



## Telecom Order CRTC 2023-160

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Ottawa, 26 May 2023

*File numbers: 1011-NOC2022-0100 and 4754-711*

### **Determination of costs award with respect to the participation of the Public Interest Advocacy Centre in the proceeding that led to Telecom Decision 2022-294**

#### **Application**

1. By letter dated 17 May 2022, the Public Interest Advocacy Centre (PIAC) applied for costs with respect to its participation in the proceeding that led to Telecom Decision 2022-294 (the proceeding). In the proceeding, the Commission sought comments on its preliminary view that the regular (i.e., non-sale) price for a wireless mobile device as published by the original equipment manufacturer is to be considered the de facto manufacturer's suggested retail price (MSRP) for the purposes of Section G of the Wireless Code.
2. The Commission did not receive any interventions in response to this 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 consumers across Canada, with a particular concern for consumers who purchase or lease wireless mobile devices from Canadian Internet service providers as part of their wireless service contracts.
5. PIAC submitted that it had assisted the Commission in developing a better understanding of the matters that were considered by arguing that a deemed (i.e., de jure) definition of MSRP should be written into the Wireless Code, by outlining the various ways in which consumers are impacted by how Canadian wireless service providers (WSPs) set the retail costs of devices, and by describing the phone leasing framework of the major Canadian WSPs.
6. PIAC requested that the Commission fix its costs at \$5,374.14, consisting entirely of legal fees. PIAC's claim included the Ontario Harmonized Sales Tax (HST) on fees

less the rebate to which its external counsel 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.

### **Commission's analysis**

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 represents the interests of consumers who purchase or lease wireless mobile devices from Canadian Internet service providers as part of their wireless service contracts.
10. PIAC has also satisfied the remaining criteria through its participation in the proceeding. In particular, PIAC's submissions on the appropriate wording of the Commission's preliminary view, the collection of MSRP data, and the importance of clarity for consumers with regard to the Wireless Code assisted the Commission in developing a better understanding of the matters that were considered. PIAC also participated in the proceeding in a responsible way by complying with the Rules of Procedure and by respecting the deadlines and processes set out in the proceeding.
11. The rates claimed in respect of 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.

12. 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.
13. 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 Mobility; Bragg Communications Incorporated, carrying on business as Eastlink; Quebecor Media Inc., on behalf of Videotron Ltd.; Rogers Communications Canada Inc. (RCCI); and TELUS Communications Inc. (TCI).
14. It is also the Commission's general practice to allocate the responsibility for payment of costs among costs respondents based on their telecommunications operating revenues (TORs).<sup>1</sup> In general, the Commission considers that TORs are indicators of the relative size and interest of the parties involved in the proceeding.
15. However, the Commission considers that allocating responsibility for the payment of costs based on TORs is not appropriate in this case given that the proceeding related to the Wireless Code and, more specifically, to clarifying the definition of the term "manufacturer's suggested retail price". The Guidelines set out the key principles that the Commission seeks to implement through its costs regime. These include ensuring that the process has the flexibility to take account of particular circumstances where they are relevant and that the approach taken is fair, efficient, and effective. Accordingly, given that the focus of the proceeding was restricted to the wireless industry, WSPs, and consumers of wireless services, the Commission considers it appropriate to depart from its practice of allocating the responsibility for payment of costs among costs respondents based on their TORs and that it would be appropriate to allocate costs among the costs respondents based on their wireless operating revenues.
16. 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.

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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.

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

Company	Proportion	Amount
RCCI	33.93%	\$1,823.45
TCI	33.80%	\$1,816.46
Bell Mobility	32.27%	\$1,734.23

### Directions regarding costs

18. The Commission **approves** the application by PIAC for costs with respect to its participation in the proceeding.
19. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to PIAC at \$5,374.14.
20. The Commission **directs** that the award of costs to PIAC be paid forthwith by RCCI, TCI, and Bell Mobility according to the proportions set out in paragraph 17 above.

Secretary General

### Related documents

- *The Wireless Code – Clarification of the term “manufacturer’s suggested retail price”*, Telecom Decision CRTC 2022-294, 28 October 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
- *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