



## Telecom Order CRTC 2019-165

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*File numbers: 1011-NOC2018-0098 and 4754-606*

### **Determination of costs award with respect to the participation of the Public Interest Advocacy Centre in the proceeding that led to Telecom Decision 2018-475**

#### **Application**

1. By letter dated 22 November 2018, the Public Interest Advocacy Centre (PIAC) applied for costs with respect to its participation in the proceeding that led to Telecom Decision 2018-475 (the proceeding). In the proceeding, the Commission considered proposals by Bell Mobility Inc. (Bell Mobility), Rogers Communications Canada Inc. (RCCI), and TELUS Communications Inc. (TCI) [collectively, the national wireless carriers] for lower-cost data-only mobile wireless service plans, which were filed pursuant to Telecom Notice of Consultation 2018-98.
2. Bell Canada, on behalf of Bell Mobility, and TCI filed interventions, dated 3 December 2018, in which they addressed general issues that were raised in the six costs applications filed with respect to the proceeding, including PIAC's application.
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 across Canada, with a particular focus on vulnerable and low-income consumers. 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 public interest groups. PIAC also submitted that it represents a number of individuals (through its board of directors) and organizational members including the Alberta Council on Aging, Dying with Dignity Canada, the Federation of Metro Tenants' Associations, the Ontario Society of Senior Citizens' Organizations, the PEI Council of People with Disabilities, Pensioners Concerned, and Rural Dignity of Canada. PIAC noted that in the past, it has conducted extensive research related to consumer interests, including the production of recent reports on affordability and choice in the telecommunications and broadcasting industries.

5. PIAC indicated that it assisted the Commission in developing a better understanding of the matters that were considered in the proceeding through (i) its report from a survey conducted for it by Environics Research Group that showed significant potential demand for lower-cost data-only mobile wireless service plans, and (ii) its extensive submissions on the appropriateness of the potential re-regulation of certain mobile wireless services.
6. PIAC also submitted that it participated responsibly in the proceeding and that its costs were necessarily and reasonably incurred.
7. PIAC requested that the Commission fix its costs at \$39,817.32, consisting of \$19,487.57 for internal and external legal counsel fees and \$20,329.75 for disbursements. Of the total disbursement costs claimed, \$20,078.80 was for the survey conducted by Environics Research Group. PIAC filed a bill of costs with its application.
8. PIAC submitted that all telecommunications companies that provide mobile wireless services are the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents).

### **Answer**

9. Bell Canada argued that all the telecommunications service providers that participated in the proceeding should be named costs respondents, with the responsibility for payment of costs allocated based on their telecommunications operating revenues (TORs).<sup>1</sup>
10. Conversely, TCI argued that the costs respondents should be limited to the national wireless carriers, as well as Ice Wireless Inc. (Ice Wireless), Quebecor Media Inc. (QMI), and Shaw Communications Inc. (Shaw). TCI further argued that the responsibility for payment of costs should be apportioned based on mobile wireless service revenues only, rather than on TORs. TCI cited the costs awards issued (e.g. in Telecom Order 2017-362) in connection with the proceeding that led to Telecom Regulatory Policy 2017-200 as an example of the Commission making a similar determination in the past.
11. TCI also argued that the disbursement costs claimed by PIAC and other costs applicants should be reduced, given that the survey conducted for PIAC was substantially duplicative of the surveys put forward by the Manitoba Coalition and the Forum for Research and Policy in Communications, and that the associated costs would have been lower had these applicants collaborated to a greater extent.

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<sup>1</sup> TORs consist of Canadian telecommunications revenues from local and access, long distance, data, private line, Internet, and wireless services.

## **Request for information**

12. On 10 December 2018, Commission staff issued a request for information in which it asked the six costs applicants to address how the Commission's determinations in Telecom Orders 2018-437 and 2018-438, and in Telecom Decision 2018-439, might apply to the costs they were claiming for their participation in the proceeding.
13. In response, PIAC submitted that the public opinion survey it put forward in the proceeding was distinct from the polling of internal membership at issue in the above-mentioned Commission orders and decision. It also argued that its survey was different in purpose and scope from the surveys put forward by other costs applicants, and that its survey provided the Commission with relevant and valuable evidence in the proceeding.
14. In a subsequent request for information dated 20 February 2019, Commission staff identified a discrepancy between the total amounts PIAC claimed in respect of legal fees, and asked PIAC to provide (i) clarity on the total amount claimed, and (ii) revised forms as necessary to support that amount.
15. In response, PIAC provided an amended Form V, on which it lowered the total legal fees claimed from \$19,487.57 to \$16,960.22, consistent with its other supporting documentation. Specifically, PIAC claimed 10.6 hours for senior external legal counsel at a rate of \$290 per hour (\$3,074 in total), 96.6 hours for junior external counsel at a rate of \$135 per hour (\$13,041 in total), and 0.25 days for in-house counsel at a rate of \$600 per day (\$150 in total). PIAC's claim included the Ontario Harmonized Sales Tax (HST) on external counsel fees less the rebate to which PIAC is entitled in connection with the HST.
16. The amendments to PIAC's Form V lowered its total costs sought from \$39,817.32 to \$37,289.97.

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

17. 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.

18. 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, and in particular, vulnerable consumers.
19. PIAC has also satisfied the remaining criteria through its participation in the proceeding. Specifically, the Commission finds that PIAC's extensive submissions on the appropriateness of re-regulation, as well as the results of the Environics Research Group survey, assisted the Commission in developing a better understanding of the matters that were considered. PIAC participated responsibly by respecting the Rules of Procedure and the deadlines for the proceeding, and by relying appropriately on less-senior external legal counsel.
20. 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.
21. The Commission agrees that PIAC's survey provided relevant evidence regarding the views of Canadian mobile wireless service subscribers on the subject matter of the proceeding. Specifically, the survey contained a series of in-depth questions seeking the preferences of Canadian consumers regarding the potential attributes of lower-cost data-only mobile wireless service plans. Given the survey's focus and the subsequent responses added to the record of the proceeding, the survey had particular value and did not duplicate the surveys conducted by other costs applicants.
22. The Commission therefore finds that the legal counsel fee and disbursement amounts claimed by PIAC were necessarily and reasonably incurred and should be allowed.
23. Accordingly, the Commission fixes PIAC's total costs for its participation in the proceeding at \$37,289.97.
24. 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.
25. 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: the national wireless carriers, as well as Bragg Communications Incorporated, carrying on business as Eastlink (Eastlink); Cogeco Communications Inc. (Cogeco); Ice Wireless; QMI, on behalf of Videotron Ltd. (Videotron);

Saskatchewan Telecommunications (SaskTel); Shaw; SSi Micro Ltd. (SSi Micro); and Xplornet Communications Inc. (Xplornet).

26. While Telecom Notice of Consultation 2018-98, which initiated the proceeding, was directed towards the national wireless carriers in particular, the submissions of the other companies in the proceeding made clear that they also had a significant interest in its outcome. Many argued strenuously against the Commission imposing any additional form of regulation because of their view that it would impact their own ability to compete in the market.
27. Therefore, the Commission finds that the following parties are the appropriate costs respondents to PIAC's application for costs: Bell Mobility, Cogeco, Eastlink, Ice Wireless, RCCI, SaskTel, Shaw, SSi Micro, TCI, Videotron, and Xplornet.
28. 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.<sup>2</sup>
29. 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.
30. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated as follows:

<b>Company</b>	<b>Proportion</b>	<b>Amount</b>
TCI	32.2%	\$12,007.37
RCCI	31.3%	\$11,671.76
Bell Mobility	22.4%	\$8,352.95
Videotron	6.4%	\$2,386.56
Shaw	4.5%	\$1,678.05
SaskTel	3.2%	\$1,193.28

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<sup>2</sup> In this order, the Commission has used the TORs of the costs respondents based on their most recent audited financial statements.

## Directions regarding costs

31. The Commission **approves** the revised application by PIAC for costs with respect to its participation in the proceeding.
32. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to PIAC at \$37,289.97.
33. The Commission **directs** that the award of costs to PIAC be paid forthwith by TCI, RCCI, Bell Mobility, Videotron, Shaw, and SaskTel according to the proportions set out in paragraph 30.

Secretary General

## Related documents

- *Lower-cost data-only plans for mobile wireless services*, Telecom Decision CRTC 2018-475, 17 December 2018
- *Deaf Wireless Canada Consultative Committee – Application to review and vary Telecom Order 2018-66*, Telecom Decision CRTC 2018-439, 28 November 2018
- *Determination of costs award with respect to the participation of the Canadian National Society of the Deaf-Blind, Inc. in the Telecom Notice of Consultation 2017-33 proceeding*, Telecom Order CRTC 2018-438, 28 November 2018
- *Determination of costs award with respect to the participation of the Deaf Wireless Canada Consultative Committee in the Telecom Notice of Consultation 2017-33 proceeding*, Telecom Order CRTC 2018-437, 28 November 2018
- *Lower-cost data-only plans for mobile wireless services*, Telecom Notice of Consultation CRTC 2018-98, 22 March 2018; as amended by Telecom Notice of Consultation CRTC 2018-98-1, 10 May 2018
- *Determination of costs award with respect to the participation of the Forum for Research and Policy in Communications in the proceeding that led to Telecom Regulatory Policy 2017-200*, Telecom Order CRTC 2017-362, 16 October 2017
- *Review of the Wireless Code*, Telecom Regulatory Policy CRTC 2017-200, 15 June 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

- *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*