



## Telecom Costs Order CRTC 2008-5

Ottawa, 30 May 2008

### **Determination of costs award with respect to the participation of the Canadian Internet Policy and Public Interest Clinic in the Telecom Public Notice CRTC 2007-16 proceeding**

Reference: 8665-C12-200711748 and 4754-308

1. By letter dated 10 December 2007, the Canadian Internet Policy and Public Interest Clinic (CIPPIC) applied for costs with respect to its participation in the proceeding initiated by Telecom Public Notice 2007-16 (the Public Notice 2007-16 proceeding).
2. On 19 December 2007, Saskatchewan Telecommunications (SaskTel) filed comments in response to CIPPIC's application. On 5 March 2008, TELUS Communications Company (TCC) filed comments in response to CIPPIC's application.
3. On 21 December 2007, CIPPIC filed reply comments to SaskTel's comments.

#### **Application**

4. CIPPIC 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 2007-16 proceeding, it participated responsibly, and it contributed to a better understanding of the issues by the Commission through its participation in the Public Notice 2007-16 proceeding.
5. CIPPIC requested that the Commission fix its costs at \$11,731.99, consisting of \$11,631.25 for legal fees and \$100.74 for disbursements. CIPPIC filed a bill of costs with its application.
6. CIPPIC submitted that the appropriate respondents in this case were all telecommunications service providers (TSPs) participating in the Public Notice 2007-16 proceeding other than small TSPs.

#### **Answer**

7. In response to the application, TCC had no objection to CIPPIC's costs entitlement or the amounts claimed. With respect to the appropriate costs respondents, TCC submitted that all larger TSPs required by Telecom Decision 2007-130 to be members of the Commissioner for Complaints for Telecommunications Services Inc. (CCTS) should be named respondents, including those represented by industry associations, whether or not such parties had participated in the proceeding. TCC also submitted that responsibility for costs should be apportioned among these TSPs in proportion to their share of telecommunications operating revenues (TORs).

8. SaskTel submitted that CIPPIC did not meet the criteria for costs set out in section 44 of the Rules, in that CIPPIC did not represent a sufficiently delineated body of subscribers and is funded by other sources to participate in public proceedings.

### **Reply**

9. In reply to SaskTel's submission, CIPPIC submitted that it was representing the interests of residential telecommunications subscribers generally in the proceeding, which was consistent with its mandate. CIPPIC also submitted that a clinic such as CIPPIC can be representative of a particular interest without formally reporting to members or clients within the interest group and that in this particular case, the interests of residential customers were clear and undisputed. CIPPIC further submitted that most of its funding is for specific research projects rather than advocacy of the nature in question in the Public Notice 2007-16 proceeding. CIPPIC stated that if it did not receive a costs award for its participation in this proceeding, it would have to raise the funds elsewhere.

### **Commission's analysis and determinations**

10. The Commission notes that it has previously awarded costs to parties that did not represent a body of subscribers with whom the parties had a formal relationship (as it did in Costs Order 2001-2). The Commission also notes that CIPPIC's mandate includes intervening on issues with broad public interest implications and its intervention in the Public Notice 2007-16 proceeding falls within this mandate. The Commission considers that the fact that CIPPIC did not represent a specifically delineated body of subscribers is not a bar to an award of costs.
11. The Commission further considers that CIPPIC has established that it has not and will not receive financial assistance from other sources in connection with its participation in the Public Notice 2007-16 proceeding.
12. The Commission finds that CIPPIC has satisfied the criteria for an award of costs set out in subsection 44(1) of the Rules. Specifically, the Commission finds that CIPPIC 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 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 24 April 2007. The Commission also finds that the total amount claimed by CIPPIC was necessarily and reasonably incurred and should be allowed.
14. 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.

15. In determining the appropriate respondents to an award of costs, the Commission has generally looked at which parties are affected by the issues and have actively participated in the proceeding. The Commission notes, however, that in allocating costs among respondents, it has also been sensitive to the fact that if too large a number of respondents are named, the applicant may have to collect small amounts from certain respondents, resulting in a significant administrative burden to the applicant.
16. In light of the above and given the size of the costs award in this case, the large number of potential costs respondents, and the result that if all potential costs respondents were retained, CIPPIC would be required to collect small amounts from certain respondents, the Commission considers that it is appropriate, in the present circumstances, to limit the respondents to Bell Aliant Regional Communications, Limited Partnership, Bell Canada and SaskTel (collectively, the Companies), TCC, Rogers Communications Inc. (Rogers), MTS Allstream Inc. (MTS Allstream), Shaw Communications Company (Shaw), Quebecor Media Inc. (on behalf of Videotron Ltd.) [Videotron], Primus Telecommunications Canada Inc. (Primus) and Télébec, Société en commandite (Télébec).
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' 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:

The Companies	43%
TCC	26%
Rogers	19%
MTS Allstream	6%
Shaw	2%
Videotron	2%
Primus	1%
Télébec	1%

18. 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**

19. The Commission **approves** the application by CIPPIC for costs with respect to its participation in the Public Notice 2007-16 proceeding.

20. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to CIPPIC at \$11,731.99.
21. The Commission directs that the award of costs to CIPPIC be paid forthwith by Bell Canada on behalf of the Companies, TCC, Rogers, MTS Allstream, Shaw, Videotron, Primus and Télébec according to the proportions set out in paragraph 17.

Secretary General

### **Related documents**

- *Establishment of an independent telecommunications consumer agency*, Telecom Decision CRTC 2007-130, 20 December 2007
- *Proceeding to consider the organization and mandate of the Commissioner for Complaints for Telecommunications Services*, Telecom Public Notice CRTC 2007-16, 22 August 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
- *Part VII application by Mr. Chris Stark respecting the provision of Fido service to persons who are blind*, Costs Order CRTC 2001-2, 6 February 2001

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