



Telecom Costs Order CRTC 2008-22

Ottawa, 1 December 2008

Determination of costs award with respect to the participation of the Public Interest Advocacy Centre, on behalf of the Consumers' Association of Canada and the National Anti-Poverty Organization, in the Telecom Public Notice 2008-4 proceeding

Reference: 8663-C12-200805609 and 4754-324

1. By letter dated 26 June 2008, the Public Interest Advocacy Centre (PIAC) applied for costs on behalf of the Consumers' Association of Canada and the National Anti-Poverty Organization (the Consumer Groups) with respect to their participation in the proceeding initiated by Telecom Public Notice 2008-4 (the Public Notice 2008-4 proceeding).
2. On 7 July 2008, Bell Aliant Regional Communications, Limited Partnership (Bell Aliant), Bell Canada, and Télébec, Limited Partnership (Télébec) [collectively, the Companies]; and TELUS Communications Company (TCC) filed comments in response to PIAC's application. PIAC filed reply comments on 19 September 2008.

Application

3. PIAC submitted 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 a clear interest in the outcome of the Public Notice 2008-4 proceeding, it had participated responsibly, and it had contributed to a better understanding of the issues by the Commission through its evidence and arguments in the Public Notice 2008-4 proceeding.
4. PIAC requested that the Commission fix its costs at \$23,219.84, consisting of \$6,658.40 for legal fees, \$4,497.19 for consultant fees, and \$12,064.25 for disbursements. PIAC's claim included the federal Goods and Services Tax (GST) on fees, less the rebate to which PIAC is entitled in connection with the GST. PIAC filed a bill of costs with its application. The amount claimed for consultant fees relates to the work done by Andrew Briggs, including preparation of evidence. The amount claimed for disbursements relates to a telephone survey conducted by Pollara Inc. (Pollara).
5. PIAC made no submission as to the appropriate costs respondents.

Answer

6. In response to the application, the Companies submitted that they did not object to costs being awarded to PIAC. However, they objected to PIAC's claimed costs with respect to the evidence of Andrew Briggs, and with respect to the survey by Pollara, on the grounds that they did not contribute to a better understanding of the issues by the Commission.

7. With respect to the evidence of Andrew Briggs, the Companies submitted that it superficially summarized the Commission's past Quality of Service (Q of S) determinations and contained virtually no meaningful analysis and no factual information beyond what could be easily gleaned from the Commission's website after a basic search. The Companies submitted that the amount PIAC has claimed for Andrew Briggs' services should be reduced by the amount that they assumed was spent in preparing the evidence, which is 7.5 hours, or \$1,687.50 plus applicable taxes.
8. With respect to the survey by Pollara, the Companies submitted that significant portions of it are biased, misleading, and/or irrelevant. Their objections included the following:
 - The collection of demographic information was irrelevant because it did not establish whether the survey respondents were wireline telephone subscribers, and if so, whether their service provider was an incumbent local exchange carrier (ILEC); and
 - While in Telecom Decision 2006-15 the Commission had already made the determination that Q of S regulation is unnecessary in forborne areas, the survey included customers from both forborne and non-forborne markets.
9. Accordingly, the Companies submitted that the amount claimed for the survey by Pollara should be reduced by 50 percent to \$6,032.13.
10. With respect to the appropriate costs respondents and apportionment of any costs awarded, the Companies submitted that all participating telecommunications service providers (TSPs) should share responsibility for costs and that costs should be apportioned among participating TSPs in proportion to their share of telecommunications operating revenues (TORs).
11. In response to the application, TCC submitted that all TSPs that participated in the proceeding should be included as costs respondents, and that costs should be apportioned among participating TSPs in proportion to their share of TORs.

Reply

12. In reply, PIAC submitted that the Commission should reject the objections of the Companies and allow the costs claim in full.
13. With respect to the evidence of Andrew Briggs, PIAC noted that the evidence was prepared to inform PIAC in the preparation of its comments. PIAC argued that the evidence illustrates that the Commission has strengthened Q of S regulation over time, and that the evidence demonstrates that the threat or possibility of competition has not been sufficient to ensure that ILECs deliver high quality of service. PIAC stated that a review of Andrew Briggs' records indicates that only 4.75 hours of his time were spent researching and drafting the evidence in question.

14. With respect to the survey by Pollara, PIAC argued, among other things, that the results are an indicator of the effectiveness of market forces as they are a measure of consumers' perceptions of their ability to switch to another provider. PIAC submitted that the survey results are relevant in light of the Companies' submissions that market forces are sufficient to ensure high service quality in non-forborne areas, since they demonstrate a customer belief that competition is not strong enough to replace regulation in areas of market dominance.
15. PIAC argued that there is value in including the views of consumers in forborne areas because they have been exposed to competition and, therefore, their views indicate the effectiveness of market forces to ensure high quality of service. According to PIAC, the results of the survey amplify the criticism of the Consumer Groups that there is likely insufficient market discipline in non-forborne markets.
16. PIAC indicated that there was neither the time nor the resources available to conduct a more complex study of consumers for the Public Notice 2008-4 proceeding.

Commission's analysis and determinations

17. 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, it has participated in a responsible way, and it has generally contributed to a better understanding of the issues by the Commission.
18. The Commission notes that PIAC's submissions in the Public Notice 2008-4 proceeding relied on the evidence of Andrew Briggs. PIAC incorporated this evidence into its submissions to support its argument that market forces were not an effective method of ensuring Q of S in non-forborne areas. The Commission finds that those submissions have contributed to bettering its understanding of the issues. The Commission determines that full costs should be allowed with respect to the evidence of Andrew Briggs.
19. With respect to the survey by Pollara, the Commission considers that a survey of consumer views on the issues under consideration in the Public Notice 2008-4 proceeding is of some value. The Commission finds, however, that there are significant flaws in the survey, including the lack of a distinction between forborne and non-forborne markets. The Commission considers that the survey's flaws reduce its value. In light of the above, the Commission determines that the amount claimed by PIAC for the survey should be reduced by 50 percent, as proposed by the Companies, to \$6,032.13.
20. 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 24 April 2007. The Commission also finds that the total amount claimed by PIAC was necessarily and reasonably incurred and should be allowed, subject to a 50 percent deduction for the amount claimed with respect to the survey by Pollara. Accordingly, the Commission determines that costs should be awarded in the amount of \$17,187.72.

21. The Commission considers 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.
22. The Commission notes that it has generally determined that the appropriate respondents to an award of costs are the parties that have a significant interest in the outcome of the proceeding and have participated actively in the proceeding. The Commission considers that Bell Aliant and Bell Canada (collectively, Bell Canada et al.); MTS Allstream Inc. (MTS Allstream); NorthernTel, Limited Partnership and Télébec (collectively, NorthernTel/Télébec); Saskatchewan Telecommunications (SaskTel); and TCC have a significant interest in the outcome of the Public Notice 2008-4 proceeding, and that these parties have participated actively throughout the proceeding. The Commission therefore finds that the aforementioned parties are the appropriate respondents to PIAC's application for costs.
23. 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' TORs, as an indicator of the relative size and interest of the parties involved in the proceeding. The Commission considers 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. Accordingly, the Commission finds that the responsibility for the payment of costs should be allocated as follows:

Bell Canada et al.	50.01%
TCC	36.91%
MTS Allstream	7.54%
SaskTel	3.99%
NorthernTel/Télébec	1.55%

24. The Commission notes that Bell Canada filed submissions in the Public Notice 2008-4 proceeding on behalf of Bell Canada et al. Consistent with its general approach articulated in Telecom Costs Order 2002-4, the Commission makes Bell Canada responsible for payment on behalf of Bell Canada et al., and leaves it to the members of Bell Canada et al. to determine the appropriate allocation of the costs among themselves.
25. The Commission notes that Télébec filed submissions in the Public Notice 2008-4 proceeding on behalf of NorthernTel/Télébec. Consistent with its general approach articulated in Telecom Costs Order 2002-4, the Commission makes Télébec responsible for payment on behalf of NorthernTel/Télébec, and leaves it to the members of NorthernTel/Télébec to determine the appropriate allocation of the costs among themselves.

Direction as to costs

26. The Commission **approves** the application by PIAC, on behalf of the Consumer Groups, for costs with respect to their participation in the Public Notice 2008-4 proceeding.

27. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to PIAC at \$17,187.72.
28. The Commission directs that the award of costs to PIAC be paid forthwith by Bell Canada on behalf of Bell Canada et al., MTS Allstream, SaskTel, Télébec on behalf of NorthernTel/Télébec, and TCC according to the proportions set out in paragraph 23.

Secretary General

Related documents

- *Review of the regulatory requirements associated with the retail quality of service regime in non-forborne markets*, Telecom Public Notice CRTC 2008-4, 17 April 2008
- *Forbearance from the regulation of retail local exchange services*, Telecom Decision CRTC 2006-15, 6 April 2006, as amended by Order in Council P.C. 2007-532, 4 April 2007
- *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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