



Telecom Order CRTC 2012-420

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Ottawa, 2 August 2012

Determination of costs award with respect to the participation of the Public Interest Advocacy Centre and the Consumers' Association of Canada in the proceeding initiated by a Part 1 application regarding certain billing practices of the wireless service providers

File numbers: 8661-P8-201116807 and 4754-399

1. By letter dated 19 March 2012, the Public Interest Advocacy Centre (PIAC), on behalf of itself and the Consumers' Association of Canada (CAC) [collectively, PIAC/CAC], applied for costs with respect to PIAC's/CAC's participation in the proceeding initiated by their Part 1 application regarding certain billing practices of the wireless service providers.¹
2. On 29 and 30 March 2012, Bell Mobility, Saskatchewan Telecommunications (SaskTel), and TELUS Communications Company (TCC) filed answers to PIAC's/CAC's application. PIAC/CAC filed a reply on 5 April 2012.

Application

3. PIAC/CAC submitted that they had met the criteria for an award of costs set out in section 68 of the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (the Rules of Procedure) because they represented a group or class of subscribers that had an interest in the outcome of the proceeding, they had assisted the Commission in developing a better understanding of the matters that were considered, and they had participated in a responsible way.
4. PIAC/CAC requested that the Commission fix their costs at \$21,145.55, consisting entirely of legal fees. PIAC/CAC claimed 7.8 hours at a rate of \$250 per hour for PIAC's external counsel, 1.7 days at a rate of \$235 per day for an in-house articling student at PIAC, and 62.06 hours at a rate of \$290 per hour for CAC's external counsel. PIAC's/CAC's claim included the Ontario Harmonized Sales Tax (HST) on fees less the rebate to which PIAC/CAC is entitled to in connection with the HST. PIAC/CAC filed a bill of costs with their application.

¹ Consideration of PIAC's/CAC's application was suspended in Telecom Notice of Consultation 2012-206, until such time as the Commission makes a determination on the issue raised in that notice.

5. PIAC/CAC submitted that the wireless providers who the application alleged charge the 30-day notice fee in issue, namely Bell Mobility, MTS Inc. and Allstream Inc. (MTS and Allstream),² Rogers Communications Partnership (RCP), SaskTel, and TCC are the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents).

Answer

6. In response to the application, Bell Mobility, SaskTel, and TCC argued that they should not be considered costs respondents. Each argued that they had demonstrated as part of the proceeding that they did not undertake the practices alleged by PIAC/CAC. SaskTel further argued that simply being the target of allegations of wrongdoing should not automatically make a company a costs respondent.
7. In addition, TCC stated that PIAC itself has previously argued that the proper costs respondents are those who are opposed in interest to its position. Since TCC did not oppose the application, but only intervened to refute the allegation made against it, TCC argued that it should not be named as a costs respondent in this case.
8. Bell Mobility also submitted that the time claimed by PIAC/CAC should be reduced. Bell Mobility stated that PIAC/CAC had claimed time for two senior counsel and an articling student, and that some of the activities appear to have been carried out by multiple representatives. Bell Mobility argued that this proceeding, which was a short written process with a limited number of interested parties, would not have required significant resources in reviewing and replying to comments. Bell Mobility argued that PIAC/CAC failed to make the best use of their resources contrary to the *Guidelines for the Assessment of Costs* (the Guidelines) which require that costs awarded shall not exceed those necessarily and reasonably incurred.

Reply

9. PIAC/CAC disputed the claims by Bell Mobility, SaskTel, and TCC that they had proven they did not have 30-day termination policies as alleged by PIAC/CAC. In each case, PIAC/CAC pointed to what they believe is a shortcoming in the company's policy that remains despite their response in the proceeding.
10. In addition, PIAC/CAC argued that whether the Commission ultimately finds that a party's practices need to change as a result of PIAC's/CAC's application is irrelevant to the determination of the proper costs respondents. What is relevant is that the ultimate decision (whether in PIAC's/CAC's favour or not) affects the business of these parties.

² MTS Allstream Inc. was the entity that participated in the proceeding. However, as of early 2012, MTS Allstream Inc. became known as two separate entities, namely, MTS Inc. and Allstream Inc.

11. In response to Bell Mobility's claims that the costs claimed should be reduced, PIAC/CAC argued that Bell Mobility provided no proof of significant overlap between the activities performed by the different representatives. PIAC/CAC asserted that research in practices and legislation in certain other jurisdictions was required in preparation for the application and was conducted by an articling student where possible. PIAC/CAC also noted that they had reduced their claim in certain circumstances where they were not required to do so by the Guidelines, including follow-up research conducted by CAC's external counsel and by choosing not to claim for the time necessary to prepare their reply remarks to the costs application. PIAC/CAC stated that the Commission should not permit a party adverse in interest, in this case Bell Mobility, to dictate the selection of counsel or the amount of time devoted to participating in a proceeding.
12. Finally, in response to the Commission's publication of Telecom Notice of Consultation 2012-206 on 4 April 2012, PIAC/CAC stated that the suspension of their application should not affect the determination of the Commission with respect to their costs claim. PIAC/CAC submitted that the record in the proceeding was closed and that a delay in awarding costs would cause them hardship.

Commission's analysis and determinations

13. The Commission finds that PIAC/CAC have satisfied the criteria for an award of costs set out in section 68 of the Rules of Procedure. Specifically, the Commission finds that PIAC/CAC represented a group or class of subscribers that had an interest in the outcome of the proceeding, they assisted the Commission in developing a better understanding of the matters that were considered, and they participated in a responsible way.
14. The Commission notes that the rates claimed in respect of legal fees are in accordance with the rates established in the Guidelines, as set out in Telecom Regulatory Policy 2010-963. The Commission also notes that, although two senior counsel claimed legal fees for their work on the file, there is no evidence on the record that their work was duplicated. The Commission finds that the total amount claimed by PIAC/CAC 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. The Commission notes that it has generally determined that the appropriate costs respondents to an award of costs are the parties that have a significant interest in the outcome of the proceeding in question and have participated actively in that proceeding. Although PIAC/CAC have indicated that the costs respondents in this case should be limited to those it alleges have the 30-day termination policies, the Commission considers that it is more appropriate to use the traditional method of determining costs respondents. Therefore, the Commission considers that all telecommunications service providers who participated in the proceeding, namely

Bell Mobility, MTS and Allstream, Public Mobile Inc. (Public Mobile), RCP, SaskTel, TCC, and Quebecor Media Inc., on behalf of Videotron Ltd. (Videotron) had a significant interest in the outcome of the proceeding and participated actively throughout the proceeding. The Commission therefore finds that the appropriate costs respondents to PIAC's/CAC's application for costs are Bell Mobility, MTS and Allstream, Public Mobile, RCP, SaskTel, TCC, and Videotron.

17. The Commission notes that it generally allocates the responsibility for payment of costs among costs respondents based on their telecommunications operating revenues (TORs),³ as reported in their most recent audited financial statements. However, the Commission has occasionally departed from this approach to make collection of an award easier for applicants or to reflect situations in which issues may be of greater importance to certain costs respondents. With regard to the present application, the Commission finds that the approach of dividing responsibility for a costs award based on TORs would require PIAC/CAC to collect negligible sums of money from Public Mobile. The Commission recognizes that the collection of small amounts from many costs respondents would represent a significant administrative burden for the applicant. The Commission therefore concludes, consistent with paragraph 48 of the Guidelines, that the responsibility for payment of costs should be allocated as follows:

TCC	34.0%
RCP	32.7%
Bell Mobility	18.9%
MTS and Allstream	5.9%
Videotron	4.9%
SaskTel	3.6%

Directions regarding costs

18. The Commission **approves** the application by PIAC/CAC for costs with respect to their participation in the proceeding.
19. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to PIAC/CAC at \$21,145.55.
20. The Commission directs that the award of costs to PIAC/CAC be paid forthwith by TCC, RCP, Bell Mobility, MTS and Allstream, Videotron, and SaskTel according to the proportions set out in paragraph 17.

Secretary General

³ TORs consist of Canadian telecommunications revenues from local and access, long distance, data, private line, Internet, and wireless services.

Related documents

- *Proceeding to consider whether the conditions in the Canadian wireless market have changed sufficiently to warrant Commission intervention with respect to retail wireless services*, Telecom Notice of Consultation CRTC 2012-206, 4 April 2012
- *Revision of CRTC costs award practices and procedures*, Telecom Regulatory Policy CRTC 2010-963, 23 December 2010
- *New procedure for Telecom costs awards*, Telecom Public Notice CRTC 2002-5, 7 November 2002