



Telecom Order CRTC 2024-13

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Ottawa, 17 January 2024

File numbers: 8662-D11-202201424 and 4754-690

Determination of costs award with respect to the participation of the Public Interest Advocacy Centre in the proceeding initiated by Distributel Communications Limited

Application

1. By letter dated 7 June 2022, the Public Interest Advocacy Centre (PIAC) applied for costs with respect to its participation in the proceeding initiated by an application from Distributel Communications Limited (Distributel) [the proceeding] requesting revised interim access rates for disaggregated wholesale high-speed access (HSA) services.
2. Distributel filed an intervention, dated 16 June 2022, 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 submitted that it represents the interests of consumers across Canada, and in particular subscribers of wholesale-based internet service providers that depend or will depend on the disaggregated wholesale regime to provide high-speed internet to consumers. With respect to the specific methods 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 looking at affordability and ongoing research related to choice in telecommunications and broadcasting providers.
5. PIAC submitted that it had assisted the Commission in developing a better understanding of the matters that were considered, notably by (i) underscoring the importance of removing barriers to competitors' deployment of next-generation technologies that provide the faster and more reliable internet services that Canadians want, (ii) explaining why consumers are yet see the benefits of the disaggregated wholesale HSA regime, and (iii) providing examples of incumbent internet service providers gaining increasing competitive advantages over wholesale-based competitors.

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 \$1,396.24, consisting entirely of in-house legal fees. PIAC claimed \$750 at the daily rate of \$600 for an in-house legal counsel, and \$646.24 at the daily rate of \$235 for an in-house articling student. PIAC filed a bill of costs with its application.
8. PIAC submitted that it would be appropriate that all potential cost respondents, namely the telecommunications service providers who participated and had an interest in the proceeding, be required to pay any costs awarded by the Commission, consistent with the Commission's practice set out in Telecom Regulatory Policy 2010-963.

Answer

9. Distributel answered that it has no objection to PIAC's costs claim.

Commission's analysis

10. 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.
11. 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, it is a non-profit organization and registered charity that represents the interests of all consumers across Canada, and conducted extensive research related to consumer interest in order to represent those subscribers.
12. PIAC has also satisfied the remaining criteria through its participation in the proceeding. It assisted the Commission in developing a better understanding of the

issues under consideration by explaining its views on Distributel's application in light of the Commission's decisions and policies and the facts on the record. PIAC further aided the Commission in understanding the impact of the interim disaggregated wholesale HSA rates on consumers.

13. 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.
14. 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.
15. 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 following parties had a significant interest in the outcome of the proceeding and participated actively in the proceeding: Bell Canada, Cogeco Communications inc., Distributel, EGATE Networks Inc., Quebecor Media Inc., Rogers Communications Canada Inc., Saskatchewan Telecommunications, TekSavvy Solutions Inc., and TELUS Communications Inc.
16. The Commission notes that its general practice is 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
17. 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.
18. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated entirely to Bell Canada.

Directions regarding costs

19. The Commission **approves** the application by PIAC for costs with respect to its 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 \$1,396.24.

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

21. The Commission **directs** that the award of costs to PIAC be paid forthwith by Bell Canada.

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