



## Telecom Order CRTC 2023-383

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Ottawa, 20 November 2023

*File numbers: 1011-NOC2020-0269 and 4754-680*

### **Determination of costs award with respect to the participation of the Public Interest Advocacy Centre in the proceeding initiated by Telecom Notice of Consultation 2020-269**

#### **Application**

1. By letter dated 2 March 2022, the Public Interest Advocacy Centre (PIAC) applied for costs with respect to its participation in the proceeding initiated by Telecom Notice of Consultation 2020-269 (the proceeding). The Commission concluded in Telecom Decision 2020-268 that Iristel Inc. (Iristel) and TELUS Communications Inc. (TCI) had violated subsection 27(2) of the *Telecommunications Act* (the Act) in relation to the routing and terminating of phone calls to the 867 area code in Northern Canada.<sup>1</sup> As a result, the Commission sought public comment on the appropriateness of imposing an administrative monetary penalty (AMP) on both parties in the proceeding.
2. Both Iristel and TCI filed replies in response to PIAC's application.
3. In its application, PIAC noted that its filing was two days late due to its lead counsel contracting COVID-19. PIAC argued no party was prejudiced excessively by the delay, and that in the event any party was prejudiced, it was outweighed by the public interest inherent in costs being awarded to public interest intervenors such as PIAC, especially given the unavoidable nature of the circumstances.
4. 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.

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<sup>1</sup> See Telecom Decision 2020-268.

5. In particular, PIAC submitted that it represents the interests of all Canadian consumers, more specifically, low income and vulnerable consumers. PIAC also represents a number of other member individuals and organizations.<sup>2</sup>
6. PIAC requested that the Commission fix its costs at \$1,202.14, consisting entirely of legal fees. PIAC's claim included 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.
7. PIAC claimed 1.5 hours for senior counsel at a rate of \$290 per hour for legal fees for work drafting and editing the intervention. PIAC additionally claimed 1.25 days for in-house counsel at a rate of \$600 per day for work reviewing the file and prior relevant Commission decisions, conducting legal research, and drafting PIAC's intervention.
8. PIAC submitted that both Iristel and TCI are the appropriate parties to be required to pay any costs awarded by the Commission because, in its view, Iristel and TCI had a significant interest in the outcome of the proceeding compared to other participants. PIAC argued this significant interest existed for both parties because, if not for their actions, the proceeding would have never occurred.
9. PIAC suggested that the responsibility for payment of costs should be divided equally among the costs respondents, because, in PIAC's view, the costs respondents were equally responsible for the proceeding.

## **Answer**

10. TCI submitted it supported PIAC's requests to distribute the costs evenly between TCI and Iristel, as opposed to the Commission's usual practice of distributing costs based on Telecommunications Operating Revenues (TORs).<sup>3</sup> TCI argued that a typical distribution based on TORs would be unjust, because even if its interest in the proceeding were equal to Iristel's, the division of costs through TORs would result in it paying the full amount claimed.
11. Iristel contested PIAC's rationale for the proposed division of costs, arguing that the revised costs award process established in Telecom Regulatory Policy 2010-963 does not set out any punitive criteria for the Commission to consider in determining appropriate costs respondents.
12. However, given the nominal amount of the costs claimed and the reasonableness of the costs incurred, Iristel stated that in the interests of administrative simplicity, it would accept the proposed division of costs.

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<sup>2</sup> PIAC's current group members are the Alberta Council on Aging, Dying with Dignity Canada, Federation of Metro Tenants' Associations, Ontario Society of Senior Citizens Organizations, and ResourceAbilities.

<sup>3</sup> TORs consist of Canadian telecommunications revenues from local and access, long distance, data, private line, Internet, and wireless services.

## Commission's analysis

13. 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.
14. 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's submissions, as well as its representation of its membership, spoke clearly to the potential for the Commission's proposed number of AMPs to have a significant impact on the Canadian telecommunications sector, and by extension, consumers as a whole.
15. PIAC has also satisfied the remaining criteria through its participation in the proceeding. In particular, PIAC's submissions, especially regarding the appropriateness of imposing the proposed AMPs, and the potential to impact a smaller service provider like Iristel in a disproportionately negative manner, assisted the Commission in developing a better understanding of the matters that were considered.
16. 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.
17. 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.
18. 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. However, in this case, both Iristel and TCI have stated they would accept the allocation

proposed by PIAC in the interest of administrative efficiency. The Commission considers that such an allocation would be in the public interest.

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

Company	Proportion	Amount
Iristel	50%	\$601.07
TCI	50%	\$601.07

### Directions regarding costs

20. The Commission **approves** the application by PIAC for costs with respect to its participation in the proceeding.
21. Pursuant to subsection 56(1) of the Act, the Commission fixes the costs to be paid to PIAC at \$1,202.14.
22. The Commission **directs** that the award of costs to PIAC be paid forthwith by Iristel and TCI according to the proportions set out in paragraph 19.

Secretary General

### Related documents

- *Call for comments – Imposition of administrative monetary penalties on Iristel Inc. and TELUS Communications Inc. in relation to the routing and termination of phone calls to the 867 area code in Northern Canada*, Telecom Notice of Consultation CRTC 2020-269, 14 August 2020; as amended by Telecom Notices of Consultation CRTC 2020-269-1, 11 September 2020 and 2020-269-2, 1 December 2021
- *Iris Technologies Inc. and TELUS Communications Inc. – Applications for final relief regarding the termination of traffic to certain 867 numbering plan area telephone numbers*, Telecom Decision CRTC 2020-268, 14 August 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
- *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