



Telecom Order CRTC 2018-124

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Determination of costs award with respect to the participation of the Public Interest Advocacy Centre in the proceeding initiated by TELUS Communications Inc.'s application relating to Telecom Decision 2016-171

Application

1. By letter dated 19 September 2016, the Public Interest Advocacy Centre (PIAC) applied for costs (initial costs application) with respect to its participation in the proceeding initiated by TELUS Communications Inc.'s (TCI)¹ application relating to Telecom Decision 2016-171 (the proceeding).
2. By letter dated 19 July 2017, Commission staff reopened the record of the proceeding in order for parties to comment on whether TCI's application should be treated as a request to review and vary Telecom Decision 2016-171. PIAC participated in this supplemental process and filed a supplemental application for costs (supplemental costs application) by letter dated 18 September 2017.
3. The Commission did not receive any interventions in response to either application for costs.
4. 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, and its articling student. In particular, Commission staff sought comments on whether it was appropriate for PIAC to claim legal fees for these individuals as internal or external resources. PIAC responded to the request, and Bell Canada and TCI provided comments.
5. 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.

¹ In this 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. In particular, PIAC submitted that it represents Canadian consumers, notably low-income consumers.
7. With respect to the class of subscribers that PIAC has submitted that it represents, PIAC explained that this class comprises all consumers across Canada. PIAC added that it represents a number of individual and organizational members, which currently are the following: Alberta Council on Aging, Pensioners Concerned, Dying with Dignity Canada, the Federation of Metro Tenants' Associations, the Ontario Society of Senior Citizens' Organizations, the PEI Council of People with Disabilities, and Rural Dignity of Canada.
8. With respect to the specific methods by which PIAC has submitted that it represents this class, PIAC explained that it has conducted extensive research related to consumer interests and has recently compiled reports on affordability and consumer choice. PIAC also submitted that it relied on its professional expertise to understand and advance consumers' interests in relation to the proceeding.
9. In its initial costs application, PIAC requested that the Commission fix its costs at \$4,520.59, consisting entirely of legal fees. Specifically, PIAC claimed 0.8 hours for senior external counsel (John Lawford) at a rate of \$290 per hour (\$241.14, which includes the Ontario Harmonized Sales Tax [HST] less the rebate to which PIAC is entitled in connection with the HST); 15.9 hours for another external counsel at a rate of \$206 per hour (\$3,404.45 with the HST and the associated rebate); and 12.5 hours for an external articling student at a rate of \$70 per hour (\$875 with no HST).
10. In its supplemental costs application, PIAC requested that the Commission fix its additional costs at \$4,841.19, consisting entirely of legal fees. Specifically, PIAC claimed 0.8 hours for senior external counsel (Mr. Lawford) at a rate of \$290 per hour (\$241.14 with the HST and the associated rebate); 9 hours for another external counsel at a rate of \$206 per hour (\$1,927.05 with the HST and the associated rebate); 4 days for a junior internal counsel at a rate of \$600 per day (\$2,400 with no HST); and 3.9 hours for an external articling student at a rate of \$70 per hour (\$273 with no HST).
11. PIAC filed a bill of costs with each of its costs applications.
12. PIAC submitted that TCI is the appropriate party to be required to pay any costs awarded by the Commission (the costs respondent) because TCI initiated the proceeding.

Commission's analysis and determinations

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. 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 the present case, PIAC has demonstrated that it meets this requirement. PIAC made submissions that clearly identified the class of subscribers it purported to represent, and it identified its member organizations as well as the methods by which it represented the class of subscribers, e.g. through consumer research.
15. PIAC has also satisfied the remaining criteria through its participation in the proceeding. In particular, PIAC's submissions were focused, structured, and thorough, and provided unique arguments regarding the issues raised in TCI's application, as well as the implications of treating TCI's request as a review and vary application. This assisted the Commission in developing a better understanding of the matters that were considered. Further, PIAC participated in the proceeding in a responsible way.
16. 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.
17. 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 Ontario,² the Commission allowed the Coalition³ 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

² On 2 November 2017, the Law Society of Upper Canada's governing body voted to change the regulator's name to the Law Society of Ontario. For ease of reference, "Law Society of Ontario" is used in this order.

³ In the proceeding that led 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.

claimed for the period prior to that date. The Commission also found the articling student to be a resource internal to PIAC and allowed the Coalition to claim costs for that student based on the internal daily rate.

18. The Commission finds that the same determinations are appropriate in the present case, since the record of this costs proceeding regarding the status of Mr. Lawford and the articling student as external or internal resources 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.
19. In its initial costs application, PIAC claimed a total of 0.8 hours for Mr. Lawford for a period prior to 1 January 2017. For this time, 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 in PIAC's initial costs application for Mr. Lawford from \$241.14 to \$200. The 0.8 hours claimed at the external rate was converted into 0.25 days based on a 7-hour work day, in accordance with the Guidelines.
20. In its supplemental costs application, PIAC claimed a total of 0.8 hours for Mr. Lawford for a period after 1 January 2017. For this time, PIAC is eligible to calculate legal fees for Mr. Lawford's services at the external hourly rate. Accordingly, the Commission finds that the amount of \$241.14 for costs claimed for this time was necessarily and reasonably incurred and should be allowed.
21. With respect to the articling student, PIAC is eligible to claim costs for his services at the internal daily rate. Therefore, in PIAC's initial costs application, the Commission reduces the costs for the articling student from \$875 to \$470, calculated using the daily rate of \$235. The 12.5 hours claimed at the external rate were converted into 2 days based on a 7-hour work day, in accordance with the Guidelines. In PIAC's supplemental costs application, the Commission reduces the costs for the articling student from \$273 to \$176.25, calculated using the daily rate of \$235. The 3.9 hours claimed at the external rate were converted into 0.75 days based on a 7-hour work day, in accordance with the Guidelines.
22. The rates claimed in respect of legal fees for the other external counsel and the junior internal counsel are in accordance with the rates established in the Guidelines.
23. Accordingly, the total legal fees claimed in PIAC's costs applications are reduced from \$9,361.78 to \$8,818.89.
24. The Commission finds that the total amount claimed by PIAC, as adjusted above, was necessarily and reasonably incurred and should be allowed.
25. 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.

26. 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; the Canadian Network Operators Consortium Inc.; Quebecor Media Inc., on behalf of Videotron Ltd.;⁴ and TCI.
27. 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.⁵
28. 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.
29. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated as follows:

Company	Percentage	Amount
TCI	59.7%	\$5,264.88
Bell Canada	40.3%	\$3,554.01

Directions regarding costs

30. The Commission **approves, with changes**, the initial and supplemental applications by PIAC for costs with respect to its participation in the proceeding.
31. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to PIAC at \$8,818.89.
32. The Commission **directs** that the award of costs to PIAC be paid forthwith by TCI and Bell Canada according to the proportions set out in paragraph 29 above.

⁴ In the proceeding, submissions were received from Videotron G.P. However, on 29 December 2017, all of Videotron G.P.'s assets and operations were transferred to Videotron Ltd., and Videotron G.P. was subsequently dissolved. For ease of reference, "Videotron Ltd." is used in this order.

⁵ 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.

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*
- *Quebecor Media Inc. – Prohibition of 30-day cancellation policies – Application regarding pro-rated refunds for cancelled services, Telecom Decision CRTC 2016-171, 5 May 2016*
- *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*