



Telecom Order CRTC 2022-247

PDF version

Ottawa, 20 September 2022

File numbers: 8665-P8-202005769 and 4754-674

Determination of costs award with respect to the participation of the Public Interest Advocacy Centre in the proceeding that led to Telecom Decision 2022-238

Background

1. On 4 May 2020, the Commission received a Part 1 application from the Public Interest Advocacy Centre (PIAC) requesting that the Commission inquire into the involvement of telecommunications service providers (TSPs) in COVID-19 contact tracing apps.
2. In a Commission [letter](#) dated 17 August 2020, the Commission noted that the issues raised by PIAC were important, relevant and of interest to Canadians. However, the Commission found that the application did not contain sufficient evidence that TSPs were participating or contemplating participating in contact tracing measures at that time, and therefore it would not be in the public interest to engage in a broad-based inquiry of the type requested by PIAC. The Commission noted that it would continue to monitor the situation, and should indications arise that TSPs are participating or contemplating participating in contact tracing measures, the Commission may reconsider whether to inquire into these activities in order to determine what, if any, additional measures should be taken.
3. On 9 September 2020, the Commission received a new Part 1 application from PIAC regarding privacy requirements for TSPs in the context of digital contact tracing technology apps. In the application, PIAC requested that the Commission set out rules in advance for TSPs regarding possible disclosure of subscriber information or other subscriber data related to either IP addresses or mobile telephone numbers.
4. In a Commission [letter](#) dated 28 October 2020, the Commission acknowledged that PIAC's application raises certain policy concerns that merit further consideration, but that certain aspects of the application are outside of the scope of the Commission. The Commission stated that it would not consider issues or interventions related to the merits of digital contact tracing technology apps, nor the handling of confidential customer information (CCI) by parties other than TSPs.

Application

5. By letter dated 21 January 2021, PIAC applied for costs with respect to its Part 1 application, which initiated the proceeding that led to Telecom Decision 2022-238

(the proceeding). In the proceeding, the Commission considered (i) issues that pertain to the role of TSPs in the handling of CCI; (ii) issues relating to what information should qualify as CCI; and (iii) any resulting measures that should apply to the TSPs' collection, use and disclosure of CCI.

6. Bell Canada and Rogers Communications Canada Inc. (RCCI) filed replies, dated 28 January 2021, in response to PIAC's application.
7. 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.
8. With respect to the group or class of subscribers that PIAC submitted it represents, PIAC explained that it advocates on behalf of consumer interests by representing a number of individual and organizational members in various regions of the country and that its activities place a particular emphasis on low-income consumers. PIAC also noted that it has a long history of representing consumers in matters involving privacy issues. Specifically, PIAC submitted that it was able to better represent consumers in the context of the proceeding because it has conducted extensive research on digital contact tracing technology apps, and it has written a position paper on the matter.
9. PIAC requested that the Commission fix its costs at \$9,344.21 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.
10. In its application, PIAC highlighted that the hours being claimed were specifically for new work produced for its Part 1 application filed on 20 September 2020, since PIAC had previously filed a similar Part 1 application on 4 May 2020.
11. PIAC claimed 31 hours at a rate of \$290 per hour for senior external counsel. PIAC noted that the amount claimed in its application for costs is modest and the actual amount of time it took to complete its work far exceeded the amount claimed. In its costs breakdown for this work, PIAC claimed 2 hours in preparatory work to review and file interventions, 17.9 hours in preparatory work to draft the application, and 11.1 hours in preparatory work to draft final comments.
12. PIAC made no submission as to the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents). However, PIAC suggested that

the responsibility for payment of costs should be divided among the costs respondents on the basis of their telecommunications operating revenues (TORs).¹

Answer

13. Bell Canada and RCCI submitted that PIAC did not assist the Commission in developing a better understanding of the matters being considered and that PIAC did not participate in the proceeding in a responsible way.
14. Bell Canada and RCCI argued that PIAC's application was too broad and as a result the Commission had to drastically reduce the scope of PIAC's application to address items that fall within Commission jurisdiction. Bell Canada and RCCI argued that PIAC's claim for 17.9 hours of work for preparation of its application cannot be seen as assisting the Commission in developing a better understanding of the issues at hand given the subsequent Commission letter that outlined the scope of the proceeding. Similarly, they argued that the inclusion of such out-of-scope information is not responsible participation in the proceeding. Bell Canada and RCCI argued that while the *Telecommunications Act* (the Act) provides the Commission with discretion with respect to awarding costs, it does not grant the authority to award payment for issues that fall outside Commission jurisdiction.
15. Further, both Bell Canada and RCCI argued that PIAC presented false, misleading, and inflammatory information about the role of TSPs in digital contact tracing technology apps, which is not responsible participation.
16. Lastly, Bell Canada argued that PIAC was raising the same matter with the Commission that it raised in the Part 1 application dated 4 May 2020 and that doing so was not responsible.

Commission's analysis

17. The criteria for an award of costs are set out in section 68 of the Rules of Procedure, which reads as follows:

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

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.
18. 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 by conducting research on digital contact tracing technology apps in order to advocate for consumer interests.
19. PIAC has also satisfied the remaining criteria through its participation in the proceeding. The Commission finds that PIAC did contribute to the Commission's understanding of the matters considered in the proceeding. PIAC's application provided the Commission with the opportunity to (i) broadly address issues with respect to CCI requirements for TSPs; (ii) close any gaps in the existing CCI rules; and (iii) provide any necessary clarifications to the CCI rules. In conducting the analysis of current CCI rules, the Commission found that there were some gaps in the treatment of CCI, particularly with respect to which service providers the rules apply to, and the Commission addressed these issues in Telecom Decision 2022-238. It is therefore clear that PIAC assisted the Commission in better understanding the matters being considered, since PIAC's Part 1 application initiated the proceeding that led to Telecom Decision 2022-238.
20. The Commission also rejects Bell Canada and RCCI's argument that PIAC's participation was not responsible, as well as their assertion that PIAC's application largely fell outside the Commission's jurisdiction. In the Commission letter dated 28 October 2020, the Commission stated that PIAC's application specifically raised policy concerns pertaining to the role that TSPs have regarding customers' privacy, and that these concerns merited further consideration.
21. Furthermore, the Commission finds that PIAC used its legal resources judiciously. After comparing PIAC's bill of costs to its submission in the proceeding, the Commission considers that PIAC, if anything, claimed costs that underrepresent the actual amount of work performed. PIAC claimed 17.9 hours for a 46-page application with an attached position paper and did not claim any hours for legal research or drafting replies, both of which PIAC undertook during the proceeding.

22. The rates claimed with respect to 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. The Commission finds that the total amount claimed by PIAC was necessarily and reasonably incurred and should be allowed.
23. Accordingly, the Commission finds that the applicant meets the criteria for an award of costs under section 68 of the Rules of Procedure.
24. 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.
25. 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; Cogeco Communications inc.; Distributel Communications Limited; Iristel Inc.; RCCI; Saskatchewan Telecommunications; Shaw Cablesystems G.P.; TBayTel; TekSavvy Solutions Inc.; TELUS Communications Inc. (TCI); and Xplornet Communications Inc.
26. 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.
27. 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.
28. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated as follows:²

Company	Proportion	Amount
TCI	36.43%	\$3,403.97
RCCI	35.19%	\$3,287.95
Bell Canada	28.38%	\$2,652.29

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

2019 Policy Direction

29. 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).³ The Commission considers that the awarding of costs in this instance is consistent with subparagraph 1(a)(iv) of the 2019 Policy Direction.
30. 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 TSPs. 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

31. The Commission **approves** the application by PIAC for costs with respect to its participation in the proceeding.
32. Pursuant to subsection 56(1) of the Act, the Commission fixes the costs to be paid to PIAC at \$9,344.21.
33. The Commission **directs** that the award of costs to PIAC be paid forthwith by TCI, RCCI and Bell Canada according to the proportions set out in paragraph 28.

Secretary General

Related documents

- *Public Interest Advocacy Centre – Request to define the privacy requirements for telecommunications service providers in the context of any digital contact tracing technologies app*, Telecom Decision CRTC 2022-238, 6 September 2022
- *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

³ *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

- *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