



Telecom Order CRTC 2024-177

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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 Canada's application for mandatory and injunctive orders in respect of Rogers Communications Canada Inc. to ensure timely access for all Canadians to wireless services on the Toronto Transit Commission

Application

1. By letter dated 14 September 2023, the Public Interest Advocacy Centre (PIAC) applied for costs with respect to its participation in the proceeding initiated by Bell Canada's application for mandatory and injunctive orders in respect of Rogers Communications Canada Inc. (RCCI) to ensure timely access for all Canadians to wireless services on the Toronto Transit Commission (TTC) [the proceeding]. Bell Canada submitted an application on the basis that RCCI, after reaching a sole-sourced deal with the TTC subway system, has refused to negotiate or collaborate with other wireless carriers to expand access, and was instead seeking to deny or delay access for as long as possible for the majority of Canadians who have chosen another wireless carrier.
2. By letter dated 18 October 2023, Bell Canada withdrew its application and, on 20 October 2023, the Commission confirmed that the Commission's file on this proceeding was closed.
3. PIAC's costs application is based on interventions made prior to the closure of the file, on 17 July 2023 and 24 August 2023. When Bell Canada withdrew the application, the proceeding was essentially complete. Therefore, the Commission is of the opinion that PIAC's costs application should be processed. The Commission notes that this is consistent with its previous decisions in Telecom Costs Order CRTC 93-8 and Telecom Costs Order CRTC 97-2.
4. 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.
5. In particular, PIAC explained that it represents the interests of all consumers across Canada as a class, who have an interest in the choice and affordability of telecommunications services. PIAC also has a long history of representing low-income and other vulnerable

consumers. Specifically, PIAC represented the interests of all consumers of mobile wireless services, and particularly TTC riders encompassing current and future Toronto residents and visitors. With respect to the specific methods by which PIAC has 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 service transparency, affordability, and choice in telecommunications and broadcasting service providers.

6. In this proceeding, PIAC submitted that it has assisted the Commission in developing a better understanding of the matters considered and raised additional considerations. For instance, PIAC raised concerns that RCCI's exclusive contract with the TTC may lead to price increases. Moreover, PIAC provided recommendations for the Commission, such as requiring the interconnection under section 40 of the *Telecommunication Act* which grants the Commission the power to order interconnection to remedy anti-competitive, self-preferencing, or discriminatory conduct. Also, PIAC looked at and supported TELUS Communications Inc.'s (TCI) allegations of undue preference and unjust discrimination in its additional comments.
7. PIAC requested that the Commission fix its costs at \$8,673.04, 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. PIAC filed a bill of costs with its application.
8. PIAC claimed 10.9 hours for external senior counsel at a rate of \$290 per hour for work preparing for the proceeding (\$3,285.54 with the HST and the associated rebate); 8 days for in-house counsel at a rate of \$600 per day (\$4,800), and 2.5 days for articling students at a rate of \$235 per hour (\$587.50).
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.

Commission's analysis

11. 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.

12. 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 assisted the Commission in developing a better understanding of the matters in this proceeding by representing the interests of all customers of mobile wireless services, and particularly TTC riders encompassing current and future Toronto residents and visitors.
13. PIAC has also satisfied the remaining criteria through its participation in the proceeding. In particular, PIAC provided recommendations on (i) how the Commission may resolve the dispute with RCCI; (ii) how to address the allegations of undue preference and unjust discrimination; and (iii) how the Commission may ensure timely interconnection of facilities. 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.
14. 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.
15. 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.
16. 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.
17. 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: Bell Canada (including Bell Mobility Inc.); Freedom Mobile Inc.; RCCI (including Shaw Telecom G.P. and Shaw Telecom Inc. [collectively, Shaw]); TCI; and Videotron Ltd.
18. The Commission considers it appropriate to depart from its practice of allocating the responsibility for payment of costs among costs respondents based on their telecommunications operating revenues (TORs),¹ and that it would be appropriate to allocate the responsibility for payment of costs among the costs respondents based on their wireless operating revenues (WORS) as an indicator of the relative size and interest of the parties involved in the proceeding.

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

19. 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.
20. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated as follows:²

Company	Proportion	Amount
Bell Canada (including Bell Mobility Inc.)	34.32%	\$2,976.23
RCCI ³	33.72%	\$2,924.32
TCI	31.97%	\$2,772.50

Directions regarding costs

21. The Commission approves the application by PIAC for costs with respect to its participation in the proceeding.
22. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to PIAC at \$8,673.04.
23. The Commission directs that the award of costs to PIAC be paid forthwith by Bell Canada, RCCI, and TCI according to the proportions set out in paragraph 20..

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

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

³ Since the 2022 WORs were reported, ownership transactions have changed the makeup of RCCI. As such, Shaw's WORs have been added to RCCI's.

- *New procedure for Telecom costs awards*, Telecom Public Notice CRTC 2002-5, 7 November 2002
- *Application for Costs by Rural Dignity of Canada (RDC)*, Telecom Costs Order CRTC 97-2, 5 February 1997
- *Application for Costs by the New Brunswick Anti-Poverty Association and the Consumers' Association of Canada (NBAPA/CAC)*, Telecom Costs Order CRTC 93-8, 16 August 1993