



Telecom Order CRTC 2021-126

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File numbers: 8662-B2-201911347 and 4754-632

Determination of costs award with respect to the participation of the Public Interest Advocacy Centre in the proceeding that led to Telecom Decision 2021-125

Application

1. By letter dated 30 January 2020, the Public Interest Advocacy Centre (PIAC) applied for costs with respect to its participation in the proceeding that led to Telecom Decision 2021-125 (the proceeding). In the proceeding, the Commission considered a Part 1 application by Bell Canada; Bragg Communications Incorporated, carrying on business as Eastlink (Eastlink); Cogeco Communications Inc. (Cogeco); Quebecor Media Inc., on behalf of Videotron Ltd. (Videotron); Rogers Communications Canada Inc. (RCCI); Saskatchewan Telecommunications (SaskTel); Shaw Cablesystems G.P. (Shaw); and TELUS Communications Inc. (TCI) [collectively, the Applicants], to review and vary Telecom Regulatory Policy 2019-269, in which the Commission established *The Internet Code*. Specifically, the Applicants sought to extend the application of the Internet Code to all Internet service providers, with certain exemptions.
2. The Commission did not receive any interventions in response to PIAC's 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 represented the interests of all Canadian consumers, with a particular focus on vulnerable consumers. With respect to the specific methods by which PIAC submitted that it represented this group or class of subscribers, PIAC explained that it ascertained consumer interests through primary and secondary research it conducted for the report it attached to its submission.
5. PIAC submitted that it had assisted the Commission in developing a better understanding of the matters that were considered by providing a summary of all of the Internet Code's shortcomings, a distinct point of view as it situated the Part 1 application within the larger context of consumer concerns regarding the content and

protection of the Internet Code, and an analysis in which it submitted that the Commission erred in fact and in law.

6. PIAC requested that the Commission fix its costs at \$1,868.84, consisting entirely of external 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.
7. PIAC submitted that the Applicants and the parties who actively intervened in the proceeding associated with the Part 1 application are the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents). PIAC submitted that the Applicants should bear 50% of the costs and that the parties that intervened should bear the remaining 50%, all in proportion to their residential Internet service revenues.

Commission's analysis and determinations

8. The criteria for an award of costs are set out in section 68 of the Rules of Procedure, 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.
9. 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. Specifically, PIAC represented the interests of all Canadian consumers, with a particular focus on vulnerable consumers. PIAC also ascertained the interests of consumers through primary and secondary research it conducted for the report it attached to its submission.
10. PIAC has also satisfied the remaining criteria through its participation in the proceeding. In particular, PIAC provided the Commission with a legal and policy analysis of the Internet Code, insight into its view of the shortcomings of the Internet Code, and a distinct point of view as the only intervener directly representing consumer interests, all of which assisted the Commission in developing a better

understanding of the matters that were considered. Further, PIAC participated in the proceeding in a responsible way. Accordingly, the Commission considers that PIAC meets the criteria for an award of costs under section 68 of the Rules of Procedure.

11. 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. The Commission finds that the total amount claimed by PIAC was necessarily and reasonably incurred and should be allowed.
12. 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.
13. 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 Bell Canada, the Canadian Communication Systems Alliance, the Canadian Network Operators Consortium Inc., Cogeco, Distributel Communications Limited, Eastlink, the Independent Telecommunications Providers Association, RCCI, SaskTel, Shaw, TekSavvy Solutions Inc., TCI, Videotron, and Xplornet Communications Inc. had a significant interest in the outcome of the proceeding and participated actively in the proceeding, and are therefore the appropriate costs respondents to PIAC's application for costs.
14. 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 telecommunications operating revenues (TORs) as an indicator of the relative size and interest of the parties involved in the proceeding.¹ 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.
15. Accordingly, in light of the relatively small amount of the costs award and the large number of costs respondents, and consistent with its general practice of lessening the administrative burden on both the applicants and costs respondents, the Commission considers it appropriate in this case to limit the responsibility for the payment of costs to Bell Canada.

Directions regarding costs

16. The Commission **approves** the application by PIAC for costs with respect to its participation in the proceeding.
17. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to PIAC at \$1,868.84.

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

18. The Commission **directs** that the award of costs to PIAC be paid forthwith by Bell Canada.

2019 Policy Direction

19. The Governor in Council issued a policy direction in which it directed the Commission to consider how its decisions can promote competition, affordability, consumer interests, and innovation (the 2019 Policy Direction).² The Commission considers that the awarding of costs in this instance is consistent with subparagraph 1(a)(iv) of the 2019 Policy Direction.
20. By facilitating the participation of a group that represents consumer interests, this order contributes to enhancing and protecting the rights of consumers in their relationships with telecommunications service providers. Since consumer groups often require financial assistance to effectively participate in Commission proceedings, the Commission is of the view that its practice of awarding costs, as exercised in this instance, enables such groups to provide their perspectives on how consumer interests may be affected by the outcomes of the proceedings. In light of the above, the Commission considers that its determination to award costs to PIAC promotes consumer interests.

Secretary General

Related documents

- *Large facilities-based Internet service providers – Application to review and vary Telecom Regulatory Policy 2019 269 regarding the application of the Internet Code*, Telecom Decision CRTC 2021-125, 8 April, 2021
- *The Internet Code*, Telecom Regulatory Policy CRTC 2019-269, 31 July 2019; as amended by Telecom Regulatory Policy CRTC 2019-269-1, 9 August 2019
- *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

² *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives to Promote Competition, Affordability, Consumer Interests and Innovation*, SOR/2019-227, 17 June 2019