



## Telecom Order CRTC 2019-143

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Ottawa, 14 May 2019

*File numbers: 8622-N68-201801176 and 4754-620*

### **Determination of costs award with respect to the participation of the Public Interest Advocacy Centre in the proceeding initiated by a Part 1 application from Novus Entertainment Inc.**

#### **Application**

1. By letter dated 10 December 2018, the Public Interest Advocacy Centre (PIAC) applied for costs with respect to its participation in the proceeding initiated by a Part 1 application from Novus Entertainment Inc. (Novus) related to a dispute with the Ledingham McAllister Group (LMG) regarding access to a multi-dwelling unit (MDU) development.
2. PIAC submitted that it 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.
3. In particular, PIAC submitted that it represents the interests of consumers across Canada. PIAC argued that it represents these consumers through its corporate objective of making representations to governing authorities with respect to matters of public concern and interest on behalf of the public at large or of specific public interest groups.
4. PIAC further indicated that it assisted the Commission in developing a better understanding of the matters that were considered in the proceeding through its submissions. PIAC also submitted that its participation in the proceeding had been responsible and that its costs had been necessarily and reasonably incurred.
5. PIAC requested that the Commission fix its costs at \$721.86, consisting entirely of fees for legal counsel. Specifically, PIAC claimed 0.3 hours for senior legal counsel at a rate of \$290 per hour and 4.5 hours for junior legal counsel at a rate of \$135 per hour. PIAC's claim included the applicable Ontario Harmonized Sales Tax (HST) for these services, less the rebate to which PIAC is entitled in connection with the HST. PIAC filed a bill of costs with its application.

6. PIAC submitted that, as the applicant that initiated and subsequently settled this proceeding, Novus should pay 90% of its costs, and that the balance should be paid by LMG, which precipitated and opposed the application by Novus.
7. The Commission did not receive any interventions in response to this application.

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

8. The criteria for an award of costs are set out in section 68 of the Rules of Procedure, 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.
9. 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's corporate objective, board, organizational members, and consultations demonstrate that PIAC represents the interests of Canadian consumers, in particular vulnerable consumers.
  10. PIAC has also satisfied the remaining criteria through its participation in the proceeding. Specifically, the Commission finds that PIAC represented a group or class of subscribers that had an interest in the outcome of the proceeding, it assisted the Commission in developing a better understanding of the matters that were considered, and it participated in a responsible way.
  11. The rates claimed in respect of legal fees are in accordance with the rates established in the *Guidelines for the Assessment of Costs*, as set out in Telecom Regulatory Policy 2010-963.
  12. The Commission considers that by summarizing the access conditions for MDUs and discussing the positive impacts of such access on increasing competition and consumer choice, PIAC's submissions assisted the Commission in developing a better understanding of the matters that were considered during the proceeding. The Commission further considers that by providing a focused and concise intervention,

and relying primarily on junior legal counsel, PIAC participated in the proceeding in a responsible way.

13. The Commission therefore finds that the legal counsel fee amounts claimed by PIAC were necessarily and reasonably incurred and should be allowed.
14. Accordingly, the Commission fixes PIAC's total costs for its participation in the proceeding at \$721.86.
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 both Novus and LMG had a significant interest in the outcome of the proceeding.
17. However, as set out in Telecom Order 2015-160, the Commission has previously considered that where there are multiple costs respondents, \$1,000 is 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. Given that the total costs PIAC is seeking in this application fall beneath this threshold, the Commission considers that it would not be appropriate to name more than one costs respondent.
18. The Commission considers that, as the party that brought the application and subsequently sought its suspension and closure, Novus is the most appropriate costs respondent in these circumstances.
19. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated entirely to Novus.

### **Directions regarding costs**

20. The Commission **approves** the application by PIAC for costs with respect to its participation in the proceeding.
21. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to PIAC at \$721.86.
22. The Commission **directs** that the award of costs to PIAC be paid forthwith by Novus.

Secretary General

## 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