



Telecom Order CRTC 2011-254

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Route reference: Telecom Notice of Consultation 2010-247

Ottawa, 15 April 2011

Determination of costs award with respect to the participation of the Public Interest Advocacy Centre in the Telecom Notice of Consultation 2010-247 proceeding

File numbers: 8665-C12-201007229 and 4754-385

1. By letter dated 22 December 2010, the Public Interest Advocacy Centre (PIAC), on behalf of the Consumers' Association of Canada and Canada Without Poverty (collectively, the Consumer Groups), applied for costs with respect to their participation in the proceeding initiated by Telecom Notice of Consultation 2010-247 (the proceeding).¹
2. On 6 January 2011, Bell Canada, on behalf of itself, Bell Aliant Regional Communications, Limited Partnership, and their respective affiliates (collectively, Bell Canada et al.), filed comments in response to PIAC's application. PIAC did not file any reply comments.

Application

3. In its application, PIAC noted that, by letter dated 9 August 2010, it had previously applied for costs in respect of the proceeding following the submission of written reply comments to the Commission but before the initiation of the public hearing. Bell Canada et al., on behalf of themselves, Saskatchewan Telecommunications (SaskTel), and TELUS Communications Company (TCC), filed comments in response to the original application, submitting that the application was premature given that the proceeding was ongoing. They also suggested that PIAC's costs claim should be reduced because a portion of PIAC's comments were based on an obsolete version of the Commissioner for Complaints for Telecommunications Services Inc.'s (CCTS) Procedural Code.
4. With its application of 22 December 2010, PIAC withdrew its previously filed costs claim in respect of the proceeding. PIAC also removed five hours of preparation time as an acknowledgement that it had relied on an outdated version of the CCTS Procedural Code and as a proxy for the amount of time that was spent preparing comments on that particular matter.

¹ The proceeding led to the publication of Telecom Decision 2010-921 and Telecom Regulatory Policy 2011-46.

5. 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) because they represented a group of subscribers that had an interest in the outcome of the proceeding, they had participated responsibly, and they had contributed to a better understanding of the issues by the Commission through their participation in the proceeding.
6. PIAC requested that the Commission fix the Consumer Groups' costs at \$18,330.51, consisting of \$17,954.25 for legal fees and \$376.26 for disbursements. 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.
7. PIAC claimed 60 hours at a rate of \$250 per hour for legal fees associated with outside legal counsel, and 37 hours at a rate of \$70 per hour for legal fees associated with an articling student.
8. PIAC submitted that the appropriate respondents in this case were all the telecommunications service providers (TSPs) that participated in the proceeding because, in its view, all the TSPs participated actively in the proceeding and they were all ordered to become members of the CCTS. PIAC also submitted that it would be inappropriate to order costs against the CCTS.
9. PIAC suggested that the responsibility for payment of costs should be divided among the respondents on the basis of their telecommunications operating revenues (TORs).²

Answer

10. In response to the application, Bell Canada et al. did not object to the Consumer Groups' entitlement to costs or to the amount claimed. Bell Canada et al. submitted that all TSPs party to the proceeding should be named as costs respondents, with responsibility for costs allocated in proportion to their respective share of TORs. Further, Bell Canada et al. submitted that responsibility for costs should be apportioned in accordance with the revised *Guidelines for the Assessment of Costs* adopted by the Commission in Telecom Regulatory Policy 2010-963.

Commission's analysis and determinations

11. 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 represented a group or class of subscribers that had an interest in the outcome of the proceeding, they participated responsibly, and they contributed to a better understanding of the issues by the Commission.

² TORs consist of Canadian telecommunications revenues from local and access, long distance, data, private line, Internet, and wireless services.

12. The Commission notes that PIAC's costs application was filed before the *Guidelines for the Assessment of Costs* came into force on 23 December 2010. Accordingly, the Commission's Legal Directorate's *Guidelines for the Taxation of Costs*, revised as of 24 April 2007, apply to this application.
13. The Commission notes that the rates claimed in respect of disbursements, outside legal counsel, and the articling student are in accordance with the rates set out in the *Guidelines for the Taxation of Costs*. However, the Commission has discovered a mathematical error in PIAC's calculation of the HST and its HST rebate in respect of legal fees associated with outside legal counsel. As a result, the Commission finds that the correct total amount that PIAC should claim, on behalf of the Consumer Groups, is \$18,704. The Commission finds that the total amount claimed by PIAC on behalf of the Consumer Groups, as revised, 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 considered which parties are affected by the issues and have actively participated in the proceeding. The Commission notes, in this regard, that the following parties actively participated in the proceeding and had a significant interest in its outcome: Bell Canada et al.; Cogeco Cable Inc. (Cogeco); Distributel Communications Limited; MTS Allstream Inc. (MTS Allstream); Rogers Communications Inc. (RCI); Quebecor Media Inc., on behalf of its affiliate Videotron Ltd. (Videotron); SaskTel; Shaw Communications (Shaw); TCC; and Verizon Canada Ltd. The Commission further notes, however, that in allocating costs among respondents, it has also been sensitive to the fact that if numerous respondents are named, the applicant may have to collect small amounts from many respondents, resulting in a significant administrative burden to the applicant.
16. 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 et al., TCC, RCI, MTS Allstream, SaskTel, Videotron, Cogeco, and Shaw.
17. The Commission notes that it generally allocates the responsibility for payment of costs among respondents based on the respondents' 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, based on their most recent audited financial statements. With respect to Bell Canada et al. and RCI, the Commission notes that all TSPs that provide services within the scope of the CCTS's mandate – including wireless services – are required to be CCTS members. For this reason, the Commission has included Bell Mobility Inc.'s TORs in the TORs of

Bell Canada et al., and Rogers Wireless Partnership's and Fido Solutions Inc.'s TORs in the TORs of RCI. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated as follows:

Bell Canada et al.	41%
TCC	25%
RCI	22%
MTS Allstream	5%
SaskTel	3%
Videotron	2%
Cogeco	1%
Shaw	1%

18. The Commission notes that Bell Canada filed submissions in the proceeding on behalf of Bell Canada et al. 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.

Directions regarding costs

19. The Commission **approves** the application by PIAC, on behalf of the Consumer Groups, for costs with respect to their 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 \$18,704.
21. The Commission directs that the award of costs to the Consumer Groups be paid forthwith by Bell Canada on behalf of Bell Canada et al., by TCC, by RCI, by MTS Allstream, by SaskTel, by Videotron, by Cogeco, and by Shaw, according to the proportions set out in paragraph 17.

Secretary General

Related documents

- *Review of the Commissioner for Complaints for Telecommunications Services*, Telecom Regulatory Policy CRTC 2011-46, 26 January 2011
- *Revision of CRTC costs award practices and procedures*, Telecom Regulatory Policy CRTC 2010-963, 23 December 2010
- *Review of the Commissioner for Complaints for Telecommunications Services – Decision on membership*, Telecom Decision CRTC 2010-921, 8 December 2010
- *Review of the Commissioner for Complaints for Telecommunications Services*, Telecom Notice of Consultation CRTC 2010-247, 30 April 2010, as amended by Telecom Notice of Consultation CRTC 2010-247-1, 12 August 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