



Telecom Order CRTC 2019-60

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Determination of costs award with respect to the participation of the Public Interest Advocacy Centre in the proceeding that led to Telecom Decision 2019-56

*The Commission **approves, with changes**, two applications for costs filed by the Public Interest Advocacy Centre for its participation in the proceeding initiated by TNW Wireless Inc.'s application relating to mandated wholesale mobile wireless roaming service agreements with Bell Mobility and TCI.*

Application

1. By letter dated 5 September 2017, the Public Interest Advocacy Centre (PIAC) applied for an award of costs with respect to its participation in the proceeding that led to Telecom Decision 2019-56 (the proceeding). In the proceeding, the Commission considered TNW Wireless Inc.'s (TNW) application for interim and final relief relating to mandated wholesale mobile wireless roaming service (wholesale roaming) agreements with Bell Mobility Inc. (Bell Mobility) and TELUS Communications Inc. (TCI).
2. The Commission did not receive any interventions in response to the application for costs.
3. By [letter](#) dated 23 October 2017, the Commission denied TNW's request for interim relief and suspended consideration of TNW's application pending the conclusion of a separate proceeding relating to wholesale roaming. Subsequent to the issuance of Telecom Decision 2018-97, which resulted from that separate proceeding, the Commission reopened TNW's application at TNW's request. PIAC filed additional comments, dated 3 May 2018, in the proceeding.
4. By letter dated 17 May 2018, PIAC applied for an additional award of costs with respect to the proceeding. TCI filed an intervention, dated 30 April 2018, in response to PIAC's second costs application.
5. The first and second costs applications are substantially similar, and relate to PIAC's participation in different stages of the proceeding. Therefore, the Commission considers that it is appropriate in these circumstances to combine the two applications, in which PIAC claimed costs totalling \$4,216.22 for legal fees, and to dispose of them in a single order.

6. 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.
7. With respect to the first criterion regarding representation of a group or class of subscribers with an interest in the outcome of the proceeding, PIAC submitted that its mandate includes representing the public at large and, in particular, Canadian consumers of telecommunications services. PIAC also submitted that it focuses on vulnerable consumers. In the second costs application, PIAC specified that it also represents (i) low-income consumers, including seniors and a number of individuals, and (ii) PIAC member organizations, namely the Alberta Council on Aging, Canadian Pensioners Concerned, Dying with Dignity Canada, the Federation of Metro Tenants' Associations, the Ontario Society of Senior Citizens' Organizations, the PEI Council of People with Disabilities, and Rural Dignity of Canada.
8. PIAC submitted that the consumers it represents have an interest in the outcome of the proceeding, since consumers of telecommunications services stand to gain as potential subscribers of TNW's proposed services and stand to lose as a result of any consequential decrease in investment in telecommunications facilities.
9. With respect to the specific methods by which PIAC submitted that it represents this group or class, in the first costs application, PIAC did not make any submissions as to how it determined that the positions it put forward in the proceeding reflect the interests of the group of subscribers it represents. In the second costs application, PIAC submitted that it has conducted extensive research related to consumer interests, including preparing reports examining affordability and conducting ongoing research related to choice in telecommunications and broadcasting service providers. It provided a non-exhaustive list of its recent research projects, including three reports from 2015 and 2016 regarding the affordability of communications services in Canada.
10. Regarding the second criterion, in the first costs application, PIAC submitted that it had assisted the Commission in developing a better understanding of the matters that were considered because its comments (i) identified the applicable legal framework, (ii) identified the public policy considerations underpinning the legal framework, (iii) set out an analysis of TNW's proposed novel technological solution, and (iv) addressed how TNW's proposal for "carrier Wi-Fi" could meet the requirements of the legal framework.

11. In the second costs application, PIAC submitted that it had provided comments on various issues, including the following:
 - Commission regulatory policies and tariff provisions that addressed comments raised by Bell Mobility and Rogers Communications Canada Inc. (RCCI) regarding 9-1-1 services and TNW's credit risk;
 - the legal framework applicable to carrier Wi-Fi that PIAC had raised in its initial intervention in the proceeding and on which TNW commented in reply;
 - spectrum licence and tariff conditions restricting the availability of roaming;
 - how TNW's proposed service and the service proposed by Wi-Fi-first service providers, which was addressed in Telecom Decision 2018-97, differed; and
 - how granting access to customers relying on carrier Wi-Fi would promote investment in building mobile networks, or how negotiating access to Wi-Fi on behalf of customers would improve the capacity of mobile networks.
12. In addition, PIAC submitted in both costs applications that its comments were concise, focused, and distinct, and that it was the only intervener representing consumer interests in the proceeding.
13. Regarding the third criterion, PIAC submitted that it had participated in the proceeding in a responsible way by complying with the Commission's deadlines and with the Rules of Procedure. It also submitted that it had relied almost exclusively on junior legal counsel.
14. In the first costs application, PIAC requested that the Commission fix its costs at \$2,341.14, 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. In particular, PIAC claimed 3.5 days for junior in-house counsel at a rate of \$600.00 per day (\$2,100.00 with the HST and the associated rebate), and 0.8 hours for senior external counsel at a rate of \$290.00 per hour (\$241.14 with the HST and the associated rebate).
15. In the second costs application, PIAC requested that the Commission fix its costs at \$1,875.08, consisting entirely of legal fees. PIAC's claim included the Ontario HST on fees less the rebate to which PIAC is entitled in connection with the HST. In particular, PIAC claimed 11 hours for junior external counsel at a rate of \$135.00 per hour (\$1,543.51 with the HST and the associated rebate), and 1.1 hours for senior external counsel at a rate of \$290.00 per hour (\$331.57 with the HST and the associated rebate).
16. PIAC submitted that the appropriate parties to pay any costs awarded by the Commission are TNW and the other respondents and interveners in the proceeding,

excluding Ice Wireless Inc. (Ice Wireless)¹ [costs respondents].² PIAC submitted that responsibility for the payment of half its costs should be allocated to TNW, and the other half to the other respondents and interveners, excluding Ice Wireless, based on their telecommunications operating revenues (TORs),³ as set out in Telecom Regulatory Policy 2010-963. PIAC argued that TNW had initiated the proceeding and stood to benefit the most from it, and that the other respondents and interveners were the beneficiaries of the Commission's current regulatory framework.

Response

17. TCI opposed PIAC's proposed allocation of costs. It took no position on the quantum of costs claimed.
18. In TCI's view, application of the Commission's general approach for determining the appropriate costs respondents would mean that TNW should be responsible for the payment of all costs. It was the party with the most significant interest in the outcome of the proceeding and the proximate cause of all costs incurred by the parties in the course of the proceeding.
19. TCI submitted that the nature of the proceeding must be taken into account when determining which party had a significant interest in its outcome. The proceeding was not a policy proceeding, unlike the other proceedings dealing with mandated wholesale roaming (e.g. the proceedings that led to Telecom Regulatory Policy 2015-177 and Telecom Decision 2018-97), which were polycentric, multi-party policy development processes. In those cases, TCI was found to have had a significant interest in the outcomes of the proceedings, and was therefore found to be responsible for a portion of the costs awards based on its TORs.
20. By contrast, in TCI's view, the proceeding was narrow in scope, initiated by TNW, and for TNW's sole benefit. Accordingly, TNW was the only party with a significant interest in the outcome of the proceeding and should be solely responsible for the payment of costs related to PIAC's participation. TNW decided to initiate the proceeding to argue that it was entitled to wholesale roaming agreements with Bell Mobility and TCI, which necessitated other parties such as TCI to respond. Further, TNW did not need to file supplementary comments after the issuance of Telecom Decision 2018-97, since the wholesale mobile wireless service framework continued to apply to TNW's application exactly as it did before the issuance of that decision. In addition, TNW's supplementary comments largely reiterated its previous comments.

¹ PIAC referred to Ice Wireless's parent company, Iristel Inc.; however, an intervention was received from Ice Wireless.

² These parties are Bell Mobility; Bragg Communications Incorporated, carrying on business as Eastlink; Quebecor Media Inc.; RCCI; Shaw Communications Inc.; and TCI.

³ TORs consist of Canadian telecommunications revenues from local and access, long distance, data, private line, Internet, and wireless services.

In electing to file supplementary comments, TNW generated needless work for the Commission and other parties.

21. In addition, TCI opposed PIAC's submission that the other interveners should be responsible for the payment of 50% of the costs on the basis that they are the beneficiaries of the current facilities-based regulatory framework. TCI submitted that this was not the appropriate test for allocating costs. The general approach, which identifies the parties with a significant interest in the outcome of a proceeding, should be followed. Further, PIAC did not demonstrate why an alternative approach would be appropriate. TCI also submitted that PIAC's use of the term "beneficiaries" (of a framework) was unclear, and questioned whether such a beneficiary would need to be made responsible for the payment of costs any time a person makes an application in respect of the framework, regardless of merit.

Commission's analysis and determinations

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 particular, applicants are required to both identify the specific group of subscribers represented, and to describe the methods by which they verified that the views they advanced reflected the interests of the group, whether by directly consulting the represented group or by other means, such as research. PIAC did not directly address the information bulletin in its submissions.

24. However, in the present case, the Commission finds that PIAC meets the first criterion for an award of costs. PIAC clearly and specifically identified the groups and classes of subscribers it represented, i.e. Canadian consumers at large but with a focus on vulnerable consumers.

25. Although PIAC did not explain how it determined that the positions it presented reflected the interests of these consumers, it explained how Canadian consumers' interests in receiving telecommunications services could be protected or harmed based on the matters at issue in the proceeding. In the second costs application, PIAC indicated that, based on research it had conducted in 2015 and 2016, it determined that the issues raised in the proceeding were of importance to the Canadian consumers for whom PIAC advocates.
26. The Commission also finds that PIAC has satisfied the second criterion for an award of costs. In both of PIAC's interventions in the proceeding, it provided to the Commission (i) analyses of the matters at issue in the proceeding, (ii) comments on TNW's proposed technology, (iii) views on the anticipated effects on Canadian consumers of the matters at issue in the proceeding, and (iv) comments on the Commission's regulatory framework for Wi-Fi-first service providers and wholesale roaming. PIAC also discussed carrier Wi-Fi, an issue that was not discussed in depth by all the other parties. By providing the Commission with a distinct point of view through its representation of the interests of Canadian consumers and users of telecommunications services, PIAC assisted the Commission in developing a better understanding of the matters that were considered.
27. With respect to the third criterion for an award of costs, PIAC's interventions were focused and structured, and they offered a distinct point of view; moreover, the time that PIAC claimed to prepare its submissions was not excessive, and PIAC complied with all deadlines and directions set out in the Rules of Procedure. Further, PIAC relied on cost-efficient resources (namely, using junior in-house and external counsel to a greater extent than senior external counsel). Accordingly, the Commission finds that PIAC has satisfied the third criterion for an award of costs.
28. The Commission finds that the rates PIAC claimed in respect of legal fees are in accordance with the rates established in the *Guidelines for the Assessment of Costs* (the Guidelines), as set out in Telecom Regulatory Policy 2010-963.
29. 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.
30. 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's general practice is 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. Where costs have been apportioned in some other manner, the Commission will so indicate.
31. 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.

32. PIAC's proposal for naming costs respondents and allocating the costs among them departs from the Commission's general approach. In addition, TCI's submission is notable for identifying only the applicant, TNW, as having a significant interest in the outcome of the proceeding.
33. Subsection 4(e) of the Guidelines states that the Guidelines are intended to implement the principle that the costs assessment process must maintain the flexibility necessary to ensure that costs are awarded in light of the particular circumstances of a proceeding.
34. Due to the nature of the proceeding, as explained further below, the Commission determines that it is appropriate in these circumstances to depart from its general approach and from the approaches proposed by PIAC and TCI.
35. The Commission considers that the following parties had a significant interest in the outcome of the proceeding and participated actively in the proceeding: Bell Mobility, TCI, and TNW. The proceeding arose from a request to resolve disputes between TNW and each of Bell Mobility and TCI regarding agreements for wholesale roaming. That request primarily required the Commission to apply its existing regulatory framework to specific facts relating to TNW as a company, a network operator, and a wireless carrier, as well as to Bell Mobility's and TCI's tariffs. Accordingly, these parties are the appropriate costs respondents to PIAC's costs applications.
36. With respect to the allocation of the responsibility for payment of costs among Bell Mobility, TCI, and TNW, if the Commission applied its general approach of allocating this responsibility based on TORs and of respecting the minimum payment threshold of \$1,000 per costs respondent, TNW would not be required to pay any costs. Therefore, in this particular case, it would be appropriate to allocate the responsibility for payment of costs in equal proportions.
37. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated as follows:

Company	Percentage	Amount
Bell Mobility	33.3%	\$1,405.41
TCI	33.3%	\$1,405.41
TNW	33.3%	\$1,405.40

Directions regarding costs

38. The Commission **approves, with changes**, the applications by PIAC for costs with respect to its participation in the proceeding.

39. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to PIAC at \$4,216.22.
40. The Commission **directs** that the award of costs to PIAC be paid forthwith by Bell Mobility, TCI, and TNW according to the proportions set out in paragraph 37 above.

Secretary General

Related documents

- *TNW Wireless Inc. – Application for final relief regarding agreements for wholesale mobile wireless roaming services from Bell Mobility Inc. and TELUS Communications Inc.*, Telecom Decision CRTC 2019-56, 28 February 2019
- *Reconsideration of Telecom Decision 2017-56 regarding final terms and conditions for wholesale mobile wireless roaming service*, Telecom Decision CRTC 2018-97, 22 March 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
- *Regulatory framework for wholesale mobile wireless services*, Telecom Regulatory Policy CRTC 2015-177, 5 May 2015
- *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