



Telecom Order CRTC 2024-260

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Determination of costs award with respect to the participation of the Public Interest Advocacy Centre in the proceeding initiated by the application by City Wide Communications Inc., Frontier Networks Inc., and Purple Cow Internet Inc. to address the third-party Internet access service outage caused by Bragg Communications Inc., carrying on business as Eastlink

Application

1. By letter dated 25 January 2024, the Public Interest Advocacy Centre (PIAC) applied for costs with respect to its participation in the proceeding initiated by an application by City Wide Communications Inc., Frontier Networks Inc., and Purple Cow Internet Inc. (the proceeding), seeking to address the third-party Internet access service outage of Bragg Communications Inc., carrying on business as Eastlink (Eastlink).
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. In particular, PIAC submitted that it represents the interests of Canadians who have an interest in the availability and affordability of retail services offerings in Canada. With respect to the specific methods by which PIAC has submitted that it represents this group, PIAC explained that it is held accountable of its representation of the public interest through a volunteer board of directors drawn from across Canada, and PIAC has conducted extensive research related to consumer interests, including recent reports looking at affordability and ongoing research related to choice in telecommunications providers.
5. PIAC requested that the Commission fix its costs at \$1,833.71, consisting entirely of legal fees. PIAC claimed 2.6 hours for an external legal counsel at a rate of \$290 per

hour (with the HST and associated rebate), and 1.75 days at the rate of \$600 per day for in-house legal counsel. PIAC filed a bill of costs with its application.

6. PIAC submitted that the telecommunications service providers are the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents).
7. PIAC suggested that the responsibility for payment of costs should be divided among the costs respondents on the basis of their telecommunications operating revenues.

Commission's analysis

8. 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.
9. 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 non-profit organization and registered charity whose purpose is to make representations to governing authorities on behalf of the public. In particular, PIAC represented the interests of retail customers of telecommunication services, such as the retail customers of the applicants who are wholesale third-party Internet access customers.
10. PIAC has also satisfied the remaining criteria through its participation in the proceeding. In particular, PIAC commented on the requirement of reporting outages, the effect of the outages on wholesale customers, the allegation of undue preference, and the appropriateness of an administrative monetary penalty, which assisted the Commission in developing a better understanding of the matters considered in this proceeding. Accordingly, the Commission finds that the applicant meet the criteria for an award of costs under section 68 of the Rules of Procedure.

11. The rates claimed in respect of 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.
12. 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.
13. 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.
14. 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 to PIAC's application for costs: City Wide Communications Inc.; Eastlink; Frontier Networks Inc.; and Purple Cow Internet Inc.
15. However, as set out in Telecom Order 2015-160, the Commission considers \$1,000 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 the cost respondents.
16. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated entirely to Eastlink.

Directions regarding costs

17. The Commission approves the application by PIAC for costs with respect to its participation in the proceeding.
18. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to PIAC at \$1,833.71.
19. The Commission directs that the award of costs to PIAC be paid forthwith by Eastlink.

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
- *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