



## Telecom Order CRTC 2015-161

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Ottawa, 23 April 2015

*File numbers: 2014-1056-3 and 4754-476*

### **Determination of costs award with respect to the participation of the Council of Senior Citizens' Organizations of British Columbia and the Public Interest Advocacy Centre in the proceeding initiated by Bell Canada under sections 3 and 5 of the *Exemption order for digital media broadcasting undertakings* regarding Rogers Media Inc.'s GameCentre Live and GamePlus**

1. By letter dated 22 December 2014, the Council of Senior Citizens' Organizations of British Columbia and the Public Interest Advocacy Centre (COSCO/PIAC) applied for costs with respect to their participation in the proceeding leading to Broadcasting Decision 2015-89 (the proceeding).
2. On 14 January 2015, Rogers Media Inc. (Rogers) filed an intervention in response to the costs application. On 19 January 2015, Bell Canada filed an intervention in response to the costs application. COSCO/PIAC filed a reply to Rogers' intervention on 16 January 2015.

#### **Application**

3. COSCO/PIAC submitted that they 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 they represented a group or class of subscribers that had an interest in the outcome of the proceeding, they had assisted the Commission in developing a better understanding of the matters that were considered, and they had participated in a responsible way.
4. In particular, COSCO/PIAC submitted that they are both public interest organizations that represent the interests of a significant group of consumers. They added that they had assisted the Commission in developing a better understanding of the issues raised in the proceeding by submitting detailed comments and identifying a number of significant consumer concerns. COSCO/PIAC indicated that they had provided a consumer-based perspective during the proceeding that was distinct from the applicant's and the respondents' perspectives.
5. COSCO/PIAC requested that the Commission fix their costs at \$13,449.44, consisting entirely of external legal fees. COSCO/PIAC's claim included the Ontario Harmonized Sales Tax (HST) on fees less the rebate to which COSCO/PIAC are entitled in connection with the HST. COSCO/PIAC filed a bill of costs with their application.

6. COSCO/PIAC submitted that Bell Canada and Rogers are the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents) because, in COSCO/PIAC's view, these parties had a significant interest in the outcome of the proceeding.

### **Answer**

7. In response to the application, Rogers submitted that the Commission has no authority to award costs under the *Broadcasting Act*. Rogers noted that section 60 of the Rules of Procedure provides a procedure for awards of costs only to parties that participate in telecommunications proceedings in accordance with section 56 of the *Telecommunications Act*.
8. Rogers submitted that the proceeding was undertaken pursuant to the *Exemption order for digital media broadcasting undertakings* (the Digital Media Exemption Order), as set out in Broadcasting Order 2012-409. Rogers added that the purpose of the Digital Media Exemption Order is to exempt digital media broadcasting undertakings from certain requirements under the *Broadcasting Act*. Rogers argued that this application for costs should be dismissed because it does not relate to a telecommunications matter, and that COSCO/PIAC could properly seek costs by applying to the Broadcasting Participation Fund, Inc.
9. Bell Canada submitted that it agreed with Rogers that the proper mechanism for COSCO/PIAC to be awarded costs in relation to the proceeding is through the Broadcasting Participation Fund. Bell Canada argued that because the proceeding focused exclusively on rules made pursuant to the *Broadcasting Act*, it would be improper for costs to be awarded pursuant to the Commission's authority to grant costs under the *Telecommunications Act*, as requested by COSCO/PIAC.

### **Reply**

10. In reply, COSCO/PIAC submitted that their costs claim was consistent with their submissions in the proceeding, which focused on whether Rogers was conferring an undue preference on its Internet access and mobile wireless telecommunications operations.
11. COSCO/PIAC submitted that an applicant's decision to focus its arguments in a given manner cannot necessarily cause the resulting proceeding to fall under a particular Act, since parties cannot assign jurisdiction. COSCO/PIAC added that Rogers' marketing practices in question during the proceeding raised significant concerns about Rogers' compliance with its obligations under the *Telecommunications Act*.

### **Commission's analysis and determinations**

12. 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.
13. The Commission notes that Bell Canada filed the application that initiated the proceeding under the *Broadcasting Act*, and that Bell Canada challenged certain practices used by Rogers as a broadcasting undertaking pursuant to the Digital Media Exemption Order. In their intervention in the proceeding, COSCO/PIAC addressed the allegations and arguments that Bell Canada made under the *Broadcasting Act*. In addition, COSCO/PIAC argued that Rogers' practices were inconsistent with the *Telecommunications Act*.
14. Given that Bell Canada filed its application under the *Broadcasting Act*, the Commission expects that an intervener attempting to invoke the Commission's powers under the *Telecommunications Act* in a broadcasting proceeding would provide a clear rationale justifying its application. In this case, however, COSCO/PIAC failed to provide any argument regarding the basis upon which subsection 27(2) of the *Telecommunications Act* (regarding unjust discrimination and undue preference related to the provision of a telecommunications service) would apply to the proceeding; they simply assumed that this provision applied.
15. As COSCO/PIAC are aware, since the Commission's jurisdiction to award costs for participation in a proceeding is set out in the *Telecommunications Act*, the Commission can award costs for participation only in proceedings that address telecommunications matters.
16. In light of the fact that COSCO/PIAC failed to demonstrate how the *Telecommunications Act* applied to the issues before the Commission in this proceeding, the Commission finds that COSCO/PIAC did not assist it in developing a better understanding of any telecommunications matters raised in the proceeding. Accordingly, the Commission finds that COSCO/PIAC failed to meet the criteria for an award of costs set out in section 68 of the Rules of Procedure.

### **Directions regarding costs**

17. The Commission **denies** the application by COSCO/PIAC for costs with respect to their participation in the proceeding.

Secretary General

## Related documents

- *Complaint by Bell Canada against Rogers Media Inc., formerly Rogers Broadcasting Limited, alleging violations of the Digital Media Exemption Order, Broadcasting Decision CRTC 2015-89, 16 March 2015*
- *Amendments to the Exemption order for new media broadcasting undertakings (now known as the Exemption order for digital media broadcasting undertakings), Broadcasting Order CRTC 2012-409, 26 July 2012*