



Telecom Order CRTC 2017-412

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Determination of costs award with respect to the participation of the Public Interest Advocacy Centre in the proceeding that led to Telecom Regulatory Policy 2017-235

Application

1. By letter dated 18 October 2016, the Public Interest Advocacy Centre (PIAC) applied for costs with respect to its participation in the proceeding that led to Telecom Regulatory Policy 2017-235 (the proceeding). In the proceeding, the Commission examined whether regulatory measures are required to mitigate the effects of disconnection without prior notice by the reseller to end-customers.
2. The Commission did not receive any interventions in response to the application for costs.
3. As in the proceeding that led to Telecom Order 2017-364, there was additional process in this costs proceeding whereby Commission staff requested information from PIAC regarding the status of its legal counsel, Mr. John Lawford. In particular, Commission staff sought comments on whether it was appropriate for PIAC to claim legal fees for Mr. Lawford as an internal or external resource. PIAC responded to the request, and Bell Canada and TELUS Communications Inc. (TCI)¹ provided comments.
4. 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.
5. In particular, PIAC submitted that it represents the interests of Canadian telecommunications service customers, notably wireline service customers, who could be affected by a disconnection. PIAC also submitted that it assisted the Commission in developing a better understanding of the matters considered through

¹ In this proceeding, submissions were received from TELUS Communications Company (TCC). However, effective 1 October 2017, TCC's assets were legally transferred to TELUS Communications Inc. (TCI) and TCC ceased to exist. For ease of reference, "TCI" is used in this order.

its concise and structured written comments that focused on establishing effective end-customer disconnection rules, supplemented by service providers' obligations regarding end-customers in their provision of wholesale services. Further, PIAC indicated that it provided a distinct point of view as the only intervener representing customers generally, and wireline service customers in particular. PIAC added that it participated responsibly by complying with all Commission deadlines and directions.

6. PIAC requested that the Commission fix its costs at \$1,956.75, consisting entirely of legal fees. PIAC's claim included the Ontario Harmonized Sales Tax (HST) on fees less the rebate to which PIAC is entitled in connection with the HST. PIAC filed a bill of costs with its application.
7. PIAC claimed 1.8 hours for senior external counsel (Mr. Lawford) at a rate of \$290 per hour (\$542.57 with the HST and the associated rebate), 0.6 hours for intermediate external counsel at a rate of \$206 per hour (\$128.47 with the HST and the associated rebate), and 2.14 days (15 hours divided by 7-hour days) for internal counsel at a rate of \$600 per day (\$1,285.71 total).
8. PIAC submitted that the Canadian carrier and reseller parties that participated in the proceeding are the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents). However, PIAC submitted that it would be appropriate for the Commission to determine the costs respondents.

Commission's analysis and determinations

9. 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.
10. In Telecom Information Bulletin 2016-188, the Commission provided guidance regarding how an applicant may demonstrate that it satisfies the first criterion with respect to its representation of interested subscribers.
11. PIAC did not directly address the information bulletin in its submissions. However, it did identify the group of subscribers it represented, being Canadian telecommunications service customers in general, and wireline service customers in particular. Although PIAC did not explain how the positions it put forward reflected

the interests of those consumers, the Commission considers that direct consultation or research would not necessarily have been practical in the circumstances of the proceeding. Therefore, it was reasonable for PIAC to develop its position based on its internal expertise. Accordingly, PIAC meets the first criterion.

12. PIAC has also satisfied the remaining criteria through its participation in the proceeding. In particular, PIAC's submissions regarding the effects of disconnection on end-customers assisted the Commission in developing a better understanding of the matters that were considered.
13. As noted in Telecom Order 2017-364, the appropriate test for assessing whether a lawyer is an internal or external resource is how the lawyer reports to the law society of which he or she is a member, in accordance with the *Guidelines for the Assessment of Costs*, as set out in Telecom Regulatory Policy 2010-963 (the Guidelines). However, the Commission may depart from the Guidelines and award costs at a different rate than what the lawyer is otherwise entitled to in cases where the applicant demonstrates that exceptional circumstances exist to warrant the departure.
14. In Telecom Order 2017-364, the Commission found that no exceptional circumstances existed. Consistent with Mr. Lawford's status as reported to the Law Society of Upper Canada, the Commission allowed the Coalition² to calculate Mr. Lawford's legal fees using the external hourly rate for costs claimed for the period after 1 January 2017 but required it to use the internal daily rate for costs claimed for the period prior to that date.
15. The Commission finds that the same determination is appropriate in the present case, since the record of this costs proceeding regarding the status of Mr. Lawford as an external or internal resource is the same as that of the proceeding that led to Telecom Order 2017-364. The Commission also finds that there are no exceptional circumstances in this case that would justify a deviation from the normal rate scale for costs applicable under the Guidelines.
16. In the present case, the 1.8 hours for Mr. Lawford were claimed for the period prior to 1 January 2017. Therefore, the Commission finds that PIAC is eligible to calculate legal fees for Mr. Lawford's services at the internal daily rate of \$800 based on his years of practice. Accordingly, the Commission reduces the costs claimed from \$542.57 to \$400. The 1.8 hours claimed at the external rate were converted into 0.5 day based on a 7-hour work day, in accordance with the Guidelines.
17. Apart from the legal fees described above, the rates claimed in respect of other legal fees are in accordance with the rates established in the Guidelines. Accordingly, the Commission reduces the total legal fees claimed from \$1,956.75 to \$1,814.18. The

² The Coalition consists of the Consumers' Association of Canada, the Council of Senior Citizens' Organizations of British Columbia, the National Pensioners Federation, and PIAC.

Commission finds that this amount was necessarily and reasonably incurred and should be allowed.

18. 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.
19. 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 the following parties had a significant interest in the outcome of the proceeding and participated actively in the proceeding: Bell Canada; Bragg Communications Incorporated, operating as Eastlink; the Canadian Cable Systems Alliance Inc.; the Canadian Independent Telephone Company Joint Task Force; DERYtelecom inc.; Distributel Communications Limited; Iristel Inc.; Quebecor Media Inc., on behalf of Videotron G.P.; Rogers Communications Canada Inc.; Shaw Cablesystems G.P.; TBayTel; TekSavvy Solutions Inc.; TCI; and Zayo Canada Inc. (formerly Allstream Inc.).
20. 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) as an indicator of the relative size and interest of the parties involved in the proceeding.³
21. However, as set out in 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 the administrative burden that small costs awards impose on both the applicant and costs respondents.
22. Accordingly, the Commission finds that the appropriate costs respondent in this case is TCI.

Directions regarding costs

23. The Commission **approves with changes** the application by PIAC for costs with respect to its participation in the proceeding.
24. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to PIAC at \$1,814.18.
25. The Commission **directs** that the award of costs to PIAC be paid forthwith by TCI.

Secretary General

³ 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.

Related documents

- *Determination of costs award with respect to the participation of the Coalition in the proceeding that led to Telecom Regulatory Policy 2017-200*, Telecom Order CRTC 2017-364, 16 October 2017
- *Disconnection practices between telecommunications service providers*, Telecom Regulatory Policy CRTC 2017-235, 6 July 2017
- *Guidance for costs award applicants regarding representation of a group or a class of subscribers*, Telecom Information Bulletin CRTC 2016-188, 17 May 2016
- *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