



## Telecom Order CRTC 2024-272

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Ottawa, 5 November 2024

*File numbers: 1011-NOC2024-0025 and 4754-749*

### **Determination of costs award with respect to the participation of the Public Interest Advocacy Centre in the proceeding initiated by Telecom Notice of Consultation 2024-25**

#### **Application**

1. By letter dated 5 June 2024, the Public Interest Advocacy Centre (PIAC) applied for costs with respect to its participation in the proceeding initiated by Telecom Notice of Consultation 2024-25 (the proceeding). In the proceeding, the Commission is considering whether to modify existing tariffs to address the deployment of wireless facilities, such as small cells, on support structures owned or controlled by incumbent local exchange carriers (ILECs).
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 all Canadian consumers, including vulnerable consumers. With respect to the group or class of subscribers that PIAC has submitted it represents, PIAC explained that this group or class had an interest in the outcomes of the proceeding because facilitating competitive and equitable access to ILEC-owned or controlled support structures for attaching wireless facilities could support competition in the wireless service market.
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 information on the Commission's jurisdiction, what types of attachments the existing support structure tariffs should apply to, and in which circumstances those tariffs should be modified.
6. PIAC requested that the Commission fix its costs at \$9,043.97, consisting entirely of 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.

7. PIAC claimed 13.2 hours at a rate of \$290 per hour for senior legal counsel to perform file review and legal research, as well as draft the intervention, final reply, and a procedural letter. It also claimed eight days at a rate of \$600 per day for counsel to perform file review and legal research, as well as draft the intervention and reply comments, and one day at a rate of \$235 per day for an articling student to review interventions and perform legal research.
8. PIAC submitted that, consistent with the Commission's practice set out in Telecom Regulatory Policy 2010-963, telecommunications service providers that have a significant interest in the outcome of the proceeding and participated actively are the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents). PIAC suggested that the responsibility for payment of costs should be divided among the costs respondents on the basis of recent data provided to the Commission.

### **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, as it represents the interests of all Canadian consumers, including vulnerable consumers.
11. PIAC has also satisfied the remaining criteria through its participation in the proceeding. PIAC's submissions, such as those about existing support structure tariffs, 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*, 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 the following companies had a significant interest in the outcome and participated actively throughout the proceeding: Bell Canada and Bell Mobility Inc. (collectively, the Bell companies); Bragg Communications Incorporated, carrying on business as Eastlink; Quebecor Media Inc., on behalf of Freedom Mobile Inc. and Videotron Ltd.; Rogers Communications Canada Inc. (RCCI); Saskatchewan Telecommunications; and TELUS Communications Inc. (TCI).
17. The Commission considers that in this case, it is appropriate to deviate from its practice of allocating 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.<sup>1</sup> The Commission considers it appropriate to allocate the costs based on the respondents' wireless operating revenues (WORs), given that the Commission examined rates exclusively for wireless services in the proceeding.
18. 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.
19. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated as follows:<sup>2</sup>

Company	Proportion <sup>3</sup>	Amount
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<sup>1</sup> TORs consist of Canadian telecommunications revenues from local and access, long distance, data, private line, Internet, and wireless services.

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

<sup>3</sup> Percentages have been rounded up to the nearest hundredth.

Bell companies	34.32%	\$3,103.53
RCCI	33.72%	\$3,049.38
TCI	31.97%	\$2,891.07

### Directions regarding costs

20. The Commission approves the application by PIAC for costs with respect to its participation in the proceeding.
21. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to PIAC at \$9,043.97.
22. The Commission directs that the award of costs to PIAC be paid forthwith by the Bell companies, RCCI, and TCI according to the proportions set out in paragraph 19.

Secretary General

### Related documents

- *Call for comments – Attachment of wireless facilities on support structures owned or controlled by incumbent local exchange carriers*, Telecom Notice of Consultation CRTC 2024-25, 5 February 2024
- *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