Commission notes that the costs criterion of "contributing to a better understanding" is not dependent on the Commission adopting the intervener's position. PIAC's submissions in the proceeding were based on its view of the impact of relieving the Companies from the regulatory constraints applicable to toll and toll-free services on consumers, particularly vulnerable consumers and low-volume toll users.

15. The Commission finds that PIAC has satisfied the criteria for an award of costs set out in subsection 44(1) of the Rules. Specifically, the Commission finds that PIAC is representative of a group or class of subscribers that has an interest in the outcome of the proceeding, has participated in a responsible way, and has contributed to a better understanding of the issues by the Commission.
16. 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 Telecom Public Notice 2002-5.
17. The Commission notes that the rates claimed are in accordance with the rates set out in the Legal Directorate's *Guidelines for the Taxation of Costs* revised as of May 1998. However, given the further revisions to the *Guidelines for the Taxation of Costs* as of 24 April 2007, the Commission considers that it would be appropriate to fix the costs in accordance with the revised rates. Accordingly, the Commission has revised the bill of costs to reflect the new rates and the revised amount is \$20,182.74. The Commission finds that the total amount claimed by PIAC was necessarily and reasonably incurred and should be allowed.
18. 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. The Commission considers that the Companies, MTS Allstream Inc. (MTS Allstream), and TCC had a significant interest in the outcome of the Public Notice 2006-10 proceeding, and that these parties have participated actively throughout the proceeding. The Commission therefore finds that the appropriate respondents to PIAC's application for costs are the Companies, MTS Allstream and TCC.
19. 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, as follows:

The Companies	57%
TCC	35%
MTS Allstream	8%

20. Consistent with its general approach articulated in Telecom Costs Order 2002-4, the Commission makes Bell Canada responsible for payment on behalf of the Companies and leaves it to the members of the Companies to determine the appropriate allocation of the costs among themselves.

Direction as to costs

21. The Commission **approves** the application by PIAC for an award of costs with respect to its participation in the Public Notice 2006-10 proceeding.

22. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to PIAC at \$20,182.74.
23. The Commission directs that the award of costs to PIAC be paid forthwith by the costs respondents according to the proportions set out in paragraph 19.

Secretary General

Related documents

- *Continued need for the regulatory constraints applicable to toll and toll-free services*, Telecom Public Notice CRTC 2006-10, 7 July 2006
- *New procedure for Telecom costs awards*, Telecom Public Notice CRTC 2002-5, 7 November 2002
- *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

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