



Telecom Order CRTC 2024-12

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Ottawa, 17 January 2024

File numbers: 1011-NOC2023-0089 and 4754-717

Determination of costs award with respect to the participation of the Public Interest Advocacy Centre in the proceeding initiated by Telecom Notice of Consultation 2023-89

Application

1. By letter dated 27 September 2023, the Public Interest Advocacy Centre (PIAC) applied for costs with respect to its participation in the proceeding initiated by Telecom Notice of Consultation 2023-89 (the proceeding). The Commission initiated the proceeding to look to the future needs of broadband Internet access funding for fixed broadband and mobile services in Canada. The Commission invited interested persons to submit an intervention that responds to questions. In particular, the Commission is seeking to reassess the Broadband Fund policy by considering potentially altering the Fund's policy objectives, introducing a specific funding stream for Indigenous communities, considering operational funding, increasing focus on mobile coverage for roads and satellite-dependent areas, and enhancing the project evaluation and selection process.
2. TELUS Communications Inc. (TCI) filed a reply, dated 10 October 2023, in response to PIAC's application.
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 it represents the interests of all consumers of broadband Internet services across Canada as a class. PIAC also explained that it represents low-income and other vulnerable consumers, such as consumers living in unserved or underserved areas. With respect to the specific methods by which PIAC has submitted that it represents this group or class, PIAC explained that its purpose is to make representation to governing authorities on behalf of the public at large or on behalf of public interest groups with respect to matters of public concern and interest. PIAC has conducted extensive research related to consumer interests, including recent reports looking at service transparency, affordability, and choice in telecommunications and broadcasting service providers.

5. PIAC submitted that it has assisted the Commission in developing a better understanding of the matters considered in the proceeding and raised additional considerations. For instance, PIAC supported the Commission's proposals to broadly improve accessibility and effectiveness of the Broadband Fund, including a new Indigenous-specific funding stream. PIAC also cited the prevalence of systemic inequities in Indigenous communities and recommended that the Commission exercise more flexibility when evaluating projects that affect Indigenous communities.
6. PIAC further submitted that it had participated in the proceeding in a responsible way and complied with the Rules of Procedure throughout the proceeding.
7. PIAC requested that the Commission fix its costs at \$16,706.09, consisting of external counsel fees and in-house legal fees. PIAC's claim included the Ontario Harmonized Sales Tax (HST) on fees less the rebate to which PIAC is entitled in connection with the HST.
8. PIAC claimed 21.8 hours for external counsel at a rate of \$290 per hour for work preparing for the proceeding (\$6,571.09 with the HST and the associated rebate); 16.5 days for in-house counsel at a rate of \$600 per day (\$9,900), and 1 day for an articling student at a rate of \$235 per day (\$235). PIAC filed a bill of costs with its application.
9. PIAC made no submission as to the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents).
10. PIAC suggested that the responsibility for payment of costs should be divided among the costs respondents on the basis of their gross revenues or another similar factor.

Reply

11. TCI does not object to PIAC's application, but stated that it might not be the appropriate time for assessing final costs since it is not clear if the record of the proceeding is closed, meaning that PIAC might be required to respond to requests for information and incur additional costs.

Commission's analysis

12. Considering TCI's reply, the Commission is of the view that it is the appropriate time to assess the costs, given the size of the award and to ensure costs orders are awarded as efficiently as possible.
13. PIAC would be able to file a supplemental costs application for any additional costs incurred should the record reopen.
14. 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.
15. 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 is a national non-profit organization and charity that represents the interests of all consumers across Canada, including low-income and other vulnerable consumers. PIAC has conducted extensive research related to consumer interests, most importantly related to Indigenous communities.
16. PIAC has also satisfied the remaining criteria through its participation in the proceeding. PIAC generally expressed support for the Commission's proposals to broadly improve accessibility and effectiveness of the Broadband Fund. For instance, PIAC cited the prevalence of systemic inequities in Indigenous communities and recommended that the Commission exercise more flexibility in determining eligible costs and in weighting the potential economic and social benefits when evaluating projects in these communities. Also, PIAC commented on the importance of meaningfully engaging Indigenous representation within the Fund administration and framed the current need for such funding regarding: the effectiveness of the Broadband Fund; a new Indigenous-specific funding stream to enhance the success of Indigenous applicants; and the prevalence of systemic inequities in Indigenous communities. PIAC made additional submissions and recommendations that assisted the Commission in developing a better understanding of the matters that were considered. Furthermore, PIAC participated in the proceeding in a responsible way by complying with the Rules of Procedure, and by respecting the deadlines and processes set out in the proceeding.
17. The rates claimed in respect of the external and 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.
18. 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.
19. 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.
20. The Commission considers that the following parties had a significant interest in the outcome of the proceeding and participated actively in the proceeding and are therefore the appropriate costs respondents: Access Communications Co-operative Limited; Bell Canada (including Bell Mobility Inc. and Northwestel Inc.); Bragg Communications Incorporated,

carrying on business as Eastlink; the Coalition¹; Cogeco Communications inc.; Eeyou Communications Network; First Mile Connectivity Consortium; Great Northern Wireless Inc.; Leepfrog Telecom Ltd; National Capital FreeNet; Quebecor Media inc. (Quebecor) [including Videotron Ltd. and Freedom Mobile Inc.]; Rogers Communications Canada Inc. (RCCI) [including Shaw Cablesystems G.P. (Shaw)]; Saskatchewan Telecommunications (SaskTel); Spirit Mobile Inc.; SSi Micro Ltd.; TCI; TeraGo Networks Inc.; ViaSat Inc.; and Xplore Inc.

21. 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.²
22. 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.
23. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated as follows:³

Company	Proportion	Amount
Bell Canada	36.55%	\$6,106.39
RCCI	29.61%	\$4,946.79
TCI	25.49%	\$4,258.75
Quebecor	8.35%	\$1,394.16

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 \$16,706.09.

¹ The coalition is comprised of the British Columbia Broadband Association, the Canadian Association of Wireless Internet Service Providers, the Canadian Communication Systems Alliance, the Competitive Network Operators of Canada, and the Independent Telecommunications Providers Association.

² Since the 2022 TORs were reported, ownership transactions have changed the makeup of Quebecor and RCCI. As such, Freedom Mobile Inc.'s TORs have been added to Quebecor's, and Shaw's TORs have been added to RCCI's. TORs consist of Canadian telecommunications revenues from local and access, long distance, data, private line, Internet, and wireless services.

³ In this order, the Commission has used the TORs of the costs respondents based on their most recent audited financial statements.

26. The Commission **directs** that the award of costs to PIAC be paid forthwith by Bell Canada, RCCI, TCI, and Quebecor according to the proportions set out in paragraph 23.

Secretary General

Related documents

- *Call for comments – Broadband Fund policy review*, Telecom Notice of Consultation CRTC 2023-89, 23 March 2023, as modified by Telecom Notice of Consultation CRTC 2023-89-1, 17 April 2023
- *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