



## Telecom Order CRTC 2022-172

PDF version

Ottawa, 23 June 2022

*File numbers: 1011-NOC2021-0009 and 4754-675*

### **Determination of costs award with respect to the participation of the Public Interest Advocacy Centre in the proceeding that led to Compliance and Enforcement and Telecom Decision 2022-170**

#### **Application**

1. By letter dated 3 June 2021, the Public Interest Advocacy Centre (PIAC) applied for costs with respect to its participation in the proceeding that led to Compliance and Enforcement and Telecom Decision 2022-170 (the proceeding). In the proceeding, the Commission sought comments on its proposal to develop a network-level blocking framework to limit the harm botnets cause to Canadians while safeguarding privacy and ensuring transparency.
2. TELUS Communications Inc. (TCI) filed an intervention, dated 11 June 2021, 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 assisted the Commission in developing a better understanding of the matters that were considered, and it participated in a responsible way.
4. In particular, PIAC submitted that it represents the interests of all Canadian consumers, with particular concern for vulnerable and low-income consumers, including seniors. With respect to the specific methods by which PIAC submitted that it represents this group or class of subscribers, PIAC explained that it has conducted extensive research on the interests of consumers as part of its participation in multiple Commission proceedings concerning public access to the Internet.
5. PIAC submitted that it had assisted the Commission in developing a better understanding of the matters that were considered by (i) arguing for the implementation of a robust test of necessity and proportionality if it could be demonstrated that there is a need to control online fraud delivered by botnets and that blocking or similar techniques could significantly and demonstrably reduce online fraud against the public, and (ii) submitting its position regarding the Commission's jurisdiction to order blocking under the *Telecommunications Act* (the Act).

6. PIAC requested that the Commission fix its costs at \$10,820.94, 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.
7. PIAC submitted that the responsibility for payment of costs should be allocated among costs respondents based on the most recent data provided to the Commission by the telecommunications service providers.

### **Answer**

8. TCI submitted that any costs awarded in this proceeding should be allocated on the basis of telecommunications operating revenues (TORs)<sup>1</sup> since the proceeding focused on the issue of network blocking to limit botnet traffic on public consumer networks. TCI added that this issue affects a variety of network providers, including national providers, regional providers and cable carriers.

### **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. Specifically, PIAC represented the interests of all Canadians consumers, with particular concern for vulnerable and low-income consumers, including seniors. PIAC also ascertained the interests of this

---

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

group through its extensive research into the interests of consumers and customers as part of its participation in multiple Commission proceedings concerning public access to the Internet.

11. 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 submissions (i) arguing for the implementation of a robust test of necessity and proportionality if it could be demonstrated that there is a need to control online fraud delivered by botnets and that blocking or similar techniques could significantly and demonstrably reduce online fraud against the public, and (ii) detailing its position with regard to the Commission's jurisdiction to order blocking under the Act. Further, PIAC participated in the proceeding in a responsible way.
12. The rates claimed with respect to 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.
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 since it concerned the development of a network-level blocking framework to limit botnet traffic, and participated actively in the proceeding: Bell Canada; Bragg Communications Incorporated, carrying on business as Eastlink; Cogeco Communications inc.; Distributel Communications Limited; Quebecor Media Inc., on behalf of Videotron Ltd.; Rogers Communications Canada Inc. (RCCI); Saskatchewan Telecommunications; Shaw Cablesystems G.P.; TekSavvy Solutions Inc.; TCI; and Xplornet Communications 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 TORs as an indicator of the relative size and interest of the parties involved in the proceeding. 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, the Commission finds that the responsibility for payment of costs should be allocated as follows:<sup>2</sup>

Company	Proportion	Amount
Bell Canada	43.7%	\$4,728.33
TCI	28.64%	\$3,099.12
RCCI	27.66%	\$2,993.49

### 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>3</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 \$10,820.94.

---

<sup>2</sup> In this order, the Commission has used the TORs of the costs respondents based on their most recent audited financial statements.

<sup>3</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

21. The Commission **directs** that the award of costs to PIAC be paid forthwith by Bell Canada, TCI and RCCI according to the proportions set out in paragraph 16.

Secretary General

### **Related documents**

- *Development of a network-level blocking framework to limit botnet traffic and strengthen Canadians' online safety*, Compliance and Enforcement and Telecom Decision CRTC 2022-170, 23 June 2022
- *Call for comments – Development of a network-level blocking framework to limit botnet traffic and strengthen Canadians' online safety*, Compliance and Enforcement and Telecom Notice of Consultation CRTC 2021-9, 13 January 2021; as amended by Compliance and Enforcement and Telecom Notice of Consultation CRTC 2021-9-1, 29 June 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
- *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