



## Telecom Order CRTC 2018-125

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Ottawa, 13 April 2018

*File numbers: 1011-NOC2017-0092 and 4754-573*

### **Determination of costs award with respect to the participation of the National Pensioners Federation and the Public Interest Advocacy Centre in the proceeding initiated by Telecom Notice of Consultation 2017-92**

#### **Application**

1. By letter dated 19 October 2017, the National Pensioners Federation and the Public Interest Advocacy Centre (NPF-PIAC) applied for costs with respect to their participation in the proceeding initiated by Telecom Notice of Consultation 2017-92 (the proceeding). In the proceeding, the Commission set out to examine the phase-out of the local service subsidy regime, as well as associated policies that could have an impact on the subsidy amounts.
2. The Commission did not receive any interventions in response to the application for costs.
3. NPF-PIAC 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. In particular, NPF-PIAC submitted that they represented the interests of rural local voice service consumers in Canada, particularly vulnerable and low-income consumers, including seniors.
5. With respect to the group of subscribers that NPF-PIAC have submitted they represent, NPF-PIAC explained that the NPF is an organization made up of 350 groups and individuals across Canada, with a collective membership of a million seniors, devoted entirely to the welfare and best interests of aging Canadians. They added that PIAC represents a number of individual and organizational members, including the 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.

6. With respect to the specific methods by which NPF-PIAC have submitted that they represent this group, NPF-PIAC explained that their positions in the proceeding focused on most of the country except Northern Canada, and that they applied PIAC's expertise in telecommunications policy to develop their positions on proposals affecting Northern customers. Specifically, NPF-PIAC submitted that they developed their positions in the proceeding based on the following:
  - (i) correspondence between NPF-PIAC's legal and executive representatives,
  - (ii) reports on consumer interests and affordability, and
  - (iii) PIAC's experience and expertise in telecommunications matters. They added that PIAC has conducted extensive research related to consumer interests, including on affordability and choice of telecommunications and broadcasting service providers.
7. NPF-PIAC requested that the Commission fix their costs at \$19,856.22, consisting of \$19,815.87 for legal fees and \$40.35 for disbursements. NPF-PIAC's claim included the Ontario Harmonized Sales Tax (HST) on fees less the rebate to which NPF-PIAC are entitled in connection with the HST. NPF-PIAC filed a bill of costs with their application.
8. NPF-PIAC claimed the following:
  - 6.7 hours for senior external counsel at a rate of \$290 per hour (\$2,019.55 with the HST and the associated rebate),
  - 65 hours for external counsel at a rate of \$165 per hour (\$11,147.57 with the HST and the associated rebate),
  - 7.75 days for in-house counsel at a rate of \$600 per day (\$4,650 with no HST),
  - 0.25 days for in-house counsel at a rate of \$600 per day (\$60 with no HST),
  - 7.5 days for one articling student at a rate of \$235 per day (\$1,762.50 with no HST),
  - 0.75 days for a second articling student at a rate of \$235 per day (\$176.25 with no HST), and
  - 269 photocopies at a rate of \$0.15 per copy (\$40.35 with no HST).
9. NPF-PIAC submitted that all the telecommunications service providers that participated actively in the proceeding and had a significant interest in its outcome are the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents). NPF-PIAC suggested that the responsibility for

payment of costs should be allocated among the costs respondents based on their telecommunications operating revenues (TORs).<sup>1</sup>

### **Commission's analysis and determinations**

10. 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.

11. 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, NPF-PIAC have demonstrated that they meet this requirement. They clearly identified and described the group of subscribers they purported to represent. NPF-PIAC also explained the specific methods by which they represented that group in the proceeding, such as researching reports about consumer interests and affordability, and applying PIAC's experience and expertise in telecommunications matters.

12. NPF-PIAC have also satisfied the remaining criteria through their participation in the proceeding. In particular, NPF-PIAC's submissions regarding the affordability of telecommunications services for the group of subscribers potentially affected by the proceeding assisted the Commission in developing a better understanding of the matters that were considered. NPF-PIAC also participated in a responsible way throughout the proceeding.

13. The rates claimed in respect of legal fees and disbursements are in accordance with the rates established in the *Guidelines for the Assessment of Costs* (the Guidelines), as set out in Telecom Regulatory Policy 2010-963. However, NPF-PIAC claimed \$60 for 0.25 days for in-house counsel at a rate of \$600 per day, which is a calculation error. Although the billable time sheet for in-house counsel indicates 0.7 hours, NPF-PIAC's claim of 0.25 days is consistent with the Guidelines, which provide that if fewer than 7 hours in a day are worked, the applicant shall reduce its

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<sup>1</sup> As stated in previous orders, 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.

claim for that day using quarter-day increments. NPF-PIAC claimed 0.25 days, at a rate of \$600 per day, which amounts to \$150 and not \$60. The Commission is therefore adjusting the amount claimed from \$60 to \$150. Accordingly, the total amount claimed is adjusted from \$19,856.22 to \$19,946.22.

14. The Commission finds that the total amount claimed by NPF-PIAC, as adjusted above, was necessarily and reasonably incurred and should be allowed.
15. 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.
16. 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 throughout the proceeding: Bell Canada (on behalf of itself and DMTS; KMTS; NorthernTel, Limited Partnership; Ontera; and Télébec, Limited Partnership); Bragg Communications Incorporated, carrying on business as Eastlink (on behalf of itself, Amtelecom Telco GP Inc., and People's Tel Limited Partnership); the Canadian Network Operators Consortium Inc.; Cogeco Communications Inc.; the Independent Telecommunications Providers Association; Northwestel Inc.; Quebecor Media Inc., on behalf of Videotron Ltd. (Videotron);<sup>2</sup> Rogers Communications Canada Inc. (RCCD); Saskatchewan Telecommunications; Shaw Communications Inc.; SSi Micro Ltd.; and TELUS Communications Inc. (TCI).<sup>3</sup>
17. 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 TORs as an indicator of the relative size and interest of the parties involved in the proceeding.
18. 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.

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<sup>2</sup> In the proceeding, submissions were received from Videotron G.P. However, effective 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.

<sup>3</sup> In the 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.

19. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated as follows:

<b>Company</b>	<b>Percentage</b>	<b>Amount</b>
TCI	34.2%	\$6,821.61
RCCI	31.1%	\$6,203.27
Bell Canada <sup>4</sup>	28.6%	\$5,704.62
Videotron	6.1%	\$1,216.72

20. Consistent with its general approach articulated in Telecom Costs Order 2002-4, the Commission makes Bell Canada responsible for payment on behalf of the Bell companies. The Commission leaves it to the members of the Bell companies to determine the appropriate allocation of the costs among themselves.

#### **Directions regarding costs**

21. The Commission **approves with changes** the application by NPF-PIAC for costs with respect to their participation in the proceeding.
22. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to NPF-PIAC at \$19,946.22.
23. The Commission **directs** that the award of costs to NPF-PIAC be paid forthwith by the costs respondents according to the proportions set out in paragraph 19.

Secretary General

#### **Related documents**

- *Phase-out of the local service subsidy regime*, Telecom Notice of Consultation CRTC 2017-92, 6 April 2017; as amended by Telecom Notice of Consultation CRC 2017-92-1, 16 May 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

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<sup>4</sup>On 1 April 2017, Bell Canada amalgamated with MTS Inc., which is now operating as Bell MTS, a division of Bell Canada.

- *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*
- *Action Réseau Consommateur, the Consumers' Association of Canada, Fédération des associations coopératives d'économie familiale and the National Anti-Poverty Organization application for costs – Public Notice CRTC 2001-60, Telecom Costs Order CRTC 2002-4, 24 April 2002*