



Telecom Order CRTC 2009-110

Route reference: Telecom Public Notice 2008-10

Ottawa, 3 March 2009

Determination of costs award with respect to the participation of the Public Interest Advocacy Centre in the Telecom Public Notice 2008-10 proceeding

File number: 8640-C12-200808074 and 4754-331

1. By letter dated 5 September 2008, the Public Interest Advocacy Centre (PIAC) applied for costs with respect to its participation on behalf of the Consumers' Association of Canada and the National Anti-Poverty Organization (collectively, the Consumer Groups) in the proceeding initiated by Telecom Public Notice 2008-10 (the Public Notice 2008-10 proceeding).
2. On 15 September 2008, Bell Aliant Regional Communications, Limited Partnership, Bell Canada, and Télébec, Limited Partnership (collectively, the Companies), and Saskatchewan Telecommunications (SaskTel) filed comments in response to PIAC's application. On 17 September 2008, TELUS Communications Company (TCC) filed comments in response to PIAC's application. PIAC filed reply comments on 24 November 2008.

Application

3. In its application, PIAC noted that it had included in its application a claim for its participation in the proceeding with respect to TCC's application for forbearance from the regulation of retail directory assistance services (the TCC application), which proceeding was combined with the Telecom Public Notice 2008-10 proceeding.
4. PIAC submitted that the criteria for an award of costs set out in subsection 44(1) of the *CRTC Telecommunications Rules of Procedure* (the Rules) had been met in this instance, as it represents a significant body of subscribers who will be affected by the outcome of the Public Notice 2008-10 proceeding, it had participated responsibly, and it had contributed to a better understanding of the issues by the Commission through its written submissions.
5. PIAC requested that the Commission fix its costs at \$5,801.05, consisting entirely of legal fees for external counsel and an articling student. 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.
6. PIAC made no submission as to the appropriate costs respondents.

Answer

7. In response to the application, the Companies and SaskTel questioned whether all of PIAC's written submissions contributed to a better understanding of the issues in the Public Notice 2008-10 proceeding.

8. In particular, the Companies and SaskTel argued that PIAC's submission concerning the TCC application merely addressed the order in which the Commission has prioritized issues along with repeated statements that TCC's application was out of process. According to the Companies and SaskTel, submissions of that nature should not result in a costs award.
9. The Companies and SaskTel also noted that PIAC had claimed time spent for the preparation of a reply in the Public Notice 2008-10 proceeding, but that no reply by PIAC appears on the record.
10. For those reasons, the Companies and SaskTel requested that PIAC's claim of \$5,801.05 be reduced accordingly by the Commission.
11. For its part, TCC requested that PIAC not be awarded costs in relation to the preparation of its reply comments as they were filed late.

Reply

12. PIAC disagreed with the argument of the Companies and SaskTel that PIAC should not be awarded costs for its submission relating to the TCC application. In response to their contention that those submissions amounted to mere statements that TCC's application was out of process, and therefore did not contribute to a better understanding of the issues in the Public Notice 2008-10 proceeding, PIAC submitted that procedural motions are part and parcel of the Commission's decision-making on the merits. Moreover, PIAC submitted that denying costs for procedural motions could deter public interest interveners from making procedural motions, which could ultimately prevent the Commission from restructuring proceedings to reach the most just decision.
13. As for its reply comments in the Public Notice 2008-10 proceeding, PIAC acknowledged that its comments had been filed late and were only received by the interested parties to the Public Notice 2008-10 proceeding on 16 September 2008. PIAC further acknowledged that the Companies and SaskTel could not have known of the reply comments when they submitted their 15 September 2008 comments. PIAC reiterated its request for costs with respect to its reply comments on the basis that they added significantly to the record of the Public Notice 2008-10 proceeding. In the alternative, PIAC submitted that in the event that the Commission declines to award costs for the late reply comments, PIAC should nevertheless be awarded costs on the balance of its submissions.

Commission's analysis and determinations

14. The Commission finds that PIAC has satisfied the criteria for an award of costs set out in subsection 44(1) of the Rules.
15. 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 and that PIAC has participated in a responsible way. Moreover, despite the contentions of the Companies and SaskTel, the Commission finds that PIAC has contributed to a better understanding of the issues by the Commission through all of its written submissions. In particular, the Commission considers

that PIAC's submission in relation to the TCC application was appropriate. Indeed, the Commission treated the TCC application in the manner suggested by PIAC. With respect to TCC's submission that no costs should be awarded for PIAC's reply comments on the basis that they were filed late, the Commission notes that it has accepted those comments as part of the record of the Public Notice 2008-10 proceeding.

16. 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 PIAC was necessarily and reasonably incurred and should be allowed.
17. 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.
18. The Commission finds that the appropriate respondents to PIAC's costs application are the Companies, MTS Allstream Inc. (MTS Allstream), SaskTel, and TCC.
19. 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, SaskTel, and TCC have a significant interest in the outcome of the Public Notice 2008-10 proceeding, and that these parties have participated actively throughout the proceeding.
20. 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 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	51.4%
TCC	37%
MTS Allstream	7.6%
SaskTel	4%

21. The Commission notes that Bell Canada filed submissions in the Public Notice 2008-10 proceeding on behalf of the Companies. 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

22. The Commission **approves** the application by PIAC for costs with respect to the participation of the Consumer Groups in the Public Notice 2008-10 proceeding.
23. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to PIAC at \$5,801.05.
24. The Commission directs that the award of costs to PIAC be paid forthwith by the Companies, MTS Allstream, SaskTel, and TCC according to the proportions set out in paragraph 20.

Secretary General

Related documents

- *Forbearance with respect to retail directory assistance services provided by the large incumbent local exchange carriers*, Telecom Public Notice CRTC 2008-10, 11 June 2008
- *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

This document is available in alternative format upon request, and may also be examined in PDF format or in HTML at the following Internet site: <http://www.crtc.gc.ca>