



## Telecom Order CRTC 2021-386

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Ottawa, 19 November 2021

*File numbers: 8622-C347-202101111 and 4754-676*

### **Determination of costs award with respect to the participation of the Public Interest Advocacy Centre in the proceeding that led to Telecom Decision 2021-385**

#### **Application**

1. By letter dated 5 May 2021, the Public Interest Advocacy Centre (PIAC) applied for costs with respect to its participation in the proceeding that led to Telecom Decision 2021-385 (the proceeding). In the proceeding, the Commission considered an application from the Competitive Network Operators of Canada (CNO) requesting a Commission determination regarding Rogers Communications Canada Inc.'s (RCCI) decision to stop activating DOCSIS 3.0 modems on its third-party Internet access (TPIA) service.
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 all Canadian consumers, with a particular focus on low-income consumers. With respect to the specific methods by which PIAC submitted that it represents this group or class, PIAC explained that given its extensive experience representing Canadian retail Internet consumers, it was well positioned to advocate for consumer interests in relation to the use of customer end-point equipment (modems).
5. PIAC submitted that it had assisted the Commission in developing a better understanding of the matters that were considered by providing (i) an analysis that the removal of the DOCSIS 3.0 modems from RCCI's approved list was not justified because the functional limitations of these modems did not render them incompatible with RCCI's network; and (ii) an examination of whether the factual circumstances surrounding CNO's application and the current competitive dynamics in the retail Internet market demonstrated that RCCI's actions implicated subsection 27(2) of the *Telecommunications Act* (the Act).

6. PIAC requested that the Commission fix its costs at \$2,345.96, consisting of \$994.71 for external legal fees and \$1,351.25 for in-house articling student 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 responsibility for payment of costs should be allocated 50% to CNOC because it filed the application initiating the proceeding and 50% to RCCI and the other intervening Internet service providers, shared among them, based on their most recent revenue data provided to the Commission.

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

8. 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.
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 low-income consumers. PIAC ascertained the interests of consumers based on its extensive experience representing Canadian retail Internet consumers, and was therefore well positioned to advocate for consumer interests in relation to the use of customer end-point equipment (modems).
10. PIAC has also satisfied the remaining criteria through its participation in the proceeding. In particular, PIAC assisted the Commission in developing a better understanding of the matters that were considered by providing (i) an analysis that the removal of the DOCSIS 3.0 modems from RCCI's approved list was not justified because the functional limitations of these modems did not render them incompatible with RCCI's network; and (ii) an examination of whether the factual circumstances surrounding CNOC's application and the current competitive dynamics in the retail

Internet market demonstrated that RCCI's actions implicated subsection 27(2) of the Act.

11. 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.
12. The rates claimed in respect of legal fees and in-house articling student 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.
13. 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.
14. 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 had a significant interest in the outcome of the proceeding as it concerned tariffed TPIA services and participated actively in the proceeding: Bragg Communications Inc., carrying on business as Eastlink; CNOC; Cogeco Communications inc.; Distributel Communications Limited; Québecor Média Inc., on behalf of Videotron Ltd.; RCCI; Shaw Cablesystems G.P.; and TekSavvy Solutions Inc. Therefore, these parties are the appropriate costs respondents to PIAC's application for costs.
15. 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.<sup>1</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.
16. 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 applicant and costs respondents, the Commission considers it appropriate in this case to limit the responsibility for the payment of costs to RCCI.

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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.

## 2019 Policy Direction

17. 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).<sup>2</sup> The Commission considers that the awarding of costs in this instance is consistent with subparagraph 1(a)(iv) of the 2019 Policy Direction.
18. 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.

## Directions regarding costs

19. The Commission **approves** the application by PIAC for costs with respect to its participation in the proceeding.
20. Pursuant to subsection 56(1) of the Act, the Commission fixes the costs to be paid to PIAC at \$2,345.96.
21. The Commission **directs** that the award of costs to PIAC be paid forthwith by RCCI.

Secretary General

## Related documents

- *Competitive Network Operators of Canada – Application requesting relief from Rogers Communications Canada Inc. concerning Data Over Cable Service Interface Specification (DOCSIS) 3.0 modems*, Telecom Decision CRTC 2021-385, 19 November 2021
- *Guidance for costs award applicants regarding representation of a group or a class of subscribers*, Telecom Information Bulletin CRTC 2016-188, 17 May 2016

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<sup>2</sup> *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

- *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*