



## Telecom Order CRTC 2013-185

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Ottawa, 16 April 2013

### **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 4754-411

1. By letter dated 6 December 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. The Commission did not receive any interventions in response to this application.

#### **Application**

3. In its application, PIAC noted that only costs incurred since the Commission reopened the proceeding on 30 July 2012 were submitted in this application, as costs incurred prior to that date were addressed by Telecom Order 2012-572.
4. 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.
5. PIAC requested that the Commission fix its costs at \$2,806.38, 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.
6. PIAC submitted that the small incumbent local exchange carriers (ILECs) listed in the Appendix to Telecom Notice of Consultation 2011-348 are the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents).
7. Additionally, PIAC suggested that the responsibility for payment of costs should be divided among the costs respondents on a basis similar to that used in Telecom Order 2012-572, wherein l'Association des compagnies de téléphone du Québec (ACTQ), Bell Canada, and the Ontario Telecommunications Association (OTA) were each made responsible for payment of costs on behalf of their affiliated or member small ILECs.

## Commission's analysis and determinations

8. The Commission considers that PIAC's submissions offered a distinct point of view regarding the potential concerns that customers in the small ILECs' territories may have with the ACTQ's and OTA's proposals regarding toll interconnection and the price cap framework. The Commission also considers that PIAC assisted the Commission in developing a better understanding of the matters that were considered, while participating in a responsible way. Accordingly, the Commission finds that PIAC meets the criteria for an award of costs under section 68 of the Rules of Procedure.
9. 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.
10. 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.
11. 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 the ACTQ; Amtelecom Limited Partnership (Amtelecom); KMTS; NorthernTel, Limited Partnership (NorthernTel); the OTA; People's Tel Limited Partnership (People's Tel); and TBayTel, as small ILECs or representatives thereof, had a significant interest in the outcome of the proceeding and participated actively throughout the proceeding.
12. The Commission therefore finds that the appropriate costs respondents to PIAC's application for costs are the ACTQ's and the OTA's member companies, Amtelecom, People's Tel, KMTS, NorthernTel, and TBayTel.
13. The Commission notes that it generally allocates the responsibility for payment of costs among costs respondents based on their telecommunications operating revenues (TORs)<sup>1</sup> 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:

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

|                       |       |
|-----------------------|-------|
| TBayTel               | 34.0% |
| OTA member companies  | 25.0% |
| NorthernTel           | 20.7% |
| ACTQ member companies | 10.7% |
| Amtelecom             | 5.4%  |
| KMTS                  | 3.0%  |
| People's Tel          | 1.2%  |

14. The Commission notes that Bell Aliant Regional Communications, Limited Partnership and Bell Canada filed joint submissions with KMTS and NorthernTel, and that Bragg Communications operating as EastLink (EastLink) filed submissions on behalf of its affiliates Amtelecom and People's Tel. 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 makes EastLink responsible for payment on behalf of Amtelecom and People's Tel. The Commission also makes the ACTQ and the OTA responsible for payment on behalf of their members, and leaves it to those groups to determine the appropriate allocation of costs among themselves.

### **Directions regarding costs**

15. The Commission **approves** the application by PIAC, on behalf of itself and CWP, for costs with respect to its participation in the proceeding.
16. The Commission notes that because this proceeding was reopened on 30 July 2012 in Telecom Notice of Consultation 2011-348-4, this award of costs applies only to the portions of the proceeding that occurred after that date.
17. Pursuant to subsection 56(1) of the Act, the Commission fixes the costs to be paid to PIAC at \$2,806.38.
18. The Commission directs that the award of costs to PIAC be paid forthwith by TBayTel; the OTA, on behalf of its member companies; Bell Canada, on behalf of KMTS and NorthernTel; the ACTQ, on behalf of its member companies; and EastLink, on behalf of Amtelecom and People's Tel, according to the proportions set out in paragraph 13.

Secretary General

### **Related documents**

- *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*, Telecom Order CRTC 2012-572, 17 October 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 Notices of Consultation CRTC 2011-348-1, 5 July 2011; 2011-348-2, 28 November 2011; 2011-348-3, 21 December 2011; and 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 l'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