



Telecom Order CRTC 2021-396

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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 Saskatchewan Telecommunications' application to review and vary Telecom Decision 2021-45

Background

1. In Telecom Decision 2021-45, the Commission approved BH Telecom Corp.'s (BH Telecom) funding application for up to a maximum of \$9,516,877 to build transport infrastructure in 26 communities in Saskatchewan to help close the gap in connectivity in underserved areas.
2. On 18 March 2021, the Commission received a Part 1 application from Saskatchewan Telecommunications (SaskTel) in which the company requested that the Commission review and vary Telecom Decision 2021-45. On 6 May 2021, the Commission received a letter from SaskTel informing the Commission of the company's request to withdraw its review and vary application.

Application

3. By letter dated 31 May 2021, the Public Interest Advocacy Centre (PIAC) applied for costs with respect to its participation in SaskTel's application to review and vary Telecom Decision 2021-45.
4. The Commission did not receive any interventions in response to the application for costs.
5. 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.
6. In particular, PIAC submitted that it represents the interests of consumers across Canada, with a particular focus on vulnerable and low-income consumers. PIAC also submitted that it represents a number of individuals through its volunteer board of directors and organizational members, including the Alberta Council on Aging, Dying with Dignity Canada, the Federation of Metro Tenants Associations, Ontario

Society of Senior Citizens Organizations, PEI Council of People with Disabilities, Canadian Pensioners Concerned Incorporated, and Rural Dignity of Canada.

7. PIAC requested that the Commission fix its costs at \$904.28, consisting solely of external legal fees for drafting the intervention. PIAC filed a bill of costs with its application.
8. PIAC submitted that SaskTel is the appropriate party to be required to pay any costs awarded by the Commission (the costs respondent) because SaskTel initiated and subsequently withdrew the review and vary application.

Commission's analysis and determinations

9. 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.
10. 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, volunteer board of directors, and organizational members demonstrate that PIAC represents the interests of Canadian consumers, and in particular, vulnerable and low-income consumers.
11. PIAC has also satisfied the remaining criteria through its participation in the proceeding by analyzing and responding to SaskTel's arguments and contributing a counter-view to that of SaskTel. Further, PIAC's participation was responsible because it complied with the Commission's Rules of Procedure and employed minimal resources.
12. Accordingly, the Commission finds that the applicant meets the criteria for an award of costs under section 68 of the Rules of Procedure.

13. 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.
14. 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.
15. 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 and participated actively in the proceeding: Bell Canada, BH Telecom, and SaskTel.
16. The Commission generally considers it 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 has previously considered that when there are multiple costs respondents, \$1,000 is 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. Given that the total costs PIAC is seeking in this application fall beneath this threshold, the Commission considers that it would not be appropriate to name more than one costs respondent.
17. Therefore, the Commission must decide which costs respondent is the most appropriate to pay the costs. The general approach to the allocation of costs would indicate that Bell Canada, as the costs respondent with the highest TORs, should be responsible for these costs. However, PIAC submitted that SaskTel should be the sole costs respondent because SaskTel initiated and subsequently withdrew the review and vary application.
18. In Telecom Order 2019-143, PIAC brought a costs application similar to the one currently being considered. In that application, PIAC sought \$721.86 in legal costs for their participation in a Part 1 proceeding initiated by Novus Entertainment Inc. (Novus) in which Novus subsequently requested the closure of the application. In that application, the Commission decided that Novus was the most appropriate costs respondent in the circumstances because it was the party that brought the application and subsequently sought its suspension and closure. Therefore, the Commission determined Novus to be the sole costs respondent.
19. In applying the same reasoning to this costs application, the Commission considers that because SaskTel brought the review and vary application and subsequently

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

withdrew it, SaskTel would be the most appropriate costs respondent in this circumstance.

20. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated as follows:

Company	Proportion	Amount
SaskTel	100%	\$904.28

2019 Policy Direction

21. 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.
22. 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

23. The Commission **approves** the application by PIAC for costs with respect to its participation in the proceeding.
24. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to PIAC at \$904.28.
25. The Commission directs that the award of costs to PIAC be paid forthwith by SaskTel according to the proportions set out in paragraph 20.

Secretary General

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

Related documents

- *Broadband Fund – Project funding approval for BH Telecom Corp.’s Saskatchewan transport fibre project*, Telecom Decision CRTC 2021-45, 4 February 2021
- *Determination of costs award with respect to the participation of the Public Interest Advocacy Centre in the proceeding initiated by a Part 1 application from Novus Entertainment Inc.*, Telecom Order CRTC 2019-143, 14 May 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