



Telecom Order CRTC 2022-39

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File numbers: 1011-NOC2020-0081 and 4754-644

Determination of costs award with respect to the participation of the Public Interest Advocacy Centre and the National Pensioners Federation in the proceeding that led to Telecom and Broadcasting Decision 2022-28

Application

1. By letter dated 25 August 2020, the Public Interest Advocacy Centre (PIAC) applied for costs on its own behalf and on behalf of the National Pensioners Federation (NPF) [collectively, PIAC-NPF] with respect to their participation in the proceeding that led to Broadcasting and Telecom Decision 2022-28 (the proceeding). In the proceeding, the Commission considered (i) whether there is a need for Canadians or certain groups of Canadians to continue to receive paper bills; (ii) whether Commission intervention is appropriate and warranted with respect to the paper billing practices of communications service providers;¹ (iii) what measures, if any, the Commission should impose with respect to paper billing practices if Commission intervention is appropriate and warranted; and (iv) how and to whom any new obligations should apply.
2. TELUS Communications Inc. (TCI) filed an answer, dated 4 September 2020, in response to PIAC-NPF's application. Subsequently, PIAC-NPF filed a reply on 10 September 2020. A group of subscribers filed a joint letter with the Commission in support of PIAC-NPF's application for costs, dated 13 September 2020.
3. The record of the proceeding initially closed on 24 July 2020; however, it was subsequently reopened for additional representations, including a request for information (RFI) and associated responses. By letter dated 11 March 2021, PIAC-NPF applied for supplementary costs with respect to their participation in this additional phase.
4. PIAC-NPF submitted that they 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 they represented a group or class of subscribers that had an interest in the outcome of the proceeding,

¹ Communications service providers include telecommunications service providers and broadcasting distribution undertakings.

they had assisted the Commission in developing a better understanding of the matters that were considered, and they had participated in a responsible way.

5. In particular, PIAC-NPF submitted that they represented the interests of Canadian telecommunications consumers to ensure their needs and complaints were addressed in the proceeding. PIAC-NPF also raised that they regularly advocate for Canadian consumers in the areas of equitable access, choice, and affordability of telecommunications services.
6. PIAC-NPF highlighted that they participated meaningfully and responsibly by maximizing the use of their resources to file detailed and structured submissions in accordance with the Rules of Procedure.
7. Further to this request, PIAC-NPF initially asked that the Commission fix their costs at \$10,386.88 (less the rebate to which John Lawford is entitled in connection with the HST), consisting entirely of legal fees. Specifically, PIAC-NPF claimed 17.1 hours for senior external counsel (John Lawford) at a rate of \$290 per hour, 5 hours for in-house counsel at a daily rate of \$600, and 9.5 hours for an in-house articling student at a daily rate of \$235.
8. Furthermore, PIAC-NPF requested that the Commission fix their additional costs at \$2,606.77 (less the rebate to which John Lawford is entitled in connection with the HST), consisting entirely of legal fees. Specifically, PIAC-NPF claimed 4.75 hours for senior external counsel (John Lawford) at a rate of \$290 per hour, and 5 days for an in-house articling student at a rate of \$235 per day.
9. Therefore, the combined costs associated with both applications is \$12,993.65. PIAC-NPF filed a bill of costs with each of their costs applications, and submitted that the majority of their arguments and submissions addressed telecommunication matters, arguing that they should thus be entitled to 100% of their claimed costs.
10. PIAC-NPF further submitted that all telecommunications service providers that participated in the proceeding would be appropriate costs respondents.

Answer

11. In their answer, dated 4 September 2020, TCI opposed PIAC-NPF's application for costs on the basis that (i) they did not represent a group of interested subscribers that have an interest in the outcome of the proceeding, and (ii) they did not assist the Commission in developing a better understanding of the matters considered in the proceeding.
12. Particularly, TCI submitted that PIAC-NPF acted as an advocate for the pulp and paper industry. TCI pointed out that PIAC is a member of Keep Me Posted North America (KMPNA), a campaign that advocates for consumers' right to choose between paper, digital, and other available delivery methods for receiving information from their service providers. TCI emphasized that KMPNA is run by Two Sides

North America, an industry lobby group whose members belong to or are affiliated with the pulp and paper industry.

13. TCI concluded that rather than represent subscriber interests, PIAC-NPF put forward private and/or commercial interests by citing research conducted by KMPNA and other commercial groups. TCI also submitted that PIAC-NPF did not provide adequate information in their application regarding the consumer interests that they represented. TCI pointed out that PIAC-NPF did not engage in consumer consultations and that they did not conduct or commission research.
14. TCI further argued that PIAC-NPF's costs were excessive and should be reduced on the basis that they were higher than the costs award they sought in the earlier Koodo Billing Proceeding (Telecom Decision 2020-80). TCI added that the Koodo Billing Proceeding dealt with similar issues as this proceeding, and so additional time spent in preparing for the proceeding should have been minimal.
15. In addition, TCI noted that PIAC-NPF claimed time spent on a file entitled "Paper Bills Part 1 / Injunction", even though this proceeding was not a Part 1 application, and PIAC-NPF did not seek an injunction.
16. Finally, TCI raised that PIAC-NPF unreasonably claimed six hours spent reviewing interventions on 19 June 2020 when there were few, if any, interventions to review. TCI concludes that PIAC-NPF's cost application should be denied, or greatly reduced for the above reasons.

Reply

17. On 10 September 2020, PIAC-NPF replied to TCI's intervention. PIAC-NPF confirmed their independence from commercial interests by stating that they did not take any funding from KMPNA or any of its members, and that no one from KMPNA sits on the board for, or is a member of, either PIAC or NPF.
18. PIAC-NPF maintained that they do represent Canadian consumers, particularly vulnerable consumers and several public interest groups, and that they informed their position in the proceeding by engaging in ongoing research related to choice in telecommunications and broadcasting services. PIAC-NPF maintained that their submissions were consumer-informed and based on their expertise. Therefore, PIAC-NPF submitted that any overlap between their submissions and those of KMPNA was simply because they were both based on the input of consumers.
19. In terms of the total costs claimed, PIAC-NPF withdrew their claim for the time spent on the file entitled "Paper Bills Part 1 / Injunction", explaining that the work was incurred in relation to an abandoned internal proposal. However, PIAC-NPF disagreed with TCI that the proceeding dealt with the same issues as the Koodo Billing Proceeding. PIAC-NPF maintained that their costs were necessarily and justifiably incurred to respond to the wide scope of issues in the proceeding. As a result, the revised total amount claimed was \$10,761.15.

20. A group of subscribers filed a joint letter with the Commission in support of PIAC-NPF's application for costs, dated 13 September 2020.²

Commission's analysis and determinations

21. 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.

22. 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. Notably, the Commission explained that blanket statements indicating that costs applicants represent a group or a class of subscribers, without any further details, will generally not be sufficient for the Commission to conclude that a given costs applicant satisfies the first criterion.

23. In the present case, PIAC-NPF has demonstrated that they meet this requirement by specifically identifying that they represented the views of Canadian telecommunications consumers, including senior Canadians. PIAC-NPF added that they represented individuals and organizational members, including the Alberta Council on Aging, Dying with Dignity Canada, the Federation of Metro Tenants' Associations, the Ontario Society of Senior Citizens' Organizations, the PEI Council of People with Disabilities, Pensioners Concerned, and Rural Dignity of Canada. PIAC-NPF submitted that they hear directly from members and engage in ongoing research to ascertain consumer views. The Commission is satisfied that PIAC-NPF are not funded or controlled by commercial organizations, and did not receive financial assistance in connection with their participation in the proceeding.

24. PIAC-NPF have also satisfied the remaining criteria through their participation in the proceeding. The Commission notes that the issues considered in this proceeding were

² The Commission notes that the joint letter was filed outside of the answer period. Nevertheless, PIAC-NPF's reply was sufficient to complete the analysis of their eligibility for an award of costs.

much broader than those considered in the Koodo Billing Proceeding. In this context, PIAC-NPF put forward submissions informed by consumer perspectives and presented analysis using their knowledge of telecommunications law and policy. These submissions assisted the Commission in developing a better understanding of the matters that were considered, especially as they related to proposed regulatory measures to protect consumers.

25. Accordingly, the Commission finds that PIAC-NPF meet the criteria for an award of costs under section 68 of the Rules of Procedure.
26. The Commission finds that 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.
27. The Commission accepts PIAC-NPF's withdrawal of their costs associated with the file entitled "Paper Bills Part 1 / Injunction" (\$2,232.50). Therefore, the Commission finds the remaining initial costs of \$8,154.38 were necessarily and reasonably incurred.
28. In terms of PIAC-NPF's supplemental costs application, the rates claimed with respect to their legal fees are in accordance with the rates established in the Guidelines, and the Commission finds that the total amount of \$2,606.77 was necessarily and reasonably incurred. Therefore, the total amount of \$10,761.15 should be allowed.
29. The Commission accepts PIAC-NPF's submissions as they relate to the allocation of costs between telecommunications and broadcasting matters. Accordingly, the Commission determines that PIAC-NPF are entitled to all of the costs incurred to participate in the proceeding.
30. 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.
31. 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, and are therefore the appropriate costs respondents to PIAC-NPF's application for costs: Bell Canada; Bragg Communications Incorporated, carrying on business as Eastlink; Distributel Communications Limited; Quebecor Media Inc., on behalf of Videotron Ltd.; Rogers Communications Canada Inc. (RCCI); Saskatchewan

Telecommunications; Shaw Communications Inc.³; TekSavvy Solutions Inc.; TCI; and Xplornet Communications Inc.

32. It is also the Commission's general practice to allocate the responsibility for the payment of costs among costs respondents based on their telecommunications operating revenues (TORs).⁴ In general, the Commission considers that TORs are indicators of the relative size and interest of the parties involved in proceedings.
33. 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.
34. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated as follows.⁵

Company	Proportion	Amount
RCCI	36.34%	\$3,910.34
TCI	36.12%	\$3,887.05
Bell Canada	27.54%	\$2,963.76

2019 Policy Direction

35. 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).⁶ The Commission considers that the awarding of costs in this instance is consistent with subparagraph 1(a)(iv) of the 2019 Policy Direction.
36. 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

³ Shaw Communications Inc. intervened on behalf of: Freedom Mobile Inc.; Shaw Cablesystems G.P.; Shaw Cablesystems Limited; Shaw Cablesystems (VCI) Limited; and Star Choice Television Network Incorporated.

⁴ TORs consist of Canadian telecommunications revenues from local and access, long distance, data, private line, Internet, and wireless services.

⁵ In this order, the Commission has used the TORs of the costs respondents based on the most recent audited financial statements available at the close of record.

⁶ *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

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-NPF promotes consumer interests.

Directions regarding costs

37. The Commission **approves** the application by PIAC-NPF for costs with respect to their participation in both phases of the proceeding.
38. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to PIAC-NPF at \$10,761.15.
39. The Commission **directs** that the award of costs to PIAC-NPF be paid forthwith by RCCI, TCI, and Bell Canada according to the proportions set out in paragraph 34.

Secretary General

Related documents

- *When and how communications service providers must provide paper bills*, Telecom and Broadcasting Decision CRTC 2022-28, 10 February 2022
- *Public Interest Advocacy Centre and National Pensioners Federation – Application regarding paper billing by Koodo Mobile*, Telecom Decision CRTC 2020-80, 3 March 2020
- *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