



Telecom Order CRTC 2012-572

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Ottawa, 17 October 2012

Determination of costs award with respect to the participation of the Public Interest Advocacy Centre and Canada Without Poverty in the Telecom Notice of Consultation 2011-348 proceeding

File numbers: 8663-C12-201108754 and 4754-406

1. By letter dated 20 June 2012, the Public Interest Advocacy Centre (PIAC), on behalf of itself and Canada Without Poverty (CWP) applied for costs with respect to its participation in the proceeding initiated by Telecom Notice of Consultation 2011-348 (the proceeding).
2. On 28 June 2012, TBayTel filed an intervention in response to PIAC's application. On 29 June 2012, TELUS Communications Company (TCC) filed an intervention and PIAC filed a reply to TBayTel's intervention.

Application

3. PIAC submitted that it 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 it represented a group or class of subscribers that had an interest in the outcome of the proceeding, it had assisted the Commission in developing a better understanding of the matters that were considered, and it had participated in a responsible way.
4. PIAC requested that the Commission fix its costs at \$4,504.75, consisting of \$1,386.55 for outside legal fees and \$3,118.20 for in-house 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 submitted that the small incumbent local exchange carriers (ILECs) are the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents) because, in the applicant's view, they had the most significant interest in the outcome of the proceeding. In particular, PIAC submitted that l'Association des compagnies de téléphone du Québec inc. (ACTQ) and the Ontario Telecommunications Association (OTA) [collectively, ACTQ/OTA] are the appropriate costs respondents despite their lack of participation in the proceeding, because (i) the Commission had made them parties to the proceeding, and (ii) their members and customers would be most affected by the outcome of the proceeding.

6. PIAC suggested that the responsibility for payment of costs should be divided among the costs respondents on a similar basis to that used in Telecom Costs Order 2006-4, which was issued subsequent to another small ILEC regulatory review. PIAC noted that given the number of potential costs respondents, the Commission concluded in that case that the various collective organizations making unified submissions to that review would each be responsible for an equal portion of the costs, with the allocation between companies left to internal discussion.

Answer

7. In response to the application, TBayTel argued that due to the small ILECs' limited participation in the proceeding, PIAC's comments mainly focused on the submissions of the large ILECs and provided little assistance to the Commission's understanding of the matters being considered, thus negating its entitlement to costs. TBayTel also submitted that should PIAC be entitled to costs, the costs should not be recoverable from the small ILECs due to their limited participation in the proceeding.
8. In its response, TCC argued that the small ILECs were the proper costs respondents. TCC noted that in Telecom Costs Order 2006-4, the Commission found the appropriate costs respondents to be the small ILECs themselves, as represented by the organizations making unified submissions on their behalf.

Reply

9. In reply, PIAC argued that it had answered the Commission's questions as posed in the notice of consultation, and some congruency with the other submissions was inevitable, but that its submissions fit within the scope of the proceeding and it had met the criteria for an award of costs set out in section 68 of the Rules of Procedure.

Commission's analysis and determinations

10. The Commission considers that PIAC's submissions were focused on the questions asked in the notice of consultation, and offered a distinct point of view regarding the potential concerns of customers in the small ILECs' territories. Accordingly, the Commission finds that PIAC meets the criteria for an award of costs under section 68 of the Rules of Procedure.
11. The Commission notes that the rates claimed in respect of legal fees are in accordance with the rates established in the Commission's *Guidelines for the Assessment of Costs* (the Guidelines), as set out in Telecom Regulatory Policy 2010-963. The Commission finds that the total amount claimed by PIAC was necessarily and reasonably incurred and should be allowed.
12. 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.

13. 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. The Commission considers that Bragg Communications Inc., operating as EastLink (EastLink); KMTS; NorthernTel, Limited Partnership (NorthernTel); and TBayTel, as small ILECs or representatives thereof, had a significant interest in the outcome of the proceeding and participated actively throughout the proceeding.
14. The Commission also notes the significant interest of the ACTQ/OTA member companies in this review.
15. The Commission notes that the ACTQ/OTA member companies were made parties to the proceeding, and that following Telecom Decision 2012-188, in which the Commission denied ACTQ/OTA's request to suspend the proceeding, their members chose not to file proposals or respond to requests for information in accordance with the established schedule.
16. In Telecom Notice of Consultation 2011-348-4, the Commission noted its expectation that parties would participate responsibly in its proceedings, respecting established timelines and other procedural directions, so that it could effectively discharge its mandate in a timely manner in the public interest. The Commission also indicated its intent to not countenance any disregard for its directives with respect to the regulatory oversight it carries out under the *Telecommunications Act* (the Act).
17. Given that the ACTQ/OTA member companies were made parties to the proceeding but chose not to comply with Commission directives and, in light of the importance of this proceeding to the ACTQ/OTA, the Commission considers it appropriate for them to be named as costs respondents despite their lack of participation.
18. The Commission therefore finds that the appropriate costs respondents to PIAC's application for costs are the ACTQ/OTA member companies, EastLink, KMTS, NorthernTel, and TBayTel.
19. The Commission notes that it generally allocates the responsibility for payment of costs among costs respondents based on their telecommunications operating revenues (TORs)¹ 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 costs 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:

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

EastLink	41.29%
TBayTel	21.43%
OTA member companies	15.71%
NorthernTel	12.99%
ACTQ member companies	6.72%
KMTS	1.87%

20. The Commission notes that Bell Aliant Regional Communications, Limited Partnership and Bell Canada filed joint submissions with KMTS and NorthernTel. Consistent with its general approach articulated in Telecom Costs Order 2002-4, the Commission makes Bell Canada responsible for payment on behalf of KMTS and NorthernTel, and leaves it to Bell Canada, KMTS, and NorthernTel to determine the appropriate allocation of the costs among themselves. Similarly, the Commission makes the ACTQ and the OTA responsible for payment on behalf of their members, and leaves it to their members to determine the appropriate allocation of costs among themselves.

Directions regarding costs

21. The Commission **approves** the application by PIAC, on behalf of itself and CWP, for costs with respect to its participation in the proceeding.
22. The Commission notes that because this proceeding was re-opened in Telecom Notice of Consultation 2011-348-4 on 30 July 2012, this award of costs applies only to the portions of the proceeding that occurred before that date.
23. Pursuant to subsection 56(1) of the Act, the Commission fixes the costs to be paid to PIAC at \$4,504.75.
24. The Commission directs that the award of costs to PIAC be paid forthwith by EastLink; TBayTel; the OTA, on behalf of its member companies; Bell Canada, on behalf of KMTS and NorthernTel; and the ACTQ, on behalf of its member companies, according to the proportions set out in paragraph 19.

Secretary General

Related documents

- *ACTQ/OTA – Application to stay certain portions of Telecom Regulatory Policy 2011-291 and related matters*, Telecom Decision CRTC 2012-188, 30 March 2012
- *Review of regulatory framework for the small incumbent local exchange carriers and related matters*, Telecom Notice of Consultation CRTC 2011-348, 26 May 2011, as amended by Telecom Notice of Consultation CRTC 2011-348-1, 5 July 2011; Telecom Notice of Consultation CRTC 2011-348-2, 28 November 2011; Telecom Notice of Consultation CRTC 2011-348-3, 21 December 2011; and Telecom Notice of Consultation CRTC 2011-348-4, 30 July 2012

- *Revision of CRTC costs award practices and procedures*, Telecom Regulatory Policy CRTC 2010-963, 23 December 2010
- *Application for costs by the Public Interest Advocacy Centre on behalf of Union des Consommateurs* – Review of regulatory framework for the small incumbent local exchange carriers, *Telecom Public Notice CRTC 2005-10*, Telecom Costs Order CRTC 2006-4, 8 March 2006
- *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