



Telecom Order CRTC 2016-325

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File numbers: 8622-B75-201513945 and 4754-515

Determination of costs award with respect to the participation of the Public Interest Advocacy Centre in the proceeding initiated by Beanfield Technologies Inc.'s application for timely access on reasonable terms and conditions to multi-dwelling units located in Toronto, Ontario

Application

1. By letter dated 1 March 2016, the Public Interest Advocacy Centre (PIAC) applied for costs with respect to its participation in the proceeding initiated by Beanfield Technologies Inc.'s (Beanfield) application for timely access on reasonable terms and conditions to the multi-dwelling units (MDUs) located at 65, 75, and 85 East Liberty Street (the East Liberty Street MDUs) in Toronto, Ontario (the proceeding).
2. Toronto Standard Condominium Corporation No. 2322 (the Corporation), which owns the East Liberty Street MDUs, filed an intervention, dated 11 March 2016, in response to PIAC's application for costs. PIAC did not file a reply.
3. PIAC submitted that it 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 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.
4. In particular, PIAC submitted that it represented the interests of Canadian consumers by advocating for equitable access to, and choice and affordability of, telecommunications services. PIAC also submitted that it had assisted the Commission in developing a better understanding of the matters that were considered through arguments focused on the interests of consumers, and, in particular, residents of MDUs. PIAC further submitted that it had contributed a distinct point of view since it was the only party representing consumer interests in the proceeding.
5. PIAC requested that the Commission fix its costs at \$750, consisting entirely of in-house legal fees. PIAC filed a bill of costs with its application.
6. PIAC submitted that the Corporation is the appropriate party to be required to pay any costs awarded by the Commission (the costs respondent).

Answer

7. The Corporation argued that PIAC had not met any of the criteria for an award of costs.
8. In particular, the Corporation submitted that PIAC had not (i) demonstrated that it represented any of the condominium owners at the East Liberty Street MDUs, and (ii) produced any evidence of being authorized by any resident or owner of a condominium unit to represent them in the proceeding.
9. The Corporation also submitted that PIAC did not assist the Commission in developing a better understanding of the matters that were considered in the proceeding because PIAC did not investigate the actual facts of the case, and appears to have completely relied on Beanfield's filing for its submission. Specifically, the Corporation indicated that the issues in the proceeding were more complex than represented by PIAC in its filing, and argued that PIAC had done little else than assemble sections of the *Telecommunications Act* (the Act) and a series of citations from past Commission decisions.
10. The Corporation further submitted that PIAC had billed for 1.25 days for in-house legal fees for preparation and submission of a six-page brief, but contributed nothing of real substance to the proceeding. Therefore, the Corporation argued that PIAC did not participate in the proceeding in a responsible way.
11. Finally, the Corporation noted that in virtually all cases involving an award of costs, costs have been assessed against telecommunications service providers (TSPs), which it is not. Thus, the Corporation submitted that if an award of costs is warranted, the Commission should name Beanfield as the appropriate costs respondent.

Request for information

12. In a letter dated 8 July 2016, Beanfield was given an opportunity to make submissions regarding the Commission potentially naming it responsible for the payment of PIAC's costs, should any costs be awarded.
13. In its response, dated 12 July 2016, Beanfield submitted that the Corporation's Board of Directors and property managers have delayed and continue to deny Beanfield's efforts to bring telecommunications services to the East Liberty Street MDUs' residents without any bona fide reason. Accordingly, Beanfield submitted that if costs are awarded to PIAC, the Corporation should be responsible for paying them.

Commission's analysis and determinations

14. 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.
15. PIAC has satisfied these criteria through its participation in the proceeding. In particular, PIAC represented a group of subscribers that had an interest in the outcome of the proceeding, namely Canadian consumers, particularly residents of MDUs, who have an interest in equitable access to, and choice and affordability of, telecommunications services.
16. PIAC's submissions, especially regarding facilitating competition and promoting consumer choice for Canadians, assisted the Commission in developing a better understanding of the matters that were considered. PIAC also provided a distinct point of view as an organization representing the interests of Canadian telecommunications service users.
17. With respect to whether PIAC participated in a responsible way, PIAC complied with all Commission deadlines and directions set out in the Rules of Procedure, and relied on more junior legal counsel to avoid incurring excessive costs.
18. Without PIAC's submissions, the Commission would not have had as comprehensive an understanding of the matters before it, particularly from a consumer-interest perspective. Accordingly, the Commission finds that the applicant meets the criteria for an award of costs under section 68 of the Rules of Procedure.
19. The rates claimed in respect of legal fees 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.
20. 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.
21. 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 Commission considers that Beanfield and the Corporation had a significant interest in the outcome of the proceeding and participated actively throughout the proceeding. However, given that Beanfield was the applicant in the proceeding, the small amount of the costs award, and the Commission's general practice of

allocating the responsibility for payment of costs to TSPs, the Commission considers that Beanfield is the appropriate costs respondent to PIAC's costs application.

Directions regarding costs

22. The Commission **approves** the application by PIAC for costs with respect to its participation in the proceeding.
23. Pursuant to subsection 56(1) of the Act, the Commission fixes the costs to be paid to PIAC at \$750.
24. The Commission **directs** that the award of costs to PIAC be paid forthwith by Beanfield.

Secretary General

Related documents

- *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