



## Telecom Order CRTC 2023-161

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Ottawa, 26 May 2023

*File numbers: 8662-C17-202203230 and 4754-712*

### **Determination of costs award with respect to the participation of the Public Interest Advocacy Centre in the proceeding initiated by City Wide Communications Inc.'s application to review and vary Telecom Order 2022-79**

#### **Application**

1. By letter dated 7 September 2022, the Public Interest Advocacy Centre (PIAC) applied for costs with respect to its participation in the proceeding initiated by City Wide Communications Inc.'s (City Wide) application to review and vary Telecom Order 2022-79 (the proceeding). In Telecom Order 2022-79, the Commission denied City Wide's application, in which the company requested that the Commission order Bragg Communications Incorporated, carrying on business as Eastlink (Eastlink), to move its Nova Scotia third-party Internet access point of interconnection from Pennant Point to a location in the Halifax core.
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 Canadian consumers, particularly the interests of consumers residing in the relevant regions served by City Wide. PIAC noted that, over the years, it has participated in various proceedings relating to the wholesale access framework and related matters.
5. PIAC submitted that it had assisted the Commission in developing a better understanding of the matters considered by submitting comments in support of City Wide's application to review and vary Telecom Order 2022-79. In particular, PIAC submitted that it provided comments in support of City Wide's submissions that there was a breach of procedural fairness, that the Commission had erred in law, and that the Commission should urgently initiate a proceeding to consider the broader regulation of transport services.

6. PIAC requested that the Commission fix its costs at \$1,351.43, 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 identified that it represents the interests of Canadian consumers, particularly the interests of consumers residing in the relevant regions served by City Wide. PIAC submitted that its participation in recent proceedings concerning the wholesale access framework and related matters has helped it to represent the interests of this group in the proceeding.
10. PIAC has also satisfied the remaining criteria through its participation in the proceeding. In particular, PIAC's submission provided its views on the various grounds for review and vary raised by City Wide, which 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*, 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: City Wide, the Competitive Network Operators of Canada, and Eastlink.
14. 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 telecommunications operating revenues (TORs) as an indicator of the relative size and interest of the parties involved in the proceeding.<sup>1</sup> 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.
15. Accordingly, the Commission finds that Eastlink is the appropriate costs respondent to PIAC's application for costs.

### **Directions regarding costs**

16. The Commission **approves** the application by PIAC for costs with respect to its participation in the proceeding.
17. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to PIAC at \$1,351.43.
18. The Commission **directs** that the award of costs to PIAC be paid forthwith by Eastlink.

Secretary General

### **Related documents**

- *City Wide Communications Inc. – Application to order Bragg Communications Incorporated, carrying on business as Eastlink, to relocate its third-party Internet access point of interconnection, Telecom Order CRTC 2022-79, 25 March 2022*

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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.

- *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