



## Telecom Order CRTC 2015-463

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Ottawa, 20 October 2015

*File numbers: 8638-C12-201501833 and 4754-489*

### **Determination of costs award with respect to the participation of the Consumers' Association of Canada, the Council of Senior Citizens' Organizations of British Columbia, and the Public Interest Advocacy Centre in the proceeding initiated by Telecom Notice of Consultation 2015-66**

#### **Application**

1. By letter dated 8 June 2015, the Consumers' Association of Canada, the Council of Senior Citizens' Organizations of British Columbia, and the Public Interest Advocacy Centre (PIAC) [collectively, PIAC et al.] applied for costs with respect to their participation in the proceeding initiated by Telecom Notice of Consultation 2015-66 concerning the public notification policy for the removal of the last payphone in a community (the proceeding).
2. The Commission did not receive any interventions in response to the application for costs.
3. PIAC et al. 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. PIAC et al. requested that the Commission fix their costs at \$11,735.48, consisting entirely of external legal fees (36.1 hours for senior external counsel and 12.2 hours for an articling student). PIAC et al.'s claim included the Ontario Harmonized Sales Tax (HST) on fees less the rebate to which PIAC et al. are entitled in connection with the HST. PIAC et al. filed a bill of costs with their application.
5. PIAC et al. submitted that Bell Canada 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**

6. 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.

7. PIAC et al. have satisfied these criteria through their participation in the proceeding. In particular, PIAC et al. provided consumer-focused arguments in favour of increasing the scope of the definition of “community,” and advocated for a greater scope to the notification requirement placed on payphone providers prior to the removal of the last payphone in a community. They highlighted what, in their view, was an inadequate consideration of the interests of payphone consumers in the submissions of the payphone providers. PIAC et al. also provided detailed comments in support of the proposal for a streamlined notification requirement advanced in a Commission staff letter. In these comments, PIAC et al. argued against Bell Canada’s contention that adoption of the streamlined notification requirement would be an unduly onerous measure. PIAC et al. thus helped the Commission in developing a better understanding of the matters that were considered in the proceeding.
8. PIAC et al.’s use of an articling student for 12.2 hours is in line with the Commission’s encouragement in *Guidelines for the Assessment of Costs*, as set out in Telecom Regulatory Policy 2010-963 (the Guidelines), regarding responsible reliance on legal counsel. This serves as an indication that PIAC et al. participated in the proceeding in a responsible manner.
9. The rates claimed in respect of external legal fees are in accordance with the rates established in the Guidelines. The Commission finds that the total amount claimed by PIAC et al. was necessarily and reasonably incurred and should be allowed.
10. 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 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, Bell Canada, Northwestel Inc., and Télébec, Limited Partnership (collectively, Bell Canada et al.); MTS Inc.; Saskatchewan Telecommunications; and TCC.

12. 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)<sup>1</sup> as an indicator of the relative size and interest of the parties involved in the proceeding. However, in Telecom Order 2015-160,<sup>2</sup> 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 Bell Canada et al. and TCC, and that responsibility for payment of costs should be allocated as follows:

<b>Company</b>	<b>Percentage</b>	<b>Amount</b>
TCC	51.7%	\$6,067.24
Bell Canada et al.	48.3%	\$5,668.24

13. Consistent with its general approach articulated in Telecom Costs Order 2002-4, the Commission makes Bell Canada responsible for payment on behalf of Bell Canada et al. The Commission leaves it to the members of Bell Canada et al. to determine the appropriate allocation of the costs among themselves.

### **Directions regarding costs**

14. The Commission **approves** the application by PIAC et al. for costs with respect to their participation in the proceeding.
15. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to PIAC et al. at \$11,735.48.
16. The Commission **directs** that the award of costs to PIAC et al. be paid forthwith by TCC and Bell Canada et al. according to the proportions set out in paragraph 12 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*

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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. In this order, the Commission has used the TORs of the costs respondents based on their most recent audited financial statements.

<sup>2</sup> See paragraph 21 of Telecom Order 2015-160.

- *Results of the fact-finding process on the role of payphones in the Canadian communications system – Follow-up process concerning the public notification policy for the removal of the last payphone in a community*, Telecom Notice of Consultation CRTC 2015-66, 26 February 2015
- *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