



Telecom Order CRTC 2011-324

PDF version

Ottawa, 16 May 2011

Determination of costs award with respect to the participation of the Public Interest Advocacy Centre in the Telecom Notice of Consultation 2010-43 proceeding

File numbers: 8663-C12-201000653 and 4754-382

1. By letter dated 20 December 2010, the Public Interest Advocacy Centre (PIAC), as counsel for Canada Without Poverty, Option consommateurs, and Rural Dignity of Canada, applied for costs with respect to its participation in the proceeding initiated by Telecom Notice of Consultation 2010-43 (the proceeding).
2. On 7 January 2011, Bell Canada, on behalf of itself, Bell Aliant Regional Communications, Limited Partnership (Bell Aliant), NorthernTel, Limited Partnership (NorthernTel), and Télébec, Limited Partnership (Télébec) [collectively, Bell Canada et al.], as well as TELUS Communications Company (TCC), filed comments in response to PIAC's application. PIAC did not file any reply comments.
3. On 19 April 2011, PIAC submitted an amended application for costs in which it indicated that it had miscalculated, in its original application, the taxes claimable with respect to the legal fees incurred.

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) 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 in the proceeding. In particular, PIAC submitted that it had provided detailed submissions, including an in-depth analysis of the legal and policy issues raised in the proceeding.
5. PIAC requested that the Commission fix its costs at \$215,276.46, consisting of \$96,150.65 for legal fees, \$19,894.12 for consultant fees, \$90,376.69 for expert witness fees, and \$8,855 for disbursements. PIAC's claim included the Ontario Harmonized Sales Tax (HST) on certain fees less the rebate to which PIAC is entitled in connection with the HST. PIAC filed a bill of costs with its application. On 19 April 2011, PIAC amended its claim for legal fees to \$97,669.85, increasing its total costs claimed to \$216,795.66.

6. PIAC submitted that costs should be apportioned among all telecommunications service providers (TSPs) that participated in the proceeding, in proportion to their telecommunications operating revenues (TORs).¹

Answer

7. Bell Canada et al. and TCC did not object to PIAC's entitlement to costs or to the amounts claimed.
8. With respect to the allocation of costs, Bell Canada et al. submitted that all TSPs that were party to the proceeding should be named as costs respondents and that costs should be allocated in proportion to their TORs.
9. TCC submitted that the allocation of costs based on TORs would result in a disproportionate share of costs being allocated to certain parties solely on the basis of their corporate structures, and requested that the Commission allocate costs in a manner that is neutral with respect to corporate structure. TCC further submitted that given the proceeding's significance to all industry players, the cost-base of respondents should be as wide as possible and that the Commission should, at a minimum, consider the total TORs of the TSP entities associated with, for example, the Bell Canada group of companies, the Rogers group of companies,² TCC, MTS Allstream Inc. (MTS Allstream), and Saskatchewan Telecommunications (SaskTel), and assess costs against each group of companies based on their percentage of TORs.

Commission's analysis and determinations

10. 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 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.
11. The Commission notes that the rates claimed in respect of consultant, expert witness, and legal fees are in accordance with the rates set out in the Commission's Legal Directorate's *Guidelines for the Taxation of Costs*, revised as of 24 April 2007. The Commission finds that the total amount claimed by PIAC was necessarily and reasonably incurred and should be allowed.
12. The Commission notes that PIAC's revised costs application was submitted four months after the 20 December 2010 deadline for the submission of costs claims. The Commission also notes that this deadline was set following PIAC's request for a one-week extension in order to permit the careful preparation of costs claims. The Commission considers that all facts that are material to the calculation of taxes

¹ TORs consist of Canadian telecommunications revenues from local and access, long distance, data, private line, Internet, and wireless services.

² TCC did not specify which companies were included in the Bell Canada group of companies or the Rogers group of companies.

claimable with respect to legal fees disbursed were or ought to have been available to PIAC at the time it submitted its original application. Accordingly, the Commission will not take into consideration PIAC's 19 April 2011 submission.

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. 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: Accelerated Connections Inc., Radiant Communications Corporation, SSI Micro Ltd., and TekSavvy Solutions Inc. (collectively, the independent Internet service providers (ISPs)); l'Association des Compagnies de Téléphone du Québec (ACTQ), participating on behalf of its member companies; Barrett Xplore Inc. and Barrett Broadband Networks Inc. (collectively, Barrett); Bell Aliant, KMTS, NorthernTel, and Télébec (collectively, Bell Aliant et al.); Bell Canada; Bragg Communications Inc., operating as EastLink (EastLink); the British Columbia Broadband Association (BCBA), participating on behalf of its member companies;³ the Canadian Cable Systems Alliance (CCSA); Cogeco Cable Inc. (Cogeco); MTS Allstream; Northwestel Inc. (Northwestel); the Ontario Telecommunications Association (OTA), participating on behalf of its member companies,⁴ and TBayTel (collectively, OTA et al.); Quebecor Media Inc., participating on behalf of its affiliate Videotron Ltd. (Videotron); Rogers Communications Inc. (RCI); SaskTel; Shaw Communications Inc. (Shaw); and TCC.
15. 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.

³ These member companies are A2B Fiber Inc.; ABC Communications Ltd.; Alliance Business Solutions Inc.; BCNET; BC Wireless Ltd.; Blueberry Ventures, Inc.; Cascadia Networking Inc.; China Creek Internet Services Ltd.; ElkValley Networks Ltd.; GwaiiTel Society; 508533 B.C. Ltd., operating as Highway 16 Internet; MBSI Canada Ltd.; Navigata Communications 2009, Inc.; Peace Region Internet Society; PerfectWorld Innovations Inc.; Seaview Communications Ltd.; and Tranzeo Wireless Technologies, Inc.

⁴ These member companies are Brooke Telecom Co-operative Ltd.; Bruce Telecom; Cochrane Telecom Services; Execulink Telecom Inc.; Gosfield North Communications Co-operative Limited; Hay Communications Co-operative Limited; Huron Telecommunications Co-operative Limited; Lansdowne Rural Telephone Co. Ltd.; Mornington Communications Co-operative Limited; Nexicom Telecommunications Inc.; Nexicom Telephones Inc.; North Frontenac Telephone Corporation Ltd.; NRTC Communications; Ontera; Quadro Communications Co-operative Inc.; Roxborough Telephone Company Limited; Tuckersmith Communications Co-operative Limited; Westport Telephone Company Limited; Wightman Telecom Ltd.; and WTC Communications.

16. In light of the above, and given 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 those entities set out in paragraph 14, excluding the independent ISPs, the BCBA, and the CCSA.
17. The Commission notes that it generally allocates the responsibility for payment of costs among respondents based on their TORs as an indicator of the relative size and interest of the parties involved in the proceeding. The Commission notes TCC's submission that corporate structure should not dictate how costs are apportioned and that, when the Commission is apportioning costs, it should include the TORs of the affiliated entities of those TSPs that were party to the proceeding. While the Commission recognizes that TCC's integrated corporate structure results in its bearing a greater percentage of costs, the Commission considers that, in the present circumstances, it is appropriate to continue its usual practice of apportioning costs in proportion to the TORs of only those parties that actively participated in the proceeding and had a significant interest in its outcome. Accordingly, the Commission does not consider it appropriate in this case to include the TORs of affiliated entities.
18. 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. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated as follows:

TCC	26.2%
RCI	24.9%
Bell Canada	23.0%
Bell Aliant et al.	8.1%
MTS Allstream	5.0%
Shaw	3.6%
SaskTel	3.0%
Videotron	3.0%
Cogeco	1.1%
OTA et al.	0.7%
Northwestel	0.5%
EastLink	0.5%
Barrett	0.3%
ACTQ	0.1%

19. The Commission notes that TBayTel and the OTA filed joint submissions in the proceeding, as did the members of Bell Aliant et al. Consistent with its general approach articulated in Telecom Costs Order 2002-4, the Commission makes TBayTel responsible for payment on behalf of OTA et al. and leaves it to TBayTel and the relevant OTA member companies to determine the appropriate allocation of costs among themselves. The Commission also makes Bell Aliant responsible for payment on behalf of Bell Aliant et al. and leaves it to the members of Bell Aliant et al. to determine the appropriate allocation of costs among themselves.
20. Regarding the other respondents that filed joint submissions in the proceeding, the Commission notes that these parties also filed significant separate submissions. Therefore, with respect to these respondents, the Commission is departing from the approach articulated in Telecom Costs Order 2002-4, whereby it would generally make the party that filed submissions on behalf of other respondents responsible for payment on behalf of those respondents and let the respondents determine among themselves the appropriate allocation of their share of costs.

Directions regarding costs

21. The Commission **approves** the application for costs by PIAC with respect to its participation in the proceeding.
22. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to PIAC at \$215,276.46.
23. The Commission directs that the award of costs to PIAC be paid forthwith by TCC, RCI, Bell Canada, Bell Aliant on behalf of Bell Aliant et al., MTS Allstream, Shaw, SaskTel, Videotron, Cogeco, TBayTel on behalf of OTA et al., Northwestel, EastLink, Barrett, and ACTQ, according to the proportions set out in paragraph 18.

Secretary General

Related documents

- *Proceeding to review access to basic telecommunications services and other matters*, Telecom Notice of Consultation CRTC 2010-43, 28 January 2010, as amended by *Obligation to serve and other matters*, Telecom Notice of Consultation CRTC 2010-43-1, 5 March 2010; Telecom Notice of Consultation CRTC 2010-43-2, 30 March 2010; and Telecom Notice of Consultation CRTC 2010-43-3, 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