



## Telecom Order CRTC 2023-318

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Ottawa, 15 September 2023

*File numbers: 8662-T117-202300268 and 4754-710*

### **Determination of costs award with respect to the participation of the Public Interest Advocacy Centre in the proceeding that led to Telecom Decision 2023-317**

#### **Application**

1. By letter dated 9 March 2023, the Public Interest Advocacy Centre (PIAC) applied for costs with respect to its participation in the proceeding that led to Telecom Decision 2023-317 (the proceeding). In the proceeding, the Commission addressed an application by TekSavvy Solutions Inc. (TekSavvy) to address undue preference arising from off-tariff agreements, pursuant to subsection 27(2) of the *Telecommunications Act*.
2. The Commission did not receive any interventions in response to the 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 all customers of telecommunications services and in this case, the interests of consumers who are affected by anti-competitive off-tariff agreements. PIAC also submitted that it represents several individual and organizational members.<sup>1</sup> PIAC stated that it is held accountable to the groups it represents through a volunteer board of directors drawn from across Canada. With respect to the specific method by which PIAC has submitted that it represents this group or class, PIAC explained that it conducted extensive research related to consumer interest by consulting recent reports on affordability and ongoing research related to choice in telecommunications and broadcasting providers.

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<sup>1</sup> PIAC's current group members are Alberta Council on Aging, Canadian Pensioners Concerned, Dying with Dignity Canada, the Federation of Metro Tenants Association, Ontario Society of Senior Citizens Organizations, the PEI Council of the Disabled, and Rural Dignity of Canada.

5. PIAC requested that the Commission fix its costs at \$6,708.02,<sup>2</sup> 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.
6. PIAC claimed 6.5 hours for senior external counsel at a rate of \$290.00 per hour for work preparing their intervention (\$1,959.27 with the HST and associated rebate), 6.25 days for in-house counsel at a rate of \$600.00 per day (\$3,750.00), and 4.25 days for an articling student at a rate of \$235.00 per day (\$998.75).<sup>3</sup>
7. PIAC submitted that all potential costs respondents based on the most recent data provided to the Commission are the appropriate parties to be required to pay any costs awarded by the Commission.

### **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. PIAC specifically identified that it represents all consumers across Canada as a class who have an interest in the availability and affordability of retail service offerings. PIAC explained that it conducted extensive research related to consumer interests by consulting recent

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<sup>2</sup> The original calculation submitted by PIAC was \$6,649.27; however, 0.25 days of an articling student's time was erroneously not taken into account. The amount has been adjusted accordingly.

<sup>3</sup> This amount has also been adjusted to take into account an additional 0.25 days of an articling student's time that was not included in the original calculation.

reports on affordability and ongoing research related to choice in telecommunications and broadcasting providers.

10. PIAC has also satisfied the remaining criteria through its participation in the proceeding. In particular, PIAC's submissions, especially regarding its position on the current off-tariff agreements regime, assisted the Commission in developing a better understanding of the matters that were considered. Furthermore, PIAC's participation was responsible because it complied with the Rules of Procedure and respected the deadlines and processes set out in the application.
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 Bell Canada; Cogeco Communications inc.; Competitive Network Operators of Canada; Quebecor Media Inc., on behalf of Videotron Ltd.; Rogers Communications Canada Inc. (RCCI); Shaw Communications Inc. (Shaw);<sup>4</sup> TekSavvy; and TELUS Communications Inc. (TCI) had a significant interest in the outcome of the proceeding and participated actively throughout the proceeding.
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. According to paragraph 48 of the Guidelines, there is a maximum of six respondents for costs awards under \$10,000. In addition, 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.

Accordingly, the Commission finds that the responsibility for payment of costs should be allocated as follows:<sup>5</sup>

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<sup>4</sup> The Commission is aware of the recent transaction between RCCI and Shaw. Due to the complexity involved in determining the new telecommunications operating revenue (TOR) amounts contrasted with the relatively small costs amount in question, the Commission maintained separate TORs for Shaw for the calculation in this application. (TORs consist of Canadian telecommunications revenues from local and access, long distance, data, private line, Internet, and wireless services.)

<sup>5</sup> In this order, the Commission has used the TORs of the costs respondents based on their most recent audited financial statements.

Company	Proportion	Amount
RCCI	38.18%	\$2,561.12
TCI	35.97%	\$2,412.88
Bell Canada	25.85%	\$1,734.02

### Directions regarding costs

15. The Commission **approves** the application by PIAC for costs with respect to its participation in the proceeding.
16. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to PIAC at \$6,708.02.
17. The Commission **directs** that the award of costs to PIAC be paid forthwith by RCCI, TCI, and Bell Canada according to the proportions set out in paragraph 14 of this order.

Secretary General

### Related documents

- *TekSavvy Solutions Inc. – Application to address alleged undue preference arising from off-tariff agreements*, Telecom Decision CRTC 2023-317, 15 September 2023
- *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