



## Telecom Order CRTC 2019-360

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Ottawa, 30 October 2019

File numbers: [1011-NOC2017-0450](#) and 4754-601

### **Determination of costs award with respect to the participation of the Public Interest Advocacy Centre in the proceeding that led to Telecom Regulatory Policy 2019-354**

#### **Application**

1. By letter dated 8 May 2018, the Public Interest Advocacy Centre (PIAC) applied for costs with respect to its participation in the proceeding that led to Telecom Regulatory Policy 2019-354 (the proceeding). In the proceeding, the Commission examined which types of non-carriers should be exempt from the obligation to register with the Commission prior to receiving telecommunications services for resale from Canadian carriers or other resellers (the registration obligation).
2. FCA Canada Inc. (FCA), Queen's University (Queen's), and TELUS Communications Inc. (TCI) filed interventions in response to PIAC's application. IBM Canada Limited (IBM) filed a note indicating that the company agrees with and supports the intervention by Queen's and that the principles laid out by Queen's apply equally to IBM.
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 on behalf of the public at large or on behalf of other public interest groups regarding matters of public concern and interest. 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 added that it was the only consumer group that participated in the proceeding and in the proceeding that led to Telecom Regulatory Policy 2017-11 (in that decision, the

Commission directed resellers to abide by all applicable existing consumer safeguard obligations set out in the Appendix to that decision, including the registration obligation).

5. PIAC submitted that it had assisted the Commission in developing a better understanding of the matters that were considered, such as by providing (i) examples of how machine-to-machine (M2M) and private Wi-Fi services could engage the Commission's consumer safeguard obligations, (ii) an evaluation of the costs and benefits associated with registration, and (iii) an approach for the Commission to determine which resellers should register (namely, those that engage in the collection of personal information or in Internet traffic management practices).
6. PIAC further submitted that it had participated in the proceeding in a responsible way and complied with the Rules of Procedure throughout the proceeding.
7. PIAC requested that the Commission fix its costs at \$3,775.65, consisting entirely 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.
8. PIAC submitted that the responsibility for payment of half of its costs should be apportioned equally between FCA, IBM, and Queen's, and that the other half should be apportioned between Bell Canada, Rogers Communications Canada Inc. (RCCI), and TCI in proportion to their telecommunications operating revenues (TORs).<sup>1</sup> However, PIAC noted that all the telecommunications service providers (TSPs) that participated actively in and had a significant interest in the outcome of the proceeding would be appropriate parties to be required to pay any costs awarded by the Commission (costs respondents). PIAC indicated that FCA, IBM, and Queen's are large businesses that were acting as TSPs that participated actively in the proceeding to advance their corporate interests. PIAC argued that it would be unfair for FCA, IBM, and Queen's to be exempt from paying costs by virtue of not being registered with the Commission.

## **Answer**

9. FCA and Queen's (as well as IBM, through its note of support for the intervention by Queen's) argued that PIAC's application was not consistent with the Commission's well-established practice regarding allocation of the responsibility for payment of costs. They noted that PIAC's proposed apportionment (i) does not follow the Commission's practice of allocation of the responsibility for payment of costs based on TORs; and (ii) allows for the proliferation of small costs awards (i.e. below \$1,000), which creates an administrative burden for both the applicant and costs respondents. Queen's took issue with PIAC's characterization of the university as a business providing telecommunications services and stated that it does not derive any

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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.

appreciable TORs from the provision of telecommunications services. Queen's argued that the purpose of the proceeding was to clarify the regulatory obligations of entities that are not traditional TSPs, and that a disincentive to provide telecommunications services would result if costs were imposed on entities that are not the intended focus of the Commission's regulatory mandate.

10. FCA took issue with PIAC's characterization of it as a TSP, since the company does not provide any telecommunications services, including those that are M2M or engage the Internet of Things. FCA also argued that public discussion would be stifled if the Commission were to depart from its practice and allocate responsibility for the payment of costs to any individual or corporation that participates in a public proceeding, regardless of whether the party is a TSP.
11. TCI argued that it is not a proper costs respondent since it did not have a significant interest in the outcome of the proceeding and that the responsibility for payment of PIAC's costs should be borne by the non-carriers whose obligations were to be determined. TCI argued that alternatively, if traditional TSPs were to pay PIAC's costs, the apportionment should be equal among all participating TSPs and not be based on TORs, since the proceeding was not primarily directed at traditional TSPs. Consequently, TCI encouraged the Commission to depart from the *Guidelines for the Assessment of Costs* (the Guidelines), as set out in Telecom Regulatory Policy 2010-963, as they relate to the minimum costs threshold and the limits on the number of costs respondents. TCI argued that the Guidelines are not law and that strict adherence to them is an impermissible fettering of the Commission's discretion. TCI noted that if the Guidelines were strictly followed, it would be the sole costs respondent, despite having identical or nearly identical interests in the outcome of the proceeding as those of other established TSPs.

### **Procedural letter**

12. A [procedural letter](#) dated 21 January 2019 was sent to PIAC and potential costs respondents, in which comments were sought on how any costs awarded in this case should be allocated. Specifically, comments were sought on whether responsibility for the potential payment of costs should be apportioned among participating TSPs in proportion to their TORs, and if so, whether the parties whose participation in the proceeding was limited to responding to the Commission's 1 March 2018 [request for information](#) (the RFI) should be included in the apportionment. The letter also requested suggestions of alternative apportionment methods with supporting rationale.
13. Bell Canada; the British Columbia Broadband Association (BCBA); BullsEye Telecom Inc. (BullsEye); the Canadian Network Operators Consortium Inc. (CNOC); Cogeco Communications Inc. (Cogeco); the Columbia Basin Broadband Corporation (CBBC); Core Broadband Inc. (Core); Cybera Inc. (Cybera); FCA; IBM; the Independent Telecommunications Providers Association (ITPA); 676766 Ontario Limited, operating as KWIC Internet (KWIC); PIAC; Pulsar360 Inc. (Pulsar); Quebecor Media Inc., on behalf of Videotron Limited (Videotron);

Queen's; 2094206 Ontario Ltd, operating as Ruralwave (Ruralwave); Saskatchewan Telecommunications (SaskTel); Shaw Communications Inc. (Shaw); Silo Wireless Inc. (Silo); Sprint International Communications Canada ULC (Sprint); and TCI provided additional comments.

14. BullsEye, CBBC, CNOC, Core, Pulsar, Ruralwave, Shaw, and Silo noted that allocation of the responsibility for payment of costs should be based on TORs and that the Commission should not allocate the responsibility for payment of insignificant costs amounts to potential costs respondents with correspondingly low TORs. These parties, as well as Cybera, FCA, KWIC, SaskTel, Shaw, and Sprint, also expressed the view that the parties whose participation in the proceeding was restricted to responding to the RFI should not be included in the apportionment, since their participation in the proceeding was limited to providing information that was requested by the Commission.
15. Queen's argued that the Commission should follow the Guidelines and that PIAC's proposed apportionment was an unacceptable deviation from the Commission's normal practice and devoid of a grounding principle. IBM commented that the Commission should apportion the responsibility for payment of costs solely among participating TSPs in proportion to their TORs.
16. The BCBA, Cogeco, the ITPA, and Videotron submitted that the Commission should apportion the responsibility for payment of costs among participating TSPs in proportion to their TORs and include the TSPs that responded to the RFI. Videotron suggested that a mechanism be established through which the responsibility for payment of costs is apportioned to resellers with an interest in the outcome of the proceeding should the Commission determine that a broader range of resellers be subject to its regulatory frameworks.
17. SaskTel submitted that PIAC's proposed apportionment has merit since the *Telecommunications Act* (the Act) does not require that the responsibility for payment of costs be apportioned solely among TSPs. SaskTel added that if parties with a significant financial interest in the outcome of a proceeding choose to participate in that proceeding, they should be prepared to contribute to the costs of that proceeding in the same manner as TSPs. SaskTel argued that in this case, however, given the amount claimed by PIAC, the difficulty in determining TORs for entities that are not currently registered as resellers with the Commission, and the fact that any TORs these entities generate would be low, none of the potential resellers should be required to pay costs.
18. Bell Canada submitted that traditional TSPs should not be responsible for the payment of costs in the proceeding and that active participants with a significant interest in the outcome of the proceeding (namely, providers of M2M connectivity and private Wi-Fi networks that may be required to register as resellers) should be the sole costs respondents. Bell Canada argued that entities that submit comments purely in the interest of contributing to the discussion should not be financially penalized for doing so. Bell Canada noted that if the Commission were to allocate the

responsibility for payment of costs to TSPs, the Commission should waive its practice of limiting costs to a \$1,000 minimum to allow for the broadest TSP representation possible, but that the apportionment should still be based on TORs.

19. TCI stated that the parties that have the most significant interest in the outcome of the proceeding should be the only named costs respondents. Because the proceeding concerned the registration obligation of Wi-Fi and M2M service operators, those entities had a significant interest in the outcome of the proceeding, since they were directly affected by it; thus, they should be the sole costs respondents.
20. In reply, PIAC submitted that its proposed apportionment is appropriate for the reasons given in its application. PIAC emphasized that the proceeding was about the obligations of resellers, and that the parties that put forward arguments on behalf of resellers should be included in the apportionment of responsibility for payment of a potential costs award. PIAC argued that such an apportionment would not result in a chill on public participation. Finally, PIAC noted that the parties that objected to such an apportionment were financially able to retain major law firms, but contested their potential responsibility for payment of the amount claimed in this case.

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

21. Section 56 of the Act authorizes the Commission to award costs associated with telecommunications proceedings, as well as to determine by whom and to whom costs are to be paid, and in what amounts.
22. 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.
23. 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, and

organizational members demonstrate that PIAC represents the interests of Canadian consumers, and in particular, vulnerable and low-income consumers.

24. PIAC has also satisfied the remaining criteria through its participation in the proceeding. Since PIAC was the only public interest intervener in the proceeding, its intervention, notably concerning which classes of service providers should be exempt from the registration obligation, assisted the Commission in developing a better understanding of the matters that were considered.
25. The rates claimed in respect of legal fees are in accordance with the rates established in the Guidelines. The Commission finds that the total amount claimed by PIAC was necessarily and reasonably incurred and should be allowed.
26. 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.
27. 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. In this case, the Commission considers that the parties whose participation in the proceeding was limited to responding to the RFI did not have a significant interest in the outcome of the proceeding and did not participate actively, since they were responsibly responding to a direct request by the Commission. Consequently, the Commission determines that these parties are not appropriate costs respondents.
28. Regarding the remaining parties, the Commission determines that the following non-TSPs, carriers, and non-carriers participated actively in the proceeding, had a significant interest in its outcome, and are consequently appropriate costs respondents: Bell Canada, the BCBA, la Coalition pour le service 9-1-1 au Québec, Cybera, CNOC, FCA, Geotab Inc., IBM, the ITPA, Queen's, TCI, the Toronto Internet Exchange, the University of Alberta, and Videotron.
29. Concerning the allocation of responsibility for payment of costs, in accordance with the Guidelines, the Commission has generally considered it 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. In cases where a costs claim is between \$1,000.01 and \$10,000 (as it is in this case), the Commission generally limits the number of costs respondents to a maximum of six. The Commission also generally excludes any potential costs respondents that, according to the apportionment of costs in relation to other costs respondents based on TORs, would have been responsible for paying less than \$100 of a total costs award. Nevertheless, the Commission is sensitive to the fact that if numerous costs respondents are named, the applicant may have to collect small amounts from many costs respondents, resulting in a significant administrative burden to the applicant and the costs respondents. Consequently, as set out in Telecom Order 2015-160, the Commission generally considers \$1,000 to be the minimum amount that a costs respondent should be required to pay.

30. The Commission notes that in response to its procedural letter, it received comments from numerous parties addressing various issues, but no party sufficiently addressed how to fairly and efficiently allocate the responsibility for payment of costs among participating non-TSPs, carriers, and non-carriers without resulting in the proliferation of many small costs awards. Since no party proposed an alternative to TORs as a principled framework to fairly and efficiently apportion costs among the various non-TSP costs respondents, the Commission considers it appropriate to exclude all parties that do not report TORs to the Commission.
31. Of the parties that do report TORs, the Commission considers it appropriate to allocate the responsibility for payment of costs among these costs respondents based on their TORs as an indicator of their relative size and interest in the proceeding. Further, the Commission determines that it is appropriate to depart from its general practice of limiting costs awards to a minimum of \$1,000, but to retain its practice of excluding costs respondents that would be responsible for paying less than \$100 based on their TORs. The Commission considers that application of the \$1,000 minimum in this case would result in an outcome that does not properly reflect the interests of the costs respondents but that retaining its \$100 minimum would ensure administrative efficiency and protect against creating undue compliance costs resulting from the payment of costs.<sup>2</sup>
32. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated as follows:<sup>3</sup>

Company	Proportion	Amount
TCI	51.4%	\$1,940.45
Bell Canada	38.8%	\$1,464.81
Videotron	9.8%	\$370.39

### Directions regarding costs

33. The Commission **approves** the application by PIAC for costs with respect to its participation in the proceeding.
34. Pursuant to subsection 56(1) of the Act, the Commission fixes the costs to be paid to PIAC at \$3,775.65.

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<sup>2</sup> The three costs respondents that are excluded since they fall under the \$100 minimum are the BCBA, CNOC, and the ITPA.

<sup>3</sup> In this order, the Commission has used the TORs of the costs respondents based on their most recent audited financial statements.

35. The Commission **directs** that the award of costs to PIAC be paid forthwith by TCI, Bell Canada, and Videotron according to the proportions set out in paragraph 32.

Secretary General

### **Related documents**

- *Review of the reseller registration obligation*, Telecom Regulatory Policy CRTC 2019-354, 24 October 2019
- *Application of regulatory obligations directly to non-carriers offering and providing telecommunications services*, Telecom Regulatory Policy CRTC 2017-11, 17 January 2017; as amended by Telecom Regulatory Policies CRTC 2017-11-1, 10 July 2017; and 2017-11-2, 17 July 2018
- *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