



Telecom Order CRTC 2013-281

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Ottawa, 7 June 2013

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 Ice Wireless Inc. and Iristel Inc.'s application for exemption from parts of Telecom Decision 2005-72

File numbers: 8620-J64-201215989 and 4754-413

1. By letter dated 26 February 2013, the Public Interest Advocacy Centre (PIAC), on behalf of itself and the Consumers' Association of Canada, applied for costs with respect to its participation in the proceeding initiated by an application from Ice Wireless Inc. (Ice) and Iristel Inc. (Iristel) [collectively, Ice/Iristel] for exemption from parts of Telecom Decision 2005-72 (the proceeding).
2. On 5 March 2013, Ice/Iristel filed an intervention in response to PIAC's application. PIAC filed a reply on 8 March 2013.

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 \$2,967.49, 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.
5. PIAC claimed a total of 10.3 hours' worth of legal fees for two outside counsel, at rates of \$250 and \$290 per hour.
6. PIAC submitted that Ice/Iristel are the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents).

Answer

7. In response to the application, Ice/Iristel submitted that two thirds of PIAC's intervention in the proceeding consisted of a summary of Ice/Iristel's original application. They also submitted that the issues leading to their application for exemption had resulted not only from their particular corporate structure and its effect on the fees they pay to the Canadian Local Number Portability Consortium (CLNPC), as PIAC had argued, but also from broader issues related to the number portability framework, including the eroding distinction between wireline and wireless services. Ice/Iristel thus argued that PIAC's intervention, in failing to address these broader issues, had not assisted the Commission in developing a better understanding of the matters considered in the proceeding, and that PIAC's application for costs should therefore be denied.

Reply

8. In reply, PIAC argued that Ice/Iristel had misinterpreted its intervention and its relevance to the matters under consideration in the proceeding. PIAC argued that Ice/Iristel's corporate structure was central to the discussion, and that there was no need for PIAC to address broader issues related to the number portability framework in its intervention. PIAC accordingly submitted that it had provided an additional perspective to the Commission's consideration of Ice/Iristel's application for exemption, and that it had participated constructively in the proceeding.

Commission's analysis and determinations

9. The Commission finds that PIAC represented a significant body of telephone subscribers who will be affected by the outcome of the proceeding. Further, the Commission considers that PIAC's intervention, which was made from the perspective of these subscribers, focused on the role and importance of the CLNPC and its requirement for fee payments and membership, from which Ice/Iristel had sought exemption in their application. The Commission therefore considers that PIAC has contributed to a better understanding of the issues by the Commission. Accordingly, the Commission finds that PIAC has satisfied the criteria for an award of costs set out in section 68 of the Rules of Procedure.
10. The Commission notes that the rates of \$250 per hour and \$290 per hour claimed by PIAC in respect of legal fees are in accordance with the rates for senior counsel established in the Commission's *Guidelines for the Assessment of Costs* (the Guidelines), as set out in Telecom Regulatory Policy 2010-963. However, the Commission considers that, given the extent of PIAC's intervention in the proceeding, PIAC has failed to demonstrate the necessity of its reliance on senior counsel rather than on junior counsel or articling students, as recommended in section 23 of the Guidelines. Accordingly, the Commission finds that the total amount claimed by PIAC was not necessarily and reasonably incurred, and therefore should be reduced to a rate of \$135 per hour, as set out for entry-level counsel in the Guidelines.

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 finds that the appropriate costs respondents to PIAC's costs application are Ice/Iristel.
13. The Commission notes that Iristel filed submissions in the proceeding on behalf of itself and Ice. Consistent with its general approach articulated in Telecom Costs Order 2002-4, the Commission makes Iristel responsible for payment on behalf of itself and Ice, and leaves it to the two companies to determine the appropriate allocation of the costs among themselves.

Directions regarding costs

14. The Commission **approves** the application by PIAC for costs with respect to its participation in the proceeding.
15. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to PIAC at \$1445.27.
16. The Commission directs that the award of costs to PIAC be paid forthwith by Iristel on behalf of itself and Ice.

Secretary General

Related documents

- *Revision of CRTC costs award practices and procedures*, Telecom Regulatory Policy CRTC 2010-963, 23 December 2010
- *Implementation of wireless number portability*, Telecom Decision CRTC 2005-72, 20 December 2005
- *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