



## Telecom Order CRTC 2019-335

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Ottawa, 25 September 2019

*File numbers: 1011-NOC2018-0246 and 4754-618*

### **Determination of costs award with respect to the participation of the Fair Communications Sales Coalition in the Telecom and Broadcasting Notice of Consultation 2018-246 proceeding**

#### **Application**

1. By letter dated 12 December 2018, the Public Interest Advocacy Centre (PIAC) applied for costs on behalf of itself, the Association of Community Organizations for Reform Now Canada (ACORN), the National Pensioners Federation (NPF), and the Canadian Association of Retired Persons (CARP) [collectively, the Fair Communications Sales Coalition (FCSC)].<sup>1</sup> The application was made with respect to the FCSC's participation in the proceeding initiated by Telecom and Broadcasting Notice of Consultation 2018-246 (the proceeding). In the proceeding, pursuant to Order in Council P.C. 2018-0685, 6 June 2018, the Commission sought comments from Canadians concerning their personal experiences with any misleading or aggressive retail sales practices of Canada's large telecommunications carriers and those carriers' practices in respect of service bundles that include both broadcasting and telecommunications services. The proceeding led to the Commission's [\*Report on Misleading or Aggressive Communications Retail Sales Practices\*](#).
2. TELUS Communications Inc. (TCI) filed an intervention, dated 9 January 2019, in response to the FCSC's application. The FCSC filed a reply dated 16 January 2019.
3. The FCSC 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, the FCSC explained that it represents the interests of Canadians as a group and through the FCSC's individual members, noting that

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<sup>1</sup> By letter dated 10 December 2018, the FCSC requested a two-day extension to the deadline to file its application for costs, which was granted by way of a [procedural letter](#) dated 13 December 2018.

- ACORN is an independent national organization of low and moderate income families with over 70,000 members in over 20 neighbourhood chapters across nine cities;
  - CARP is the largest seniors' advocacy group in Canada, with 300,000 members nationwide, and has a mandate to improve healthcare and financial security and support the human rights of Canadians as they age;
  - NPF is a democratic, non-partisan, and non-sectarian organization with a mission to stimulate public interest in the welfare of aging Canadians, and is composed of 350 seniors' chapters and clubs across Canada with a collective membership of one million Canadian seniors and retired workers; and
  - PIAC is a national non-profit organization and registered charity with a mandate to make representations to governing authorities on behalf of the public or public interest groups with respect to matters of public concern and interest. In carrying out this mandate, PIAC represents the interests of all consumers across Canada, with a particular focus on vulnerable consumers. The FCSC went on to note that PIAC represents thousands of Canadians when counting the membership of the various organizations<sup>2</sup> that PIAC represents.
5. The FCSC submitted that it represents Canadians through various strategies to solicit feedback from its members and from the individuals who make up the FCSC's member organizations. For example, the FCSC noted that the senior management of all of its member groups had reviewed its positions and interventions before these were submitted to the Commission.
  6. The FCSC submitted that it had assisted the Commission in developing a better understanding of the issues by participating in all stages of the proceeding and offering a distinct, user-focused, and public interest-oriented perspective.
  7. The FCSC submitted that it had participated in a responsible way throughout the proceeding, since it had filed a comprehensive intervention, questioned confidentiality claims, efficiently used different types of legal counsel, and complied with all Commission deadlines and directions as laid out in the Rules of Procedure.
  8. The FCSC requested that the Commission fix its costs at \$83,185.90, consisting of \$81,504.09 for legal fees, \$1,585.81 for non-meal disbursements, and \$96 for meals. The FCSC's claim included the Ontario Harmonized Sales Tax (HST) on its costs

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<sup>2</sup> These organizations include the Ontario Society of Senior Citizens Organizations (160 seniors' groups representing 500,000 individual seniors in Ontario); the Alberta Council on Aging (4,500 individual members and 450 organizational members); Dying with Dignity (2,000 members); the PEI Council of the Disabled (1,500 individual members); Rural Dignity of Canada (2,000 members); and the Federation of Metro Tenants Association (which represents 92 tenants' associations).

less the rebate to which PIAC (the FCSC's legal counsel) is entitled in connection with the HST. The FCSC filed a bill of costs with its application.

9. With respect to legal fees, the FCSC claimed 99.4 hours for senior external counsel at a rate of \$290 per hour for work preparing for the proceeding and 33.9 hours at a rate of \$290 per hour for attending the hearing (\$40,180.09 with the HST and the associated rebate); 25.5 days for internal legal counsel at a rate of \$600 per day for work preparing for the proceeding and 1 day at a rate of \$600 per day for attending the hearing (\$15,900); and 341.6 hours for an articling student at the external rate of \$70 per hour for work preparing for the proceeding and 21.6 hours at the external rate of \$70 per hour for attending the hearing (\$25,424).
10. Concerning its disbursements, the FCSC claimed \$141.45 for photocopies, \$648.85 for air travel using a "flexible fare" ticket, \$259.69 for intercity train travel using a "business fare" ticket, \$70 for parking, \$128 for intracity taxi travel, \$337.82 for hotel accommodation, and \$96 for meals.
11. The FCSC submitted that the appropriate costs respondents to its application are the large telecommunications carriers noted at paragraph 11 of Telecom and Broadcasting Notice of Consultation 2018-246.
12. Concerning the apportionment of costs, the FCSC submitted that it should be done based on the companies' respective telecommunications operating revenues (TORs). The FCSC noted that those elements of the proceeding that dealt uniquely with broadcasting matters (estimated at 5%-10% of the FCSC's total claim) should form the basis of a Broadcasting Participation Fund claim.

### **Answer**

13. TCI took no position on whether the FCSC should be eligible for costs, but submitted that
  - the legal work (especially that of the articling student) was neither necessary nor reasonable when compared to similarly situated groups,
  - the articling student's work was billed at an incorrect rate, and
  - some of the travel disbursements were ineligible.
14. Accordingly, TCI submitted that the FCSC's legal fees should be fixed at no more than \$63,541.34 and its non-meal disbursements limited to \$1,131.54.
15. Concerning the necessity and reasonableness of the FCSC's legal fees for its two lawyers and articling student, TCI submitted that the FCSC claimed considerably more than the other public interest interveners that participated in the proceeding despite having similarly situated interests, taking on similar amounts of

responsibility, and having similar experience and expertise in representing the interests of consumers.

16. Concerning the reasonableness, necessity, and rate for the articling student, TCI submitted that of the 341.6 hours billed to prepare for the proceeding, 176 hours to “review file/summarize interventions” was neither necessary nor reasonable, and should be reduced to a full work week at seven hours per day. In addition, TCI submitted that the work should have been billed at the in-house articling student rate of \$235 per day, rather than \$70 per hour.
17. Concerning the travel disbursements, TCI argued that the air and train travel tickets purchased were not the cheapest available and that there was no reason to purchase them on short notice. Accordingly, TCI called for a 50% reduction to the airfare and train tickets claimed by the FCSC.

## Reply

18. In reply, the FCSC disagreed with the positions taken by TCI. Concerning the articling student’s rate, the FCSC noted that the 176 hours to “review file/summarize interventions” was a broad category used by PIAC’s time-tracking software that reflected the time spent by the articling student on reading through 1,416 interventions, making summaries, and engaging in translation where necessary.
19. The FCSC also argued that the Commission should exercise its discretion to apply the external rate rather than the in-house articling student rate. The FCSC took the position that the articling student had already fulfilled the bulk of their billings before the Commission changed the calculation of articling students’ billings from \$70 per hour to \$235 per day (based on a seven-hour day) in Telecom Order 2017-364, which was restated in Telecom Order 2017-426. PIAC also indicated that as of June 2019, it would no longer employ articling students in its Commission work, noting that the rate for articling students is not cost-effective to the organization’s representation.
20. Concerning the necessity and reasonableness of the FCSC’s legal fees, the FCSC submitted that its intervention was comprehensive, thorough, and structured, and contributed meaningfully to the proceeding. The FCSC restated that PIAC’s articling student read through every intervention in order to categorize and identify the major issues in the proceeding. Finally, the FCSC noted that it represents over one million members and that its costs were not excessive under the criteria at paragraph 18 in the *Guidelines for the Assessment of Costs* (the Guidelines), as set out in Telecom Regulatory Policy 2010-963.
21. Concerning the eligibility of its travel disbursements, the FCSC commented that, pursuant to subsection 70(1) of the Rules of Procedure, the Commission is required to take into account the sources of funding an applicant receives for the purposes of participating in proceedings under the *Telecommunications Act* (the Act). The FCSC noted that PIAC does not receive financial assistance from other sources and that

disallowing its claims will limit the FCSC's ability to participate in future proceedings. The FCSC went on to note that its disbursements were reasonably incurred expenses and that a 50% reduction was arbitrary. The FCSC specifically noted that the train ticket at issue was purchased using a corporate discount, making its cost comparable to an economy ticket. Further, the FCSC argued that standard fare flights were not available in this case and that, in any event, a basic class fare is not appropriate for someone flying and staying overnight for a hearing because basic class fares are meant for day trips, passengers are not allowed to bring carry-on bags, and passengers cannot obtain a refund or credit if they are unable to make their flight.

### **Request for information**

22. In a letter dated 1 May 2019, the Commission noted that the proceeding related to both telecommunications and broadcasting issues, and that the Commission may award costs related only to telecommunications matters under the Act. The letter also indicated that parties claiming costs for broadcasting matters were free to apply to the Broadcasting Participation Fund for the portion of their time in the proceeding that was dedicated to broadcasting matters.
23. In the letter, the Commission outlined that the overall division of issues in the proceeding does not necessarily translate into the amount of time that any specific costs applicant spends on either telecommunications or broadcasting matters. In particular, the Commission noted that the individual costs applicants had the best knowledge of the amount of time allocated to particular issues and whether these issues related to telecommunications or broadcasting matters.
24. Accordingly, the Commission requested that all costs applicants to the proceeding provide the percentage of time spent on telecommunications matters during the proceeding, including supporting information as to how they determined the time allocated to telecommunications as opposed to broadcasting matters.
25. In its response, dated 3 May 2019, the FCSC submitted that the correct allocation of time spent on telecommunications and broadcasting matters is 90% and 10%, respectively. The FCSC elaborated that the broadcasting matters examined arose in the context of services that were bundled, primarily to deliver Internet services with TV and home phone services as potential add-ons.
26. The FCSC encouraged the Commission to also consider the incentive of parties to shift costs awards to the Broadcasting Participation Fund and argued that it is inefficient for the Commission not to declare an allocation of time between broadcasting and telecommunications matters.

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

27. 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.
28. 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, the FCSC has demonstrated that it meets this requirement, since its membership includes a variety of public interest organizations that represent a diverse group of Canadian consumers from across the country.
29. The FCSC has also satisfied the remaining criteria through its participation in the proceeding. In particular, the FCSC's written submissions analyzing the comments submitted by Canadians and its oral submissions at the hearing assisted the Commission in developing a better understanding of the matters that were considered. Accordingly, the Commission finds that the FCSC meets the criteria for an award of costs under section 68 of the Rules of Procedure.
30. Regarding whether the FCSC's costs were necessarily and reasonably incurred, the Commission set out criteria for evaluating whether a claim is excessive under the circumstances at paragraph 18 in the Guidelines. The Commission finds that the FCSC's submissions were extensive, PIAC as the FCSC's provider of legal services relied on different levels of counsel (senior, junior, and an articling student), and the FCSC's member organizations together brought a breadth of relevant expertise to the proceeding. Accordingly, the Commission finds that the FCSC's costs were not excessive.
31. Concerning the rates claimed for the articling student, the Commission determines that the rate should be set at the daily rate of \$235 rather than the hourly rate of \$70 claimed by the FCSC. The Commission also finds that there are no exceptional circumstances in this case that would justify a deviation from the normal articling student rate applicable under the Guidelines.
32. The Commission notes that in Telecom Order 2017-364, published on 16 October 2017, PIAC had its articling student costs reduced because the Commission

determined that the student was internal to PIAC.<sup>3</sup> Similarly, in Telecom Order 2017-426, published on 4 December 2017, the Commission again reduced PIAC's costs for the same reason.<sup>4</sup>

33. Telecom and Broadcasting Notice of Consultation 2018-246, which led to the proceeding that gave rise to this application and order, was published on 16 July 2018, which was nine months after the Commission had communicated to PIAC in Telecom Order 2017-364 that its articling student's costs were to be based on the in-house daily rate and not the external hourly rate. The Commission finds, as a matter of fact, that PIAC knew or ought to have known that its articling student's work would not be recoverable at the hourly rate as claimed by the FCSC. Accordingly, the Commission reduces PIAC's articling student costs from the \$25,424 claimed to \$12,196.50 (a reduction of \$13,227.50).<sup>5</sup>
34. The remaining fees, including travel disbursements, were necessarily and reasonably incurred and are in accordance with the rates established in the Guidelines. Nevertheless, the Commission discovered a clerical error, whereby the allowable HST rebate was noted in the FCSC's "Exhibit A – Summary of Disbursements" but not applied, resulting in a miscalculation. Based on a claim of \$1,585.81 for non-meal disbursements that include HST, the correct amount less PIAC's rebate to which the FCSC is entitled is \$1,458.66 for non-meal disbursements. Accordingly, the Commission reduces the FCSC's costs claimed by \$127.15.
35. The Commission accepts the FCSC's submissions as they relate to the allocation of costs between telecommunications and broadcasting matters. Accordingly, the Commission determines that the FCSC's total costs claim should be reduced by 10% to account for the work that the FCSC undertook in the proceeding that was related to broadcasting matters.
36. 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.
37. 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, including all their subsidiaries, had a significant interest in the outcome of the proceeding and participated actively in the proceeding: Bell Canada, on its own behalf and on behalf of Bell Aliant, a division of Bell Canada; Bell Mobility Inc.; Bell MTS Inc.; Câblevision du Nord de Québec inc.; DMTS, a division of Bell Canada; KMTS, a division of Bell Canada; NorthernTel Limited Partnership; Ontera; and Télébec, Société en commandite

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<sup>3</sup> See paragraphs 42-44.

<sup>4</sup> See paragraphs 26-33.

<sup>5</sup> The 363.2 hours claimed at the external rate were converted into 51.9 days based on a 7-hour work day, in accordance with the Guidelines.

(collectively, Bell Canada et al.); Bragg Communications Incorporated, carrying on business as Eastlink; Canadian Network Operators Consortium Inc.; Cogeco Communications Inc. (Cogeco); Northwestel Inc.; Quebecor Media Inc., on behalf of Videotron Ltd. (Videotron); Rogers Communications Canada Inc. (RCCI); Saskatchewan Telecommunications (SaskTel); Shaw Communications Inc. (Shaw); TBayTel; TekSavvy Solutions Inc.; TCI; and Xplornet Communications Inc.

38. 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>6</sup> 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. 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>
Bell Canada et al.	38%	\$23,916.73
TCI	25%	\$15,669.43
RCCI	24%	\$15,191.72
Videotron	5%	\$3,110.73
Shaw	3%	\$2,185.79
SaskTel	2%	\$1,539.98
Cogeco	2%	\$1,233.75

39. Consistent with its general approach articulated in Telecom Costs Order 2002-4, the Commission makes Bell Canada responsible for payment on behalf of Bell Canada et al., Quebecor Media Inc. responsible for payment on behalf of Videotron, Shaw Communications Inc. responsible for payment on behalf of its companies, and Cogeco Communications Inc. responsible for payment on behalf of its companies. The Commission leaves it to the companies and their respective subsidiaries to determine the appropriate allocation of the costs among themselves.

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<sup>6</sup> 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.

## Directions regarding costs

40. The Commission **approves with changes** the application by the FCSC for costs with respect to its participation in the proceeding.
41. Pursuant to subsection 56(1) of the Act, the Commission fixes the costs to be paid to the FCSC at \$62,848.13.
42. The Commission **directs** that the award of costs to the FCSC's legal counsel, PIAC, be paid forthwith by Bell Canada, TCI, RCCI, Videotron, Shaw, SaskTel, and Cogeco according to the proportions set out in paragraph **38**.

Secretary General

## Related documents

- *Report regarding the retail sales practices of Canada's large telecommunications carriers*, Telecom and Broadcasting Notice of Consultation CRTC 2018-246, 16 July 2018; as amended by Telecom and Broadcasting Notice of Consultation CRTC 2018-246-1, 16 October 2018
- *Determination of costs award with respect to the participation of the Equitable Internet Coalition in the proceeding that led to Telecom Regulatory Policy 2017-104*, Telecom Order CRTC 2017-426, 4 December 2017
- *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
- *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
- *Action Réseau Consommateur, the Consumers' Association of Canada, Fédération des associations coopératives d'économie familiale and the National Anti-Poverty Organization application for costs – Public Notice CRTC 2001-60*, Telecom Costs Order CRTC 2002-4, 24 April 2002