



Telecom Order CRTC 2023-387

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Ottawa, 20 November 2023

File numbers: 8662-B2-202208280 and 4754-704

Determination of costs award with respect to the participation of the Public Interest Advocacy Centre in the proceeding initiated by Bell Canada to review and vary Telecom Decision 2021-131 and Telecom Decision 2022-160

Application

1. By letter dated 17 November 2022, the Public Interest Advocacy Centre (PIAC) applied for costs with respect to its participation in the proceeding initiated by Bell Canada to review and vary Telecom Decision 2021-131 and Telecom Decision 2022-160 (the proceeding). In the proceeding, the Commission is reconsidering whether to impose an administrative monetary penalty (AMP) on Bell Canada for having subjected its competitors to unjust discrimination with respect to access to its support structures.
2. The Commission received an intervention from TELUS Communications Inc. (TCI) 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 explained that its submissions on the application of confidentiality rules that require a functional separation between retail and wholesale segments, and on the appropriateness of the amount of the AMPs imposed on Bell Canada in Telecom Decision 2022-160, assisted the Commission in developing a better understanding of the issues considered in the proceeding.
5. With respect to the group or class of subscribers that PIAC submitted it represents, PIAC explained that it represents the interests of all customers of telecommunication services, and that all such consumers are affected by unnecessary delays in competitive service providers' access to incumbent-owned support structures. With respect to the specific method by which PIAC submitted that it represents this group or class, PIAC explained that it has conducted extensive research related to consumer interests, including recent reports on affordability and ongoing research related to choice in telecommunications and broadcasting providers.

6. PIAC requested that the Commission fix its costs at \$2,100, consisting entirely of in-house counsel fees. PIAC filed a bill of costs with its application.
7. PIAC claimed 3.5 days for in-house counsel at a rate of \$600 per day.
8. PIAC did not name potential costs respondents. Rather, PIAC stated that, consistent with Telecom Regulatory Policy 2010-963, it would be appropriate to allocate responsibility for payment among potential costs respondents based on the most recent data provided to the Commission by the telecommunications service providers.

TCI's answer

9. TCI argued that it should not be considered as a costs respondent because it does not have a significant interest in the proceeding in question, which relates to a bilateral dispute between Bell Canada and Videotron Ltd. (Videotron).
10. TCI indicated that its submissions were limited to purely legal and procedural arguments and did not address the underlying factual dispute between Bell Canada and Videotron. TCI added that its intervention assisted the Commission in gaining a better understanding of the legal issues and in developing a more fulsome record upon which to form the basis of its opinion.
11. TCI further submitted that ordering it to pay costs in the circumstances could disincentivize it from participating in future proceedings where TCI's interests are not directly engaged but where its comments are aimed at assisting the Commission in developing a better understanding of the issues. According to TCI, in light of the Commission's approach to the apportionment of costs, it would be unfair for TCI to be a costs respondent and for Videotron, which has a significant interest in the outcome of the proceeding, to pay nothing.

Commission's analysis

12. The criteria for an award of costs are set out in section 68 of the *Canadian Radio-television and Telecommunications Commission Rules of Practice and 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.

13. 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 represented the interests of consumers of telecommunication services who are affected by unnecessary delays in competitive service providers' access to incumbent-owned support structures.
14. PIAC has also satisfied the remaining criteria through its participation in the proceeding. In particular, PIAC assisted the Commission in developing a better understanding of the matters that were considered by providing its views on the appropriateness of the AMPs imposed on Bell Canada and on the impacts of the rules surrounding the confidentiality of wholesale information on competitive access to support structures.
15. The rates claimed in respect of in-house 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.
16. 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.
17. 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.
18. While the Commission acknowledges that TCI is not directly affected by the underlying dispute between Bell Canada and Videotron, the Commission is of the view that TCI nonetheless has a significant interest in the outcome of the proceeding. As a regulated entity that may be subject to AMPs, TCI has a significant interest in the Commission's determinations on the process related to the issuance of AMPs for violations of the *Telecommunications Act* (the Act).
19. The Commission therefore considers that Bell Canada, TCI, and Videotron had a significant interest in the outcome of the proceeding and participated actively throughout the proceeding. Therefore, these parties are the appropriate costs respondents to PIAC's application for costs.
20. 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.¹

21. 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.
22. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated entirely to TCI.

Directions regarding costs

23. The Commission **approves** the application by PIAC for costs with respect to its participation in the proceeding.
24. Pursuant to subsection 56(1) of the Act, the Commission fixes the costs to be paid to PIAC at \$2,100.
25. The Commission **directs** that the award of costs to PIAC be paid forthwith by TCI.

Secretary General

Related documents

- *Imposition of an administrative monetary penalty on Bell Canada in relation to the processing and granting of access permit applications for support structures in accordance with its National Services Tariff*, Telecom Decision CRTC 2022-160, 15 June 2022
- *Videotron Ltd. – Application concerning the issuance of orders related to the processing and granting by Bell Canada of access permit applications for support structures*, Telecom Decision CRTC 2021-131, 16 April 2021
- *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

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

- *New procedure for Telecom costs awards*, Telecom Public Notice CRTC 2002-5, 7 November 2002