



Telecom Order CRTC 2009-637

Ottawa, 8 October 2009

Determination of costs award with respect to the participation of the Public Interest Advocacy Centre in the Telecom Notice of Consultation 2009-71 proceeding

File number: 8663-C12-200903387 and 4754-349

1. By letter dated 27 April 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 Notice of Consultation 2009-71 (the Notice of Consultation 2009-71 proceeding).
2. In a letter dated 29 May 2009, Commission staff invited parties to file additional submissions on certain issues raised by Rogers Communications Inc. (RCI) in the reply comments filed in the Notice of Consultation 2009-71 proceeding. As a consequence of the additional process, Commission staff indicated that it would not examine PIAC's application for costs at that time but noted that PIAC could submit a revised application if it chose to further participate in the proceeding. PIAC submitted a revised application for costs on 23 June 2009.
3. On 4 May 2009 and on 3 July 2009 respectively, TELUS Communications Company (TCC) filed comments in response to PIAC's original and revised application for costs. On 5 May 2009, Bell Aliant Regional Communications, Limited Partnership, Bell Canada, Northwestel Inc., Saskatchewan Telecommunications, and Télébec, Limited Partnership (collectively, Bell Canada et al.) filed joint comments in response to PIAC's original application. On 3 July 2009, PIAC filed reply comments.

Application

4. PIAC 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 Notice of Consultation 2009-71 proceeding, it had participated responsibly, and it had contributed to a better understanding of the issues by the Commission through its participation in the Notice of Consultation 2009-71 proceeding.
5. PIAC requested that the Commission fix its costs at \$13,053.37, which consists of legal fees. 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 original application, Bell Canada et al. and TCC did not object to the claimant's entitlement to costs or to the amount claimed. Bell Canada et al. submitted that the following parties should be named as costs respondents: Bell Canada et al., Bragg Communications Inc. (Bragg Communications), RCI, and TCC. TCC submitted that in addition to the costs respondents identified by Bell Canada et al., the Commission should also name Cogeco Cable Inc. (Cogeco), MTS Allstream Inc. (MTS Allstream), Quebecor Media Inc. (Quebecor), and Shaw Communications Inc. (Shaw) as respondents. TCC argued that although these parties did not participate in the proceeding, they have a significant interest in its outcome and all derive significant revenues from the provision of telecommunications services.
8. While TCC took no position in response to the claimant's costs filed in the original application, TCC objected to the amounts claimed by PIAC for the work required in filing additional reply comments. TCC argued that the additional reply comments filed by PIAC misstate the law relating to privacy and betray a lack of understanding of consumer trends. As a result, PIAC did not contribute to a better understanding of the issues at stake in the proceeding and did not participate responsibly in the filing of its additional reply comments. TCC emphasized that it remained willing to pay its allocated portion of costs as claimed by PIAC in its original application dated 27 April 2009.

Reply

9. In reply, PIAC noted that the extra counsel time spent on this matter was the consequence of further process brought on by certain matters raised by RCI in its reply comments. Moreover, PIAC argued that TCC's umbrage relates solely to a difference of opinion over privacy law and a lack of appreciation of the Consumer Groups' points on privacy. PIAC also argued that this is not a basis upon which to deny PIAC any of its costs claim.

Commission's analysis and determinations

10. The Commission finds that PIAC's submissions in the Notice of Consultation 2009-71 proceeding provided the Commission with an informative analysis on the regulatory measures associated with confidential customer information and privacy, and how certain changes to these measures could impact consumers. The Commission considers that PIAC's input has contributed to a better understanding of the issues.
11. Accordingly, 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 contributed to a better understanding of the issues by the Commission.

12. 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.
13. 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.
14. 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 Bell Canada et al., Bragg Communications, RCI, and TCC have a significant interest in the outcome of the Notice of Consultation 2009-71 proceeding, and that these parties have participated actively throughout the proceeding. The Commission considers that it would be inappropriate to name Cogeco, MTS Allstream, Quebecor, and Shaw as additional costs respondents because they did not participate in the Notice of Consultation 2009-71 proceeding. The Commission finds that the circumstances of this case do not warrant a departure from the Commission's general practice. Accordingly, the Commission finds that the appropriate respondents to PIAC's application for costs are Bell Canada et al., Bragg Communications, RCI, and TCC.
15. The Commission notes that in the Notice of Consultation 2009-71 proceeding, NorthernTel, Limited Partnership was part of Bell Canada et al. The Commission is therefore including NorthernTel, Limited Partnership in Bell Canada et al. for the purposes of identifying the appropriate costs respondents to PIAC's application for costs.
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:

Bell Canada et al.	54%
TCC	38%
RCI	7%
Bragg Communications	1%

17. The Commission notes that Bell Canada et al. filed joint submissions in the Notice of Consultation 2009-71 proceeding. 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.

Direction as to costs

18. The Commission **approves** the application by PIAC for costs with respect to its participation in the Notice of Consultation 2009-71 proceeding.
19. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to PIAC at \$13,053.37.
20. The Commission directs that the award of costs to PIAC be paid forthwith by Bell Canada et al., Bragg Communications, RCI, and TCC, according to the proportions set out in paragraph 16.

Secretary General

Related documents

- *Review of the regulatory measures associated with confidential customer information and privacy*, Telecom Notice of Consultation CRTC 2009-71, 13 February 2009
- *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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