



Telecom Order CRTC 2018-34

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Ottawa, 26 January 2018

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Determination of costs award with respect to the participation of the Public Interest Advocacy Centre in the proceeding initiated by the Canadian Network Operators Consortium Inc.'s application for transitional access to the incumbent carriers' fibre-to-the-premises facilities through aggregated wholesale high-speed access services

Application

1. By letter dated 31 May 2017, the Public Interest Advocacy Centre (PIAC) applied for costs with respect to its participation in the proceeding initiated by the Canadian Network Operators Consortium Inc.'s (CNOC) application for transitional access to the incumbent carriers' fibre-to-the-premises (FTTP) facilities through aggregated wholesale high-speed access services (the proceeding).
2. The Commission did not receive any interventions in response to the application for costs.
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 represents the interests of consumers, and of vulnerable consumers in particular, in the provision of public services, including telecommunications services.
5. PIAC requested that the Commission fix its costs at \$1,050, consisting entirely of legal fees. Specifically, PIAC claimed 1.75 days for junior internal counsel at a rate of \$600 per day, with no Ontario Harmonized Sales Tax included.
6. PIAC submitted that all the telecommunications service providers that participated actively in the proceeding would be the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents).

Commission's analysis and determinations

7. 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.
8. 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 identified the group of subscribers it represented, i.e. consumers and users of telecommunications services.
9. Although PIAC did not explain how it determined that the positions it presented reflected the interests of these consumers, the Commission considers that having regard to the targeted nature and relative brevity of PIAC's intervention, 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.
10. PIAC has also satisfied the remaining criteria through its participation in the proceeding. In particular, the Commission agrees with PIAC's statement that its submissions – especially regarding the benefits of high-speed broadband access (including FTTP) and competition for Canadian consumers, as well as how granting transitional FTTP access would be consistent with the Commission's mandate, authority, and past policy decisions – assisted the Commission in developing a better understanding of the matters that were considered.
11. The rates claimed in respect of legal fees 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. The Commission finds that the total amount claimed by PIAC was necessarily and reasonably incurred and should be allowed.
12. 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.

13. 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, carrying on business as Eastlink; CNOC; Cogeco Communications Inc.; Quebecor Media Inc., on behalf of Videotron G.P.; Rogers Communications Canada Inc.; Saskatchewan Telecommunications; Shaw Cablesystems G.P.; TekSavvy Solutions Inc.; and TELUS Communications Inc. (TCI).¹
14. 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.²
15. 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.
16. Accordingly, the Commission finds that the appropriate costs respondent in this case is TCI.

Directions regarding costs

17. The Commission **approves** the application by PIAC for costs with respect to its participation in the proceeding.
18. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to PIAC at \$1,050.
19. The Commission **directs** that the award of costs to PIAC be paid forthwith by TCI.

Secretary General

¹ 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.

² 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

- *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