



Telecom Order CRTC 2023-385

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Determination of costs award with respect to the participation of the Public Interest Advocacy Centre in the proceeding initiated by Bragg Communications Inc. requesting a review of the wholesale roaming tariff rates of the national wireless carriers

Application

1. By letters dated 3 August 2022 and 31 May 2023, the Public Interest Advocacy Centre (PIAC) applied for costs with respect to their participation in the proceeding initiated by an application from Bragg Communications Inc., carrying on business as Eastlink (Eastlink), Cogeco Communications Inc., on behalf of its subsidiary Cogeco Connexion Inc., (Cogeco), Quebecor Media Inc., on behalf of its subsidiary Videotron Ltd. (Videotron), and Xplore Inc. (the proceeding). In the proceeding, the Commission considered the applicants' request for an immediate and comprehensive review of the wholesale roaming tariff rates of Bell Mobility Inc. (Bell Mobility), Rogers Communications Canada Inc. (RCCI), and TELUS Communications Inc. (TCI) [the national wireless carriers].
2. TCI filed an intervention, dated 12 August 2022, in response to PIAC's application. PIAC did not reply.
3. PIAC submitted that they 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 they represented a group or class of subscribers that had an interest in the outcome of the proceeding, they had assisted the Commission in developing a better understanding of the matters that were considered, and they 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 all customers of telecommunication services and of essential services more broadly, as well its members, both individuals and organizations.¹ PIAC stated that it is held accountable to the groups it represents through a volunteer board of directors drawn from across Canada. PIAC added that they represented the subscribers of regional wireless carriers in Canada that depend or will depend on wholesale roaming from

¹ 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.

the national wireless carriers to provide broad or national coverage to customers. 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 interests, including recent reports that look at affordability and ongoing research related to choice in telecommunications and broadcasting providers.

5. PIAC initially requested that the Commission fix its costs at \$1,950, consisting of 3.25 days for in-house legal counsel at a rate of \$600 per day to conduct research and prepare the intervention. PIAC filed a bill of costs with their application. In a supplemental application, PIAC asked for an additional \$3001.43 in costs, which consist of 1 hour of outside legal counsel at a rate of \$290 per hour, and 4.5 days for in-house legal counsel at a rate of \$600 per day, to prepare interventions, conduct legal research and prepare reply comments. The total amount applied for is \$4,951.43. PIAC's claim included the federal Goods and Services Tax (GST) on fees less the rebate to which PIAC is entitled in connection with the GST. PIAC filed a bill of costs with both applications.
6. PIAC submitted that all the potential costs respondents are the appropriate parties to be required to pay any costs awarded by the Commission.

TCI's answer

7. TCI took no position on the amount of costs claimed by PIAC. However, TCI submitted that the appropriate costs respondents are the parties that filed the application that led to PIAC's participation, namely Eastlink, Cogeco, Videotron, and Xplore Inc. As an alternative, TCI asked that the Commission allocate costs in the amounts of 50% payable by the applicants and 50% payable by Bell Mobility, RCCI, and TCI, based on wireless revenues.
8. TCI also reasoned that it would be appropriate to apportion costs based on wireless revenues because the proceeding relates exclusively to wireless services. TCI noted that the Commission has done so in the past when the subject matter of the proceeding was limited to wireless services.

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 interested subscribers. In the present case, PIAC has demonstrated that it meets this requirement. Specifically, PIAC identified that it represented the views of Canadian consumers, particularly those with low incomes, as well as its individual and organizational members. In this case, they also represented subscribers of regional wireless carriers in Canada that depend or will depend on wholesale roaming from the national wireless carriers to provide broad or national coverage to customers. PIAC submitted that the research it has conducted related to consumer interests helped it to represent the interests of those groups in the proceeding.
11. PIAC has also satisfied the remaining criteria through their participation in the proceeding by providing valuable information concerning the need for an update to the national wireless carrier wholesale roaming tariffs, which contributed to the Commission developing a better understanding of the matters that were considered. PIAC also contributed by expressing their views on the use of commercial negotiation or an off-tariff agreement regime as the primary method or alternative option for setting wholesale roaming rates. Furthermore, PIAC's participation was responsible because it complied with the Rules of Procedure and employed minimal resources.
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 the Part 1 applicants as well as Bell Mobility, RCCI and TCI had a significant interest in the outcome of the proceeding and participated actively throughout the proceeding.

15. Although TCI proposed a different mechanism for allocating costs to the respondents, it 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. Because the application regarded the wholesale roaming tariff rates of the national wireless carriers, the Commission considers that in this case it is appropriate to apportion costs based on the wireless operating revenues of the costs respondents, given that the Commission has considered tariffs exclusively for wireless services in the proceeding.
17. 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.
18. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated as follows:²

| Company | Proportion | Amount |
|---------------|------------|------------|
| Bell Mobility | 33.80% | \$1,673.75 |
| RCCI | 33.93% | \$1,680.00 |
| TCI | 32.27% | \$1,597.68 |

Directions regarding costs

19. The Commission **approves** the application by PIAC for costs with respect to their participation in the proceeding.
20. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to PIAC at \$4,951.43.
21. The Commission **directs** that the award of costs to PIAC be paid forthwith by Bell Mobility, RCCI and TCI, according to the proportions set out in paragraph 18.

Secretary General

² In this order, the Commission has used the wireless operating revenues of the costs respondents based on their most recent audited financial statements.

Related documents

- *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