



Telecom Order CRTC 2024-184

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Determination of costs award with respect to the participation of the Public Interest Advocacy Centre in the proceeding initiated by Beanfield Technologies Inc.'s application regarding the multiple dwelling unit bulk agreements practices of Rogers Communications Canada Inc.

Application

1. By letter dated 22 November 2023, the Public Interest Advocacy Centre (PIAC) applied for costs with respect to its participation in the proceeding initiated by Beanfield Technologies Inc.'s (Beanfield) application regarding Rogers Communications Canada Inc.'s (RCCI) bulk agreements practices (the proceeding). In the proceeding, Beanfield requested the Commission prohibit RCCI's practice of arranging bulk billing agreements for Internet services with developers of multiple dwelling unit (MDU) and condominium corporations. Beanfield made its request because, in its view, those bulk agreements had the effect of restricting other Internet service providers from accessing and serving end-users.
2. The Commission did not receive any interventions 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. Specifically, PIAC submitted that it represents all broadband customers residing in MDUs. PIAC's method of specifically identifying the needs of this group included research regarding consumer interests, inclusive of recent reports examining service transparency, affordability, and choice in telecommunications and broadcasting service providers.
5. PIAC submitted that it had assisted the Commission in developing a better understanding of the matters considered and raised additional considerations in the proceeding. For instance, PIAC's submissions included (i) information regarding the potential impacts of long-term bulk billing agreements with MDUs on consumers,

(ii) suggestions on redefining the term “end-user premise” to be inclusive of individual units in an MDU, and, alternatively, (iii) a proposal that the Commission clarify that the term “network termination point” includes end-user units.

6. PIAC requested that the Commission fix its costs at \$1,637.50 for in-house legal fees. PIAC filed a bill of costs with its application.
7. PIAC claimed 1.75 days at a rate of \$600 per day for in-house legal counsel to review the file, perform legal research, and draft the intervention. It also claimed 2.5 days at a rate of \$235 per day for an articling student to assist with reviewing the file, performing legal research, and drafting the intervention.
8. PIAC submitted that as an exception to the usual costs allocation practice established in Telecom Regulatory Policy 2010-963, 50% of the costs should be allocated to Beanfield and 50% to all other parties that participated actively in the proceeding, with the latter divided among parties based on telecommunications operating revenues (TORs).¹

Commission’s analysis

9. 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.
10. 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 because it represents the interests of

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

consumers across Canada, with a particular emphasis in this proceeding on the customers of broadband services residing in MDUs.

11. PIAC has also satisfied the remaining criteria through its participation in the proceeding. PIAC's submissions regarding the potential negative impact on consumers that bulk billing agreements may pose, such as limitations on available service speeds and providers, as well as fixed schedules of price increases, assisted the Commission in developing a better understanding of the matters at issue in the proceeding.
12. 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.
13. The rates claimed in respect of legal fees are in accordance with the rates established in the *Guidelines for the Assessment of Costs* (the Guidelines), 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.
16. The Commission therefore considers that Beanfield; Bell Canada; Bragg Communications Inc., carrying on business as Eastlink; CIK Telecom Inc.; Cloudwifi Inc.; Cogeco Connexion Inc.; the telecommunications service providers that form the Competitive Network Operators of Canada; Execulink Telecom Inc.; the member companies of the Independent Telecommunications Providers Association; RCCI (including Shaw Cablesystems G.P. [Shaw]);² and TELUS Communications Inc. had a significant interest in the outcome and participated actively throughout the proceeding.
17. 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 TORs as an indicator of the relative size and interest of the parties involved in the proceeding.
18. Furthermore, 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,

² Since the 2022 TORs were reported, ownership transactions have changed the makeup of RCCI. As a result, Shaw's TORs have been added to RCCI's.

due to the administrative burden that small costs awards impose on both the applicant and costs respondents.

19. The Commission considers that, while PIAC proposed a different allocation of costs, the public interest is better served by the Commission being consistent and transparent about its practices. Moreover, given the size of the award, splitting costs would result in payments less than \$1,000. As a result, the Commission finds it appropriate to allocate the responsibility for payment of costs among costs respondents based on their TORs as an indicator of the relative size and interest of the parties involved in the proceeding.
20. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated entirely to RCCI.

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 \$1,637.50.
23. The Commission directs that the award of costs to PIAC be paid forthwith by RCCI.

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