



Telecom Order CRTC 2023-374

PDF version

Ottawa, 17 November 2023

File numbers: 1011-NOC2022-0268 and 4754-709

Determination of costs award with respect to the participation of the Public Interest Advocacy Centre in the proceeding initiated by Telecom Notice of Consultation 2022-268

Application

1. By letter dated 30 November 2022, the Public Interest Advocacy Centre (PIAC) applied for costs with respect to its participation in the proceeding initiated by Telecom Notice of Consultation 2022-268 (the proceeding). In the proceeding, the Commission called for comments on whether it is appropriate to impose enforcement actions to address Rogers Communications Canada Inc. (RCCI) being denied access to 70 Yorkville Avenue, Toronto, Ontario, a multi-dwelling unit (MDU) owned by Lixo Investments Limited (Lixo).
2. RCCI filed an answer, dated 7 December 2022, in response to PIAC's application.
3. PIAC submitted that it 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 Canadians with a focus on low-income consumers. PIAC also submitted that it represents the interests of consumers residing in MDUs. PIAC explained that it has previously participated in various matters related to end-users' right to access the service provider of their choice in MDUs.
5. With respect to the group or class of subscribers that PIAC has submitted it represents, PIAC explained that the group consists of consumers residing in MDUs. In particular, the group comprises RCCI customers residing in the MDU at 70 Yorkville Avenue and other RCCI customers residing in surrounding MDUs and single-family properties, who are affected by this denial of access and would be interested in the outcome of the substantive proceeding. With respect to the specific methods by which PIAC has submitted that it represents this group, PIAC explained that it commented on Lixo's intervention in the proceeding and supported RCCI's immediate access to 70 Yorkville Avenue so that all affected consumers are able to receive the necessary upgrades to their Internet service.

6. PIAC requested that the Commission fix its costs at \$1,050, consisting of 1.75 days for in-house legal counsel at a rate of \$600 per day to review the file, conduct research, and prepare the intervention. PIAC filed a bill of costs with its application.
7. PIAC submitted that RCCI is the appropriate party to be required to pay any costs awarded by the Commission (the costs respondent) because RCCI submitted the initial application to seek access to the MDU at 70 Yorkville Avenue.

Answer

8. RCCI took no position on the amount of costs claimed by PIAC; however, RCCI submitted that it should not be the costs respondent. It contended that Lixò should be responsible for the entirety of PIAC's claimed costs because Lixò's actions resulted in the Commission's decision to issue Telecom Notice of Consultation 2022-268. In addition, RCCI submitted that no other TSP (telecommunications service provider) should be responsible to pay for costs.

Commission's analysis

9. 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.
10. 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 an interested subscriber. In the present case, PIAC has demonstrated that it meets this requirement. PIAC specifically identified that it represents the interests of all Canadians, with a focus on low-income consumers, and the interests of consumers residing in MDUs, particularly those who reside at 70 Yorkville Avenue.
11. PIAC has also satisfied the remaining criteria through its participation in the proceeding. In particular, PIAC's submissions, especially regarding the impact on residents of the MDU to access the service provider of their choice, and the potential enforcement measures that the Commission could use to ensure that RCCI has

access to the MDU owned by Lixo, assisted the Commission in developing a better understanding of the matters that were considered.

12. 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.
13. 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.
14. 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, the TSPs that form part of the Competitive Network Operators of Canada, Distributel Communications Ltd., RCCI, and TELUS Communications Inc. had a significant interest in the outcome of the proceeding and participated actively throughout the proceeding.
15. Although RCCI proposed that Lixo be the sole costs respondent, Lixo is not a TSP and therefore does not have telecommunications operating revenues (TORs) for the Commission to consider for an allocation of costs.¹ RCCI did not provide a convincing reason to make an exception to the general rules regarding the allocation of costs, which are designed to ensure efficiency and fairness.
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. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated to RCCI.²

Directions regarding costs

17. The Commission **approves** the application by PIAC for costs with respect to its participation in the proceeding.
18. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to PIAC at \$1,050.
19. The Commission **directs** that the award of costs to PIAC be paid forthwith by RCCI according to the proportions set out in paragraph 16 above.

Secretary General

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

² In this order, the Commission has used the TORs of the costs respondent based on its 2021 audited financial statements.

Related documents

- *Call for comments - Imposition of orders on Lixio Investments Limited for failure to comply with a Commission decision and requests regarding access to the multi-dwelling unit at 70 Yorkville Avenue, Toronto, Ontario*, Telecom Notice of Consultation CRTC 2022-268, 3 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