



Telecom Order CRTC 2015-342

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Determination of costs award with respect to the participation of the Consumers' Association of Canada and the Public Interest Advocacy Centre in the proceeding initiated by Telecom Notice of Consultation 2013-551

Application

1. By letter dated 16 January 2015, the Consumers' Association of Canada (CAC) and the Public Interest Advocacy Centre (PIAC) [collectively, PIAC/CAC] applied for costs with respect to their participation in the proceeding initiated by Telecom Notice of Consultation 2013-551 (the proceeding).
2. On 26 January 2015, TELUS Communications Company (TCC) filed an intervention in response to PIAC/CAC's application. PIAC/CAC filed a reply on 30 January 2015.
3. PIAC/CAC 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, PIAC/CAC submitted that they represent the interests of consumers, and that they provide legal and research services on behalf of consumers concerning important public services. PIAC/CAC also submitted that they identified a number of significant concerns in the proceeding and provided detailed comments related to several considerations, including the need for forward-looking regulation and the importance of access to new technologies from a range of retail competitors. PIAC/CAC further submitted that there was little duplication of their position with other parties.
5. PIAC/CAC requested that the Commission fix their costs at \$123,770.53, consisting of \$117,181.13 for legal fees and \$6,589.40 for disbursements. PIAC/CAC's claim included the Ontario Harmonized Sales Tax (HST) on fees less the rebate to which PIAC/CAC are entitled in connection with the HST. PIAC/CAC filed a bill of costs with their application.

6. PIAC/CAC claimed 305.7 hours for senior external counsel at a rate of \$290 per hour for work preparing for the proceeding and 11.9 hours at a rate of \$145 per hour for attending the hearing (\$93,833.91 with the HST and the associated rebate); 0.5 hours for another senior external counsel at a rate of \$290 per hour (\$150.71 with the HST and the associated rebate); 37.1 hours for external counsel at a rate of \$165 per hour (\$6,362.69 with the HST and the associated rebate); 18 days for in-house counsel at a rate of \$600 per day (\$10,800); and 82.93 hours for articling students at a rate of \$70 per hour (\$6,033.82 with the HST and the associated rebate).
7. PIAC/CAC submitted that the incumbent wireline service providers and the principal independent Internet service providers that the Commission regulates and that participated in the proceeding are the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents).

Answer

8. In response to the application, TCC noted that PIAC/CAC made a disbursement claim in respect of an invoice from the Environics Research Group related to a survey on “satisfaction with Internet service providers.” TCC stated that it could find no reference to the results of this survey in PIAC/CAC’s submissions. As such, TCC submitted that PIAC/CAC’s expenses associated with the survey should not be eligible for a costs award.
9. TCC further submitted that while the proceeding was long and involved multiple rounds of evidence and interrogatories, PIAC/CAC could have allocated work more cost effectively among the professionals they engaged. TCC noted that the majority of the legal fees that PIAC/CAC claimed related to work performed by senior external counsel. TCC asked the Commission to consider whether these fees were necessarily and reasonably incurred, and suggested that more economic options were available to PIAC/CAC for resourcing the file.
10. TCC agreed with PIAC/CAC that the incumbent wireline service providers and the principal independent Internet service providers that participated in the proceeding are the appropriate costs respondents.

Reply

11. In reply, PIAC/CAC withdrew their invoice for the Environics Research Group survey, noting that the invoice was filed as a result of a clerical misunderstanding.
12. PIAC/CAC submitted that the fees they claimed for senior external counsel were appropriate given that the proceeding was significant, lasted 15 months, and required counsel that was knowledgeable and experienced in complex telecommunications issues. PIAC/CAC asserted that the senior counsel they engaged was primarily responsible for drafting submissions, reviewing and analyzing the extensive submissions of other parties, and designing appropriate strategies and responses. PIAC/CAC stated that in-house counsel and articling students were primarily

responsible for conducting research so as to maximize efficiency and minimize potential overlap. PIAC/CAC submitted that this was an efficient and appropriate allocation of time given the complexity of the proceeding.

Commission's analysis and determinations

13. 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.
14. PIAC/CAC have satisfied the first two of the above criteria. PIAC/CAC represented a group of subscribers that had an interest in the outcome of the proceeding, and their submissions provided a distinct and consumer-focused view with respect to the extensive regulatory submissions of the large incumbent cable and telephone service providers. As well, PIAC/CAC's participation assisted the Commission in developing a better understanding of the matters that were considered.
15. With respect to the third criterion, the Commission must assess whether the applicants participated in the proceeding in the most efficient and economic way possible. This is illustrated in paragraph 23 of the *Guidelines for the Assessment of Costs*, as set out in Telecom Regulatory Policy 2010-963 (the Guidelines), which encourage applicants to rely on junior counsel and articling students to the greatest extent possible.
16. In this case, the majority of the time claimed by PIAC/CAC was for work undertaken by senior legal counsel. Given that the proceeding was complex, lengthy, and voluminous, PIAC/CAC's use of senior legal counsel was warranted. As well, the rates claimed by PIAC/CAC in respect of legal fees are in accordance with the rates established in the Guidelines. However, the Commission must decide whether to award costs for the total amount that PIAC/CAC claimed in respect of the senior legal counsel.
17. For the same proceeding, another costs applicant, OpenMedia.ca (OpenMedia), claimed a total of 388.5 hours, as compared to the PIAC/CAC's claim of 564.13 hours. As well, OpenMedia claimed time for work undertaken only by in-

house analysts, which charge a lower rate than senior legal counsel. While PIAC/CAC participated in the proceeding more fully than OpenMedia, OpenMedia's contribution to the proceeding was as effective as that of PIAC/CAC. Further, senior legal counsel would be expected to spend less time on the file than a junior lawyer or an analyst, given their experience.

18. In light of this, the Commission is not persuaded that PIAC/CAC have demonstrated that all of the time claimed with respect to senior legal counsel should be allowed. The time allowed in respect of PIAC/CAC's senior legal counsel should therefore be reduced from 317.6 hours to 250 hours, and the 67.6-hour difference should be allocated to the more junior external counsel, such that the time attributed to his work for costs purposes is increased from 37.1 hours to 104.7 hours. This reallocation of time between senior and junior legal counsel is consistent with the Guidelines and constitutes a more appropriate assessment of their respective roles for the purpose of determining allowable costs.
19. In light of the above, the following legal fees were necessarily and reasonably incurred and should be allowed: \$73,563.04 for senior external counsel; \$150.71 for the other senior external counsel; \$17,956.16 for external counsel; \$10,800 for in-house counsel; and \$6,033.82 for articling students.
20. The Commission is concerned that PIAC/CAC withdrew their invoice for the Environics Research Group survey only after TCC raised the issue, especially given the significant sum (\$6,236.40). The Commission expects applicants to exercise due diligence when submitting their bill of costs. The Commission reduces PIAC/CAC's disbursement claim by \$6,236.40, and fixes the total amount of PIAC/CAC's disbursements at \$353.00. The total amount of costs allowed is therefore \$108,856.73.
21. 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.
22. The Commission 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 following parties to the proceeding had a significant interest in the outcome of the proceeding and participated actively throughout the proceeding: Bell Aliant Regional Communications, Limited Partnership and Bell Canada (collectively, the Bell companies); Bragg Communications Incorporated, operating as Eastlink (Eastlink); the Canadian Network Operators Consortium Inc. (CNOC); Cogeco Cable Inc. (Cogeco); MTS Inc. (MTS) and Allstream Inc. (collectively, MTS Allstream); Quebecor Media Inc., on behalf of its affiliate Videotron G.P. (Videotron); Rogers Communications Partnership (RCP); Saskatchewan Telecommunications (SaskTel); Shaw Cablesystems G.P. (Shaw); and TCC.

23. The Commission considers that, consistent with its practice, it is appropriate to allocate 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.² Furthermore, in Telecom Order 2015-160,³ the Commission considered \$1,000 to be the minimum amount that a costs respondent should be required to pay due to the administrative burden that small costs awards impose on both the applicant and costs respondents. Accordingly, the Commission finds that, in this case, the appropriate costs respondents are the Bell companies, CNOC, Cogeco, Eastlink, MTS Allstream, RCP, SaskTel, Shaw, TCC, and Videotron, and that the responsibility for payment of costs should be allocated as follows:

Company	Percentage	Amount
TCC	28.2%	\$30,697.60
RCP	26.3%	\$28,629.32
The Bell companies	25.0%	\$27,214.18
Shaw	4.8%	\$5,225.12
Videotron	4.5%	\$4,898.55
MTS Allstream	4.2%	\$4,571.98
SaskTel	2.9%	\$3,156.85
Cogeco	1.7%	\$1,850.57
CNOC	1.4% ⁴	\$1,523.99
Eastlink	1.0%	\$1,088.57

24. 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 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.

¹ TORs consist of Canadian telecommunications revenues from local and access, long distance, data, private line, Internet, and wireless services. In this order, the Commission has used the TORs of the costs respondents based on their most recent audited financial statements (see footnote 2).

² The TORs of all members of CNOC are not readily available to the Commission.

³ See paragraph 21 of Telecom Order 2015-160.

⁴ See footnote 2. On examining the TORs of those members of CNOC whose revenues are readily available, the Commission considers it appropriate in the circumstances to find CNOC responsible for the payment of 1.4% of the total costs awarded.

Directions regarding costs

25. The Commission **approves in part** the application by PIAC/CAC for costs with respect to their participation in the proceeding.
26. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to PIAC/CAC at \$108,856.73.
27. The Commission **directs** that the award of costs to PIAC/CAC be paid forthwith by Bell Canada on behalf of the Bell companies, by CNOC, by Cogeco, by Eastlink, by MTS on behalf of MTS Allstream, by RCP, by SaskTel, by Shaw, by TCC, and by Videotron according to the proportions set out in paragraph 23 above.

Secretary General

Related documents

- *Determination of costs award with respect to the participation of the Ontario Video Relay Service Committee in the proceeding initiated by Telecom Notice of Consultation 2014-188*, Telecom Order CRTC 2015-160, 23 April 2015
- *Review of wholesale services and associated policies*, Telecom Notice of Consultation CRTC 2013-551, 15 October 2013, as amended by Telecom Notice of Consultation CRTC 2013-551-1, 8 November 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