



Telecom Order CRTC 2012-680

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Ottawa, 13 December 2012

Determination of costs award with respect to the participation of the Public Interest Advocacy Centre in the proceeding leading to Telecom Regulatory Policy 2012-359

File numbers: 8663-B54-201200501 and 4754-403

1. By letter dated 18 May 2012, the Public Interest Advocacy Centre (PIAC) applied for costs with respect to its participation in the proceeding leading to Telecom Regulatory Policy 2012-359 (the proceeding), which concerned an application from Bell Aliant Regional Communications, Limited Partnership (Bell Aliant) and Bell Canada (collectively, the Bell companies) regarding filing requirements associated with wholesale negotiated agreements.
2. The record of PIAC's application was completed on 11 June 2012, the date on which PIAC submitted a revised form that specified how the employment status of PIAC's counsel is reported to the law society of which the claimant is a member.
3. The Commission did not receive any interventions in response to the application.

Application

4. PIAC noted that its application for costs was filed after the Commission's deadline of 30 days following the close of record date of the proceeding, due to a combination of simple inadvertence and resource constraints. PIAC argued that the delay was not egregious, that it was remedied as soon as PIAC became aware of the situation, and that no party was greatly prejudiced by the delay. PIAC therefore requested that the Commission exercise its discretion and accept the costs application.
5. 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.
6. PIAC requested that the Commission fix its costs at \$4,204.89, 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.

7. PIAC suggested that all corporate participants that took a position adverse in interest to PIAC in the proceeding, that is, participants that supported the application by the Bell companies that initiated the proceeding, are the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents). Accordingly, PIAC submitted that the Bell companies, Primus Telecommunications Canada Inc. (Primus), and TELUS Communications Company (TCC) should be responsible for costs, in proportion to their telecommunications operating revenues (TORs).¹

Commission's analysis and determinations

8. Although PIAC filed its application for costs several weeks following the deadline, the Commission is of the opinion that considerations of public interest and fairness outweigh any potential prejudice that may be caused by accepting PIAC's application. Accordingly, the Commission considers PIAC's application for an award of costs in this order.
9. The Commission finds that PIAC has satisfied the criteria for an award of costs set out in section 68 of the Rules of Procedure. Specifically, the Commission finds that PIAC represented a group or class of subscribers that had an interest in the outcome of the proceeding, and it participated in a responsible way. The Commission notes that in its intervention in the proceeding, PIAC addressed why the requirement to file and disclose the agreements in question achieves the intended result and remains necessary, and also discussed whether the agreements in question should be filed on a confidential or public basis. The Commission also finds that through its participation, PIAC assisted the Commission in developing a better understanding of the matters that were considered.
10. The Commission notes that the rate claimed in respect of legal fees is 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.
11. 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.
12. The Commission notes that PIAC submitted that the costs respondents in this case should be limited to those whose position was adverse in interest to PIAC. The Commission, however, does not consider there to be circumstances particular to the proceeding that would justify a departure from the Commission's general practice regarding the allocation of costs. Therefore, the Commission considers it appropriate that all of the parties that had a significant interest in the outcome of the proceeding

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

and participated actively should be the costs respondents, consistent with the Commission's usual approach. Accordingly, the Commission finds that the appropriate costs respondents to PIAC's application for costs are the Bell companies, the Canadian Network Operators Consortium Inc., MTS Inc. and Allstream Inc. (collectively, MTS Allstream), Primus, and TCC.

13. The Commission further notes that in allocating costs among costs respondents, it has also been sensitive to the fact that if numerous costs respondents are named, the applicant may have to collect small amounts from many costs respondents, resulting in a significant administrative burden to the applicant.
14. 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, consistent with section 48 of the Guidelines, it is appropriate to limit the costs respondents to the Bell companies, MTS Allstream, and TCC.
15. The Commission notes that it generally allocates the responsibility for payment of costs among costs respondents based on their 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 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:

Bell companies	47%
TCC	45%
MTS Allstream	8%

16. The Commission notes that the Bell companies filed joint submissions in the proceeding, as did MTS Allstream. 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 MTS Inc. responsible for payment on behalf of MTS Allstream. The Commission leaves it to the members of the Bell companies and MTS Allstream to determine the appropriate allocation of the costs among themselves.

Directions regarding costs

17. The Commission **approves** the application by PIAC for costs with respect to its participation in the proceeding.
18. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to PIAC at \$4,204.89.

19. The Commission directs that the award of costs to PIAC be paid forthwith by Bell Canada on behalf of the Bell companies, MTS Inc. on behalf of MTS Allstream, and TCC, according to the proportions set out in paragraph 15.

Secretary General

Related documents

- *Bell Aliant Regional Communications, Limited Partnership and Bell Canada – Application for revised filing requirements associated with wholesale negotiated agreements*, Telecom Regulatory Policy CRTC 2012-359, 3 July 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
- *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