



## Telecom Order CRTC 2019-220

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Ottawa, 21 June 2019

*File numbers: 8644-C282-201806986 and 4754-609*

### **Determination of costs award with respect to the participation of the Public Interest Advocacy Centre in the proceeding initiated by Cloudwifi Inc.'s application regarding access to Bell Canada's inside wire**

#### **Application**

1. By letter dated 23 November 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 Cloudwifi Inc. (Cloudwifi) regarding access to Bell Canada's inside wire in two multi-dwelling units (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 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. PIAC indicated that it makes these representations on behalf of the public at large or on behalf of other public interest groups.
5. PIAC indicated that it had assisted the Commission in developing a better understanding of the matters that were considered in the proceeding through its submissions, in which it discussed the applicable legal framework and the application of the policy objectives set out in previous Commission decisions and in the Policy Direction.<sup>1</sup>

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<sup>1</sup> *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives*, P.C. 2006-1534, 14 December 2006

6. PIAC also submitted that its participation in the proceeding was responsible and that its costs were necessarily and reasonably incurred.
7. PIAC requested that the Commission fix its costs at \$3,002.85, consisting entirely of legal fees. Specifically, PIAC claimed two hours for senior external legal counsel at a rate of \$290 per hour (plus the applicable Ontario Harmonized Sales Tax [HST], and less the rebate to which PIAC is entitled in connection with the HST), and four days for junior in-house counsel at a rate of \$600 per day. PIAC filed a bill of costs with its application.
8. PIAC submitted that Cloudwifi, as the party whose application initiated the proceeding, should pay 50% of its costs, and that the balance should be paid by telecommunications companies that participated in the proceeding, based on their annual telecommunications operating revenues (TORs).<sup>2</sup>

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

9. 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.
10. 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, organizational members, and consultations demonstrate that PIAC represents the interests of Canadian consumers and, in particular, vulnerable consumers.
  11. PIAC has also satisfied the remaining criteria through its participation in the proceeding. Specifically, the Commission finds that PIAC represented a group or

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<sup>2</sup> TORs consist of Canadian telecommunications revenues from local and access, long distance, data, private line, Internet, and wireless services.

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.

12. 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.
13. The Commission considers that PIAC's submissions on the legal framework supporting Cloudwifi's application and the application of the Commission's policy objectives assisted it in developing a better understanding of the matters that were considered. The Commission further considers that by providing a focused and concise intervention, and relying primarily on junior legal counsel, PIAC participated responsibly in the proceeding.
14. The Commission therefore finds that the total amount claimed by PIAC 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 finds that the following parties had a significant interest in the outcome of the proceeding and participated actively in the proceeding: Bell Canada, the Canadian Network Operators Consortium Inc., Cloudwifi, Iristel Inc., and Novus Entertainment Inc.
17. While PIAC argued that Cloudwifi should bear responsibility for payment of half of the costs claimed, the Commission considers that the circumstances of the proceeding do not give rise to a reason to depart from the Commission's standard practices.
18. The Commission considers that, consistent with its normal 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>3</sup>
19. 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>3</sup> In this order, the Commission has used the TORs of the costs respondents based on their most recent audited financial statements.

20. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated to Bell Canada.

### **Directions regarding costs**

21. The Commission **approves** the application by PIAC for costs with respect to its participation in the proceeding.
22. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to PIAC at \$3,002.85.
23. The Commission **directs** that the award of costs to PIAC be paid forthwith by Bell Canada.

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