



Telecom Order CRTC 2016-203

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Ottawa, 27 May 2016

File numbers: 8662-B2-201512161 and 4754-509

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 Bell Canada to review and vary Telecom Regulatory Policy 2015-326

Application

1. By letter dated 18 December 2015, the Public Interest Advocacy Centre (PIAC), on behalf of itself and the Consumers' Association of Canada (CAC) [collectively, PIAC/CAC], applied for costs with respect to their participation in the proceeding initiated by Bell Canada to review and vary Telecom Regulatory Policy 2015-326 (the proceeding).
2. The Commission did not receive any interventions in response to the application for costs.
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. PIAC/CAC submitted that they (i) intervened on behalf of Canadian consumers and users of telecommunications services and (ii) represented a group or class of subscribers as non-profit organizations aimed at informing and educating consumers and representing consumer interests. Further, they submitted that they assisted the Commission in developing a better understanding of the matters considered in the proceeding. For example, they provided submissions with respect to the impact that approval of Bell Canada's application would have on the Commission's determinations in Telecom Regulatory Policy 2015-326.
5. PIAC/CAC requested that the Commission fix their costs at \$7,587.55, consisting of \$5,802.55 for external legal fees and \$1,785.00 for in-house articling fees. PIAC/CAC's claim included the Ontario Harmonized Sales Tax (HST). PIAC/CAC filed a bill of costs with their application.

6. PIAC/CAC submitted that Bell Canada, as the party who initiated the review and vary proceeding, is the appropriate party to be required to pay any costs awarded by the Commission (the costs respondent).

Subsequent process

7. On 22 March 2016, the Commission sent a letter to all parties who participated in the proceeding who could be named as potential costs respondents to provide an opportunity to make submissions on the Commission naming parties other than, or in addition to, Bell Canada as responsible for the payment of PIAC/CAC's costs.
8. On 31 March 2016, the Commission received comments from Rogers Communications Canada Inc. (RCCI)¹ and Allstream Inc. (Allstream). Bell Canada then submitted comments on 1 April 2016, requesting that the Commission consider its late-filed submissions in the interest of assembling a complete record.
9. RCCI submitted that it would be unfair to name it as a costs respondent, since Bell Canada initiated the proceeding and should therefore be solely responsible. Allstream took no view on whether there should be costs respondents other than Bell Canada, but submitted that the Commission should prevent relatively small sums of money from being collected by the costs applicants due to the administrative burden it has on all parties.
10. Bell Canada submitted that it should not be named as the sole costs respondent since the Commission's established principle is to determine costs respondents based on the parties that have an interest in the outcome of the proceeding and who have participated actively in the proceeding. Bell Canada argued that the appropriate costs respondents included all parties with an interest who participated, and recommended that costs be allocated based on telecommunications operating revenues (TORs).²
11. PIAC/CAC replied on 4 April 2016, restating its position that Bell Canada should be the sole costs respondent because considerations of efficiency support it, and because fairness to Bell Canada is not at issue.

Commission's analysis and determinations

12. The Commission considers that Bell Canada's late filing of its comments did not prejudice any party and notes that PIAC/CAC was permitted an opportunity to reply to those comments.

¹ In the proceeding leading to Telecom Regulatory Policy 2015-326, submissions were received from Rogers Communications Partnership (RCP). On 1 January 2016, RCP ceased to exist. All of RCP's business activities, including its assets and liabilities, are now held by RCCI.

² TORs consist of Canadian telecommunications revenues from local and access, long distance, data, private line, Internet, and wireless services.

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. The Commission finds that PIAC/CAC has satisfied these criteria through their participation in the proceeding. In particular, the Commission considers that PIAC/CAC assisted the Commission in developing a better understanding of the issues through their submissions with respect to the effect of Bell Canada's requested variance on competition, as well as its consistency with the Policy Direction³ and the ability of the Commission to achieve the policy objectives set out in section 7 of the *Telecommunications Act* (the Act).

15. The rates claimed in respect of legal fees, both external and articling, 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/CAC was necessarily and reasonably incurred and should be allowed.

16. 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.

17. The Commission notes that PIAC/CAC and RCCI argued that Bell Canada should be the sole costs respondent because it was the party who initiated this proceeding. However, in determining the appropriate costs respondents, the Commission has generally considered which parties are affected by the issues and have actively participated in the proceeding. RCCI did not provide any sufficient reasons why the Commission should deviate from this approach, other than a broad statement of unfairness.

18. In this regard, in addition to Bell Canada, the following parties actively participated in the proceeding and had a significant interest in its outcome: Allstream; Bragg

³*Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, P.C. 2006-1534, 14 December 2006

Communications Incorporated, operating as Eastlink; the Canadian Network Operators Consortium Inc.; Primus Telecommunications Canada Inc.; Quebecor Media Inc., on behalf of Videotron G.P.; RCCI; Shaw Communications Inc.; and TELUS Communications Company (TCC).

19. The Commission generally allocates the responsibility for payment of costs among costs respondents based on their TORs as an indicator of the relative size and interest of the parties involved in the proceeding.
20. The Commission notes, however, that in allocating costs among costs respondents, it has also been sensitive to the fact that if numerous costs respondents are named, an applicant may have to collect negligible sums of money from many costs respondents, resulting in a significant administrative burden to the applicant. As set out in paragraph 21 of Telecom Order 2015-160, the Commission considers \$1,000 to be the minimum amount that a costs respondent should be required to pay due to this administrative burden on both the applicant and costs respondents. This is the Commission's established approach for addressing concerns of efficiency in collecting sums of money from many costs respondents.
21. The Commission considers that, in the present circumstances, it is appropriate to apportion the costs among the following costs respondents in proportion to their TORs.⁴

Company	Percentage	Amount
TCC	39.4%	\$2,989.50
RCCI	35.7%	\$2,708.75
Bell Canada	24.9%	\$1,889.30

Directions regarding costs

22. The Commission **approves** the application by PIAC/CAC for costs with respect to their participation in the proceeding.
23. Pursuant to subsection 56(1) of the Act, the Commission fixes the costs to be paid to PIAC/CAC at \$7,587.55.
24. The Commission **directs** that the award of costs to PIAC/CAC be paid forthwith by TCC, RCCI, and Bell Canada according to the proportions set out in paragraph 21 above.

Secretary General

⁴ In this order, the Commission has used the TORs of the costs respondents based on their most recent audited financial statements.

Related documents

- *Review of wholesale wireline services and associated policies*, Telecom Regulatory Policy CRTC 2015-326, 22 July 2015, as amended by Telecom Regulatory Policy CRTC 2015-326-1, 9 October 2015
- *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
- *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