



Telecom Order CRTC 2009-398

Ottawa, 30 June 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 2008-14 proceeding

File number: 8665-C12-200814021 and 4754-333

1. By letter dated 19 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 2008-14 (the Public Notice 2008-14 proceeding).
2. On 28 January 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 the same day, TELUS Communications Company (TCC) filed comments in response to the application by PIAC. On 2 February 2009, the Canadian Marketing Association (CMA) filed comments in response to the application by PIAC. PIAC did not file 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 2008-14 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 2008-14 proceeding.
4. PIAC requested that the Commission fix its costs at \$1,137.76 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 1.5 hours at a rate of \$250 per hour for legal fees associated with outside legal counsel, and 11 hours at a rate of \$70.00 per hour for legal fees associated with an articling student.
6. PIAC made no submission as to the appropriate costs respondents.

Answer

7. In response to the application, the Companies, TCC, and the CMA stated that they had no objection to PIAC's eligibility for costs or the amounts claimed.

8. The Companies submitted that any costs awarded should be allocated among telecommunications service providers (the Companies, Primus Telecommunications Canada Inc. (Primus) and Rogers Communications Inc. (RCI)) and the CMA in a manner similar to that determined by the Commission in the proceeding initiated by Telecom Public Notice 2006-4.
9. TCC submitted that those identified as costs respondents in the Telecom Public Notice 2006-4 proceeding, who participated in the Public Notice 2008-14 proceeding, in addition to Primus, should be named as costs respondents, in a similar manner to what the Commission determined in the former proceeding.
10. In its response, the CMA submitted that it should not be named as a costs respondent in this proceeding. The CMA argued that the Commission does not have the authority to name it as a costs respondent since it does not fall under the definition of a regulated company found in subsection 44(1) of the Rules. The CMA further argued that it would be inappropriate to assign costs to any interested parties that did not enjoy the benefits of a regulated marketplace, particularly not-for-profit organizations such as the CMA. Finally, the CMA considered that if the Commission intends to allocate costs against unregulated interveners, it should, at the commencement of each proceeding, notify all respondents with commercial interests that costs may be awarded against them.

Reply

11. PIAC did not file reply comments.

Commission's analysis and determinations

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 and the articling student 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.
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.

16. The Commission further 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 many respondents, resulting in a significant administrative burden to the applicant.
17. The Commission notes the CMA's submission that the Commission does not have the authority to name it as a costs respondent. The Commission does not agree. In this regard, the Commission notes that subsection 56(2) of the *Telecommunications Act* (the Act) provides it with broad discretionary powers to determine by whom costs are to be paid.
18. The Commission also notes the CMA's submission that it would be inappropriate to name it as a costs respondent because it is not a regulated company and it is a not-for-profit organization. The Commission disagrees. In this regard, the Commission notes that the CMA is an industry association which represents for-profit as well as not-for-profit interests, and that the CMA actively participated in the Public Notice 2008-14 proceeding on behalf of its many telemarketer members who will be affected by the outcome of the proceeding.
19. The Commission notes in passing that the CMA made similar submissions in previous costs proceedings and that the Commission included the CMA as a costs respondent in those proceedings.
20. In light of the above and given the small 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, PIAC 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 the Companies, MTS Allstream Inc. (MTS Allstream), TCC, and the CMA. Although Primus and RCI are affected by the issues and actively participated in the proceeding, the Commission considers that it is appropriate not to include them among the costs respondents because their share would be too small, resulting in an administrative burden if the applicant would have to collect from them.
21. 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, except for the CMA, 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 and MTS Allstream	57%
TCC	33%
CMA	10%

22. The Commission notes that Bell Canada filed submissions in the Public Notice 2008-14 proceeding on behalf of the Companies and MTS Allstream. 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 MTS Allstream and leaves it to the members of the Companies and MTS Allstream to determine the appropriate allocation of the costs among themselves.

Direction as to costs

23. The Commission **approves** the application by PIAC for costs with respect to its participation in the Public Notice 2008-14 proceeding.
24. Pursuant to subsection 56(1) of the Act, the Commission fixes the costs to be paid to PIAC at \$1,137.76.
25. The Commission directs that the award of costs to PIAC be paid forthwith by Bell Canada on behalf of the Companies and MTS Allstream, TCC, and the CMA according to the proportions set out in paragraph 21.

Secretary General

Related documents

- *Call for comments on potential modifications to some Unsolicited Telecommunications Rules*, Telecom Public Notice CRTC 2008-14, 20 October 2008, as amended by Telecom Public Notice CRTC 2008-14-1, 25 November 2008
- *Proceeding to establish a national do not call list framework and to review the telemarketing rules*, Telecom Public Notice CRTC 2006-4, 20 February 2006, as amended by Telecom Public Notice CRTC 2006-4-1, 13 March 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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