



Telecom Order CRTC 2018-8

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Determination of costs award with respect to the participation of the Public Interest Advocacy Centre in the application by Bell Canada for forbearance from the regulation of billing and collection service

Application

1. By letter dated 31 August 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 Bell Canada for forbearance from the regulation of billing and collection service (the proceeding). PIAC amended its application on 19 June 2017.
2. Bell Canada filed an intervention, dated 12 September 2016, in response to PIAC's initial 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, 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 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 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 that 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.

¹ In 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 \$3,383.05, 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 0.5 hours for senior external counsel (Mr. Lawford) at a rate of \$290 per hour for work preparing for the proceeding (\$150.71 with the HST and the associated rebate), 9.8 hours for intermediate external counsel at a rate of \$206 per hour (\$2,098.34 with the HST and the associated rebate), and 16.2 hours for an articling student at the outside counsel rate of \$70 per hour (\$1,134 with no HST claimed).
8. Noting that Bell Canada initiated the proceeding, PIAC submitted that Bell Canada is the appropriate party to be required to pay any costs awarded by the Commission (the costs respondent).

Answer

9. Bell Canada noted that PIAC is claiming fees for its resources, including its articling student, as outside resources and that this practice was the subject of considerable discussion in the context of a costs application by the Affordable Access Coalition in the Telecom Notice of Consultation 2015-134 proceeding.² It requested that, should the Commission determine that a modification to the manner in which PIAC claims for its resources as outside resources is appropriate, then a similar modification should be made to the present costs application.
10. In addition, Bell Canada submitted that costs respondents should be determined in accordance with the *Guidelines for the Assessment of Costs* (the Guidelines), as set out in Telecom Regulatory Policy 2010-963. It argued that, in harmony with the general practice, costs should be allocated according to the telecommunications operating revenues (TORs)³ of telecommunications service providers participating in a proceeding and limiting respondents to exclude any party who would be responsible for paying less than \$100 of a total costs award.

Commission's analysis and determinations

11. 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:

² The Telecom Notice of Consultation 2015-134 proceeding resulted in the issuance of Telecom Regulatory Policy 2016-496.

³ TORs consist of Canadian telecommunications revenues from local and access, long distance, data, private line, Internet, and wireless services.

- (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.

12. 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.
13. 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.
14. PIAC has also satisfied the remaining criteria through its participation in the proceeding. In particular, PIAC's intervention focusing on Bell Canada'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.
15. 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. 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.

16. 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 Coalition⁴ 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. 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.
17. 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 internal or external 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.
18. In the present case, the 0.5 hours for Mr. Lawford was 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 alters the costs claimed from \$150.71 to \$200. The 0.5 hours claimed at the external rate was converted into 0.25 days based on a 7-hour work day, in accordance with the Guidelines.
19. With respect to the articling student, PIAC is eligible to claim costs for his services at the internal daily rate. The Commission therefore alters the costs for the articling student from \$1,134.00 to \$587.50, calculated using the daily rate of \$235. The 16.2 hours claimed at the external rate were converted into 2.5 days based on a 7-hour work day, in accordance with the Guidelines.
20. Otherwise, the rates claimed in respect of legal fees for senior and intermediate outside counsel are in accordance with the rates established in the Commission's Guidelines. The Commission finds that the total amount claimed by PIAC, as adjusted above, was necessarily and reasonably incurred and should be allowed.
21. Accordingly, the Commission determines that the total amount of legal fees claimed are reduced from \$3,383.05 to \$2,885.84.
22. 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.
23. 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.

⁴ The Coalition consists of the Consumers' Association of Canada, the Council of Senior Citizens' Organizations of British Columbia, the National Pensioners Federation, and PIAC.

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; Canadian Network Operators Consortium Inc.; Quebecor Media Inc., on behalf of Videotron G.P.; Shaw Telecom G.P.; and TCI.

24. In response to Bell Canada's submission that costs respondents should be determined in accordance with the \$100 threshold policy set out in Telecom Regulatory Policy 2010-963, the Commission notes that, in Telecom Order 2015-160, it considered \$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. In light of the relatively small size of the costs award and the number of potential costs respondents in this case, the Commission considers it appropriate to apply the \$1,000 threshold policy.
25. However, given (i) that Bell Canada 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 24 of this order, the Commission considers that it is appropriate to allocate the responsibility for costs to Bell Canada in this case.

Directions regarding costs

26. The Commission **approves, with changes**, the application by PIAC for costs with respect to its participation in the proceeding.
27. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to PIAC at \$2,885.84.
28. The Commission **directs** that the award of costs to PIAC be paid forthwith by Bell Canada.

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
- *Modern telecommunications services – The path forward for Canada's digital economy*, Telecom Regulatory Policy CRTC 2016-496, 21 December 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
- *Review of basic telecommunications services*, Telecom Notice of Consultation CRTC 2015-134, 9 April 2015, as amended by Telecom Notices of Consultation CRTC 2015-134-1, 3 June 2015; 2015-134-2, 22 December 2015; 2015-134-3, 14 January 2016; 2015-134-4, 9 March 2016; and 2015-134-5, 28 April 2016
- *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