



Telecom Order CRTC 2011-196

PDF version

Ottawa, 18 March 2011

Determination of costs award with respect to the participation of the Public Interest Advocacy Centre in the Broadcasting and Telecom Notice of Consultation 2010-406 proceeding

File numbers: 8622-C12-201010595 and 4754-373

1. By letter dated 12 October 2010, the Public Interest Advocacy Centre (PIAC), on behalf of the Consumers' Association of Canada and Canada Without Poverty (the Consumer Groups), applied for costs with respect to its participation in the proceeding initiated by Broadcasting and Telecom Notice of Consultation 2010-406 (the proceeding).
2. On 19 October 2010, Bell Canada, on behalf of itself, Bell Aliant Regional Communications, Limited Partnership (Bell Aliant), and Saskatchewan Telecommunications (collectively, the Companies), filed comments in response to PIAC's application.

Application

3. PIAC submitted that, in the context of the proceeding, 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) because it represented a group of subscribers that had an interest in the outcome of the proceeding, it had participated responsibly, and it had contributed to a better understanding of the issues by the Commission through its participation.
4. PIAC requested that the Commission fix its costs at \$7,665.58, consisting entirely of legal fees. PIAC's claim included the Ontario Harmonized Sales Tax (HST) on fees less the rebate to which PIAC is entitled in connection with the HST. PIAC filed a bill of costs with its application.
5. PIAC made no submission as to the appropriate costs respondents.

Answer

6. In response to the application, the Companies submitted that they did not object to PIAC's general entitlement to costs, but that the amount of costs claimed was excessive. They argued that there are no provisions for awarding costs related to broadcasting issues, and that PIAC's comments in the proceeding addressed both broadcasting and telecommunications issues. The Companies submitted that, accordingly, PIAC should be required to resubmit its costs application indicating

the proportion of time it spent on telecommunications issues in the proceeding. Failing receipt of a more detailed account, the Companies suggested that PIAC's costs be halved.

7. Following a review of the Companies' comments, Commission staff sent a letter to PIAC specifying that the Commission could only consider an application for an award of costs in connection with an intervener's submissions on telecommunications-related matters. In response, PIAC confirmed that its submissions in the proceeding focused entirely on telecommunications and that the total costs claimed therefore relate to telecommunications matters.
8. With respect to the costs respondents, the Companies submitted that costs should be allocated among the parties named in the proceeding, in proportion to their respective share of telecommunications operating revenues.

Commission's analysis and determinations

9. 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, during the proceeding, PIAC represented a group or class of subscribers that had an interest in the outcome of the proceeding, it participated responsibly, and it contributed to a better understanding of the issues by the Commission.
10. The Commission notes that the rates claimed in respect of legal fees are in accordance with the rates established in the Commission's Legal Directorate's *Guidelines for the Taxation of Costs*, revised as of 24 April 2007.¹
11. The Commission notes the Companies' submission that only a portion of PIAC's legal costs claimed for the proceeding are related to telecommunications matters. The Commission also notes PIAC's confirmation that all its submissions and all the legal costs it claimed relate to telecommunications matters.
12. To a large extent, the proceeding involved the consideration of a proposal for regulatory symmetry between measures applicable to telecommunications and broadcasting services for the handling of service cancellation. The proceeding also involved questions regarding the imposition of competitor quality of service standards to the transfer of customers between broadcasting distribution undertakings (BDUs) and the possible establishment of a transfer process for customers who change their high-speed Internet access service provider.
13. In other converged broadcasting and telecommunications proceedings, it may be possible to define, with a certain amount of clarity, the distinct issues discussed and whether the *Telecommunications Act* or the *Broadcasting Act* applies to the

¹ These guidelines were updated on 23 December 2010 in Telecom Regulatory Policy 2010-963. The updated guidelines apply to costs applications submitted to the Commission on or after 23 December 2010.

determinations on each issue. By contrast, the questions in this proceeding involved an examination of whether a customer transfer rule similar to that used for telecommunications service providers could be adopted in the BDU sphere.

14. In the context of this proceeding, the Commission considers that the comments submitted by PIAC were sufficiently related to telecommunications issues, and that PIAC is eligible for compensation for the legal costs it incurred in preparing those comments. The Commission therefore finds that the total amount claimed by PIAC was necessarily and reasonably incurred and should be allowed.
15. 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.
16. 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 many respondents, resulting in a significant administrative burden to the applicant.
17. In light of the above, and given the relatively small size of the costs award and the large number of potential costs respondents in this case, the Commission considers that it is appropriate, in the present circumstances, to limit the respondents to Bell Canada and Bell Aliant (collectively, the Bell companies).
18. The Commission notes that Bell Canada filed a submission on behalf of Bell Aliant in the proceeding. Consistent with its general approach articulated in Telecom Costs Order 2002-4, the Commission makes Bell Canada responsible for payment on behalf of the Bell companies and leaves it to the Bell companies to determine the appropriate allocation of the costs among themselves.

Direction as to costs

19. The Commission **approves** the application by PIAC, on behalf of the Consumer Groups, for costs with respect to its participation in the proceeding.
20. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to PIAC at \$7,665.58.
21. The Commission directs that the award of costs to PIAC be paid forthwith by Bell Canada on behalf of the Bell companies.

Secretary General

Related documents

- *Revision of CRTC costs award practices and procedures*, Telecom Regulatory Policy CRTC 2010-963, 23 December 2010
- *Call for comments on the customer transfer process and related competitive issues*, Broadcasting and Telecom Notice of Consultation CRTC 2010-406, 23 June 2010, as amended by Broadcasting and Telecom Notices of Consultation CRTC 2010-406-1, 5 July 2010, and 2010-406-2, 23 July 2010
- *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