



Telecom Order CRTC 2023-389

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Determination of costs award with respect to the participation of the Public Interest Advocacy Centre in the proceeding initiated by Bell Mobility Inc. regarding Videotron Ltd.'s use of its wholesale roaming tariffs

Application

1. By letter dated 7 November 2022, the Public Interest Advocacy Centre (PIAC) applied for costs with respect to its participation in the proceeding initiated by Bell Mobility Inc. (Bell Mobility) to review and vary a letter decision, dated 25 May 2022, entitled “Bell Mobility Inc. – Application for various orders regarding Videotron Ltd.’s use of Bell Mobility’s wholesale roaming service”.
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, which focused on the appropriateness of the issuance of letter decisions for Part 1 applications, assisted the Commission in developing a better understanding of the matters 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 who are affected by the procedural practices of the Commission. 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 \$1,800, consisting entirely of in-house counsel fees. PIAC filed a bill of costs with its application.

7. PIAC claimed 3 days at a rate of \$600 per day for in-house counsel fees.
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 Mobility and Videotron Ltd. (Videotron). According to TCI, Bell Mobility and Videotron should be the payors of costs, as these parties have the most significant interest in the outcome of the proceeding.
10. TCI indicated that it filed an intervention consisting of policy and legal arguments for public policy reasons, and to assist the Commission. TCI 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 and that, as a result, the Commission may not get the context and submissions it needs to make balanced decisions.
11. TCI added that, in light of the Commission's approach to the apportionment of costs, it is conceivable that TCI would be the sole (or a significant) payor of costs, which, in its view, would be nonsensical in the case of a bilateral dispute between Bell Mobility and Videotron.

Commission's analysis

12. 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.

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 telecommunications who are affected by the Commission's procedures.
14. PIAC has also satisfied the remaining criteria through its participation in the proceeding. In particular, PIAC's submissions regarding the procedure surrounding the issuance of Commission decisions offered a distinct point of view on the proceeding.
15. The rates claimed in respect of in-house counsel 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 Mobility and Videotron, the Commission is of the view that TCI nonetheless has a significant interest in the outcome of the proceeding. In particular, TCI has a significant interest in the Commission's determinations on the wholesale wireless roaming regime to which TCI is subject.
19. The Commission therefore considers that Bell Mobility, TCI and Videotron have 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. It is the Commission's general practice 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, the Commission's past practice has been to deviate from this standard approach and use wireless revenues market share instead of TORs where proceedings relate to wireless service matters alone. In this case, the entirety of the relevant proceeding relates to wireless roaming tariffs, policy and customers. Accordingly,

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

given that the focus of the proceeding is restricted to the wireless industry, wireless service providers, and consumers of wireless services, the Commission considers that a deviation from the use of TORs is justified, and that it would be appropriate to allocate costs among the costs respondents based on wireless revenue market share.²

22. 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.
23. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated entirely to Bell Mobility.

Directions regarding costs

24. The Commission **approves** the application by PIAC for costs with respect to its participation in the proceeding.
25. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to PIAC at \$1,800.
26. The Commission **directs** that the award of costs to PIAC be paid forthwith by Bell Mobility.

Secretary General

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

² In this order, the wireless revenue market share of the costs respondents is based on the retail mobile revenue market share data provided for 2021 in the Communications Market Reports [datasets](#) (see “Data – Retail mobile” dataset – Supplementary Table 1).