



Telecom Order CRTC 2014-560

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Ottawa, 29 Octobre 2014

File numbers: 8650-C12-201310060 and 4754-458

Determination of costs award with respect to the participation of the Public Interest Advocacy Centre in the Telecom Notice of Consultation 2013-337 proceeding

1. By letter dated 15 April 2014, the Public Interest Advocacy Centre (PIAC), on behalf of itself, the Consumers' Association of Canada, and the Council of Senior Citizens' Organizations of British Columbia, applied for costs with respect to their participation in the proceeding initiated by Telecom Notice of Consultation 2013-337 regarding the fact-finding process on the role of payphones in the Canadian communications system (the proceeding).
2. The Commission did not receive any interventions in response to the application.

Application

3. PIAC noted that it filed its application one day beyond the deadline prescribed by the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (the Rules of Procedure). PIAC submitted that the delay was caused by the unexpected unavailability of key members of its staff, and added that the delay was unlikely to cause prejudice to any party to the proceeding.
4. PIAC submitted that it had met the criteria for an award of costs set out in section 68 of 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 \$50,667.78, consisting of \$28,786.18 in fees for external counsel, \$6,257.19 in fees for an external articling student, and \$15,624.41 in disbursements. 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 Bell Aliant Regional Communications, Limited Partnership and Bell Canada (collectively, the Bell companies); MTS Inc. (MTS) and Allstream Inc. (collectively, MTS Allstream); Saskatchewan Telecommunications (SaskTel); and TELUS Communications Company (TCC) are the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents).

Commission's analysis and determinations

7. As a preliminary matter, the Commission finds that it is appropriate to accept and consider PIAC's application for costs in this case. However, the Commission reminds costs applicants that they are expected to file their applications within the prescribed deadline and that, if they fail to do so, the Commission has a range of options, including reduction of the amount claimed and denial of the application.
8. The criteria for an award of costs are set out in section 68 of the Rules of Procedure, which reads as follows:
 68. The Commission must determine whether to award final costs and the maximum percentage of costs that is to be awarded on the basis of the following criteria:
 - (a) whether the applicant had, or was the representative of a group or a class of subscribers that had, an interest in the outcome of the proceeding;
 - (b) the extent to which the applicant assisted the Commission in developing a better understanding of the matters that were considered; and
 - (c) whether the applicant participated in the proceeding in a responsible way.
9. The Commission finds that PIAC has satisfied these criteria through its participation in the proceeding. In particular, the Commission considers that PIAC's submissions, which included two reports on payphone use, one of which was based on the results of a national telephone survey that PIAC had commissioned, assisted the Commission in developing a better understanding of the issues. These submissions provided helpful information on, among other topics, the availability and effectiveness of technological substitutes for payphones.
10. The Commission notes that the rates claimed in respect of legal fees and disbursements are in accordance with the rates established in the Commission's *Guidelines for the Assessment of Costs*, 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 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 Bell companies, MTS Allstream, SaskTel, and TCC, as incumbent local exchange carriers that operate payphones, had a significant interest in the outcome of the proceeding and participated actively by

filing interventions in the proceeding. The Commission therefore finds that these companies are the appropriate costs respondents to PIAC's costs application.

13. 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:

Company	Percentage	Amount
Bell companies:	45.0%	\$22,792.27
TCC:	43.2%	\$21,897.57
MTS Allstream:	7.3%	\$3,684.16
SaskTel:	4.5%	\$2,293.78

14. The Commission notes that Bell Canada filed submissions on behalf of the Bell companies and that MTS Allstream filed joint submissions in the proceeding. 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 makes MTS responsible for payment on behalf of MTS Allstream. The Commission leaves it to the respective members of the Bell companies and MTS Allstream to determine the appropriate allocation of the costs among themselves.

Directions regarding costs

15. The Commission **approves** the application by PIAC for costs with respect to its participation in the proceeding.
16. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to PIAC at \$50,667.78.
17. The Commission **directs** that the award of costs to PIAC be paid forthwith by Bell Canada on behalf of the Bell companies, by MTS on behalf of MTS Allstream, by SaskTel, and by TCC according to the proportions set out in paragraph 13.

Secretary General

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

Related documents

- *Fact-finding process on the role of payphones in the Canadian communications system*, Telecom Notice of Consultation CRTC 2013-337, 16 July 2013, as amended by Telecom Notice of Consultation CRTC 2013-337-1, 11 September 2013
- *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