



## Telecom Order CRTC 2009-314

Route reference: Telecom Public Notice 2008-15

Ottawa, 29 May 2009

### **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 2008-15 proceeding**

File number: 8663-C12-200814279 and 4754-336

1. By letter dated 23 January 2009, the Public Interest Advocacy Centre (PIAC) on behalf of the Consumers' Association of Canada and the National Anti-Poverty Organization (the Consumer Groups) applied for costs with respect to their participation in the proceeding initiated by Telecom Public Notice 2008-15 (the Public Notice 2008-15 proceeding).
2. On 2 February 2009, Bell Canada on behalf of itself and Bell Aliant Regional Communications, Limited Partnership, Saskatchewan Telecommunications, and Télébec, Limited Partnership (collectively, the Companies) filed comments in response to the application by PIAC. On 2 February 2009, TELUS Communications Company (TCC) filed comments in response to the application by PIAC. On 3 February 2009, PIAC filed reply comments.

### **Application**

3. PIAC submitted that the Consumer Groups 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 they represent a group of subscribers that had an interest in the outcome of the Public Notice 2008-15 proceeding, they had participated responsibly, and they had contributed to a better understanding of the issues by the Commission through their participation in the Public Notice 2008-15 proceeding.
4. PIAC requested that the Commission fix its costs at \$11,505.63, consisting of legal fees and 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.
5. PIAC claimed 45 hours at a rate of \$250 per hour for legal fees associated with outside legal counsel.
6. PIAC made no submission as to the appropriate costs respondents.

### **Answer**

7. In response to the application, the Companies stated that they had no objection to PIAC's eligibility for costs, but they did, however, object to the amount claimed. The Companies submitted that the amount claimed should be reduced. The Companies also submitted that in

light of the relative simplicity of the Public Notice 2008-15 proceeding and the small number of parties, the hours claimed by PIAC for drafting comments appear excessive. The Companies noted that the expansion of the mandate of the Commissioner of Complaints for Telecommunications Services (CCTS) was not within the scope of the Public Notice 2008-15 proceeding and that to the extent that PIAC requested such an expansion, PIAC's initial comments therefore did not contribute to a better understanding of the issues.

8. TCC objected to PIAC's eligibility for costs on the basis that its claim was submitted thirteen days after the required date and that PIAC failed to contribute to a better understanding of the issues by the Commission. In the latter regard, TCC submitted that PIAC confused the issue because PIAC emphasized the importance of affordability and pay telephone service for consumers rather than the continued appropriateness of monitoring and reporting on these matters.

### **Reply**

9. In reply, PIAC submitted that the time spent on this proceeding was all expended in an effort to produce the best submissions on behalf of its clients and that counsel's decision on which proceeding to expend time was one made in his best judgment for the clients, given the resource constraints of the organization. PIAC also argued that it contributed to a better understanding of the issues, and that monitoring and reporting is clearly for the purpose of ensuring affordability of service of presenting the consumers' perspective with regard to the importance of affordability and pay telephone service for consumers. Finally, PIAC stated that at most the application was three days late as the Commission was recessed from 24 December 2008 to 2 January 2009 and that in any case, TCC was not prejudiced by the delay.

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

10. With regard to the Companies' submission that PIAC did not contribute to a better understanding of the issues by filing comments on the expansion of the mandate of the CCTS, the Commission notes that PIAC's comments regarding the CCTS were not outside the scope of the Public Notice 2008-15 proceeding as they addressed the reporting and monitoring of affordability. In this regard, the Commission notes that PIAC made submissions as to what would be necessary should the Commission determine that affordability monitoring remains important but should be wholly transferred to the CCTS.
11. With regard to TCC's objection to PIAC's eligibility for costs on the basis that it failed to submit its claim on time, the Commission finds that TCC was not prejudiced by the delay. The Commission notes TCC's submission that PIAC did not contribute to a better understanding of the issues on the basis that PIAC confused the issue because it emphasized the importance of affordability and pay telephone service for consumers rather than the continued appropriateness of monitoring and reporting on these matters. Contrary to TCC's submission, the Commission considers that PIAC did emphasize the importance of monitoring and reporting. For example, PIAC submitted that retaining those requirements will be beneficial for those for whom affordability is an issue, such as poverty-reduction advocates, municipal politicians, and the Commission.

12. The Commission finds that the Consumer Groups have satisfied the criteria for an award of costs set out in subsection 44(1) of the Rules. Specifically, the Commission finds that the Consumer Groups are representative of a group or class of subscribers that has an interest in the outcome of the proceeding, they have participated in a responsible way, and they have contributed to a better understanding of the issues by the Commission.
13. The Commission notes that the rates claimed in respect of outside legal counsel 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. PIAC submitted two sets of extensive comments, in particular with respect to affordability. In this regard, PIAC's submissions were detailed and comprehensive. PIAC provided full supporting rationale and all evidence on which it relied and structured its submissions according to the issues identified in the Public Notice 2008-15 proceeding.
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. The Commission finds that the appropriate respondents to PIAC's costs application are the Companies, TCC, and Rogers Communications Inc. (RCI).
16. 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	55%
TCC	37%
RCI	8%

17. The Commission notes that Bell Canada filed submissions in the Public Notice 2008-15 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**

18. The Commission **approves** the application by PIAC for costs with respect to its participation in the Public Notice 2008-15 proceeding.

19. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to PIAC at \$11,505.63.
20. The Commission directs that the award of costs to PIAC be paid forthwith by Bell Canada on behalf of the Companies, TCC, and RCI, according to the proportions set out in paragraph 16.

Secretary General

### **Related documents**

- *Notice of consultation – Review of the regulatory requirements pertaining to the monitoring and reporting of certain data*, Telecom Public Notice CRTC 2008-15, 27 October 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

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