



## Telecom Order CRTC 2018-10

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Ottawa, 12 January 2018

*File numbers: 8640-T66-201608408 and 4754-544*

### **Determination of costs award with respect to the participation of the Public Interest Advocacy Centre in the application by TELUS Communications Inc. for forbearance from the regulation of billing and collection service**

#### **Application**

1. By letter dated 11 October 2016, the Public Interest Advocacy Centre (PIAC) applied for costs with respect to its participation in the proceeding initiated by a Part 1 application by TELUS Communications Inc. (TCI)<sup>1</sup> for forbearance from the regulation of billing and collection service (the proceeding).
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 articling student. In particular, Commission staff sought comments on whether it was appropriate for PIAC to claim legal fees for this individual as an internal or external resource. PIAC responded to the request, and Bell Canada and TCI 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 had, and 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 had an interest in the outcome of the proceeding and it represented the interests of Canadian consumers and users of telecommunications services as well as the public interest at large. It also submitted that it provided a fuller understanding of the matters considered in the proceeding through its concise intervention and distinct point of view, and that it was the only party representing consumer interests in the proceeding.

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

6. PIAC requested that the Commission fix its costs at \$2,422.41, consisting solely 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 3.5 hours for intermediate external counsel at a rate of \$206.00 per hour for work preparing for the proceeding (\$749.41 with the HST and the associated rebate) and 23.9 hours for an articling student at the outside counsel rate of \$70 per hour (\$1,673.00 with no HST claimed).
8. Noting that TCI initiated the proceeding, PIAC submitted that TCI is the appropriate party to be required to pay any costs awarded by the Commission (the costs respondent).

### **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. In particular, applicants are required to both identify the specific group of subscriber represented, and describe the methods by which they verified that the views put forward reflect the interests of the group, whether by directly consulting the represented group or by other means, such as research.
11. PIAC did not directly address the information bulletin in its submissions. However, it did identify the group of subscribers it represented, i.e., Canadian consumers and users of telecommunications services, as well as the public interest at large. Although PIAC did not explain how it determined that the positions it presented reflected the interests of these consumers, the Commission considers that since consumer issues occupied a relatively limited portion of the proceeding, which occurred only in writing over a relatively short period of time, direct consultation or research would not necessarily have been practical in the circumstances of this file.

12. PIAC has also satisfied the remaining criteria through its participation in the proceeding. In particular, PIAC's intervention focusing on TCI's evidence and whether it had met its evidentiary burden as well as providing the Commission with a distinct point of view by representing the interests of Canadian consumers and users of telecommunications services, assisted the Commission in developing a better understanding of the matters that were considered.
13. In Telecom Order 2017-364, the Commission determined that the articling student was a resource internal to PIAC and that the Coalition<sup>2</sup> was eligible to claim costs for the student's services based on the internal daily rate. The Commission finds that the same determination is appropriate in the present case, since the record of this proceeding on this issue is the same as that of the proceeding that led to Telecom Order 2017-364.
14. 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 for the Assessment of Costs* (the Guidelines), as set out in Telecom Regulatory Policy 2010-963.
15. PIAC is eligible to claim costs for the articling student using the internal daily rate. The Commission therefore alters the costs for the articling student from \$1,673.00 to \$822.50, calculated using the daily rate of \$235. The 23.9 hours claimed at the external rate were converted into 3.5 days based on a 7-hour work day, in accordance with the Guidelines.
16. Otherwise, the rates claimed in respect of legal fees are in accordance with the rates established in the Guidelines. The Commission finds that the total amount claimed by PIAC, as adjusted above, was necessarily and reasonably incurred and should be allowed.
17. Accordingly, the total legal fees claimed are reduced from \$2,422.41 to \$1,571.91.
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; Canadian Network Operators Consortium Inc.; Distributel Communications Limited; TCI; and Yak Communications (Canada) Corp.

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<sup>2</sup> In the proceeding leading to Telecom Order 2017-364, the Coalition consisted of the Consumers' Association of Canada, the Council of Senior Citizens' Organizations of British Columbia, the National Pensioners Federation, and PIAC.

20. 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.
21. However, given (i) that TCI filed the application initiating the proceeding, in which the company sought forbearance from the regulation of some of its services, (ii) the amount of costs under consideration, and (iii) the Commission's monetary threshold policy discussed in paragraph 20 above, the Commission considers that it is appropriate to allocate the responsibility for costs to TCI in this case.

### **Directions regarding costs**

22. The Commission **approves, with changes**, the application by PIAC for costs with respect to its participation in the proceeding.
23. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to PIAC at \$1,571.91.
24. The Commission **directs** that the award of costs to PIAC be paid forthwith by TCI.

Secretary General

### **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
- *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