



Telecom Order CRTC 2024-289

PDF version

Ottawa, 15 November 2024

File numbers: 8622-T117-202306919 and 4754-740

Determination of costs award with respect to the participation of the Public Interest Advocacy Centre in the proceeding initiated by TekSavvy Solutions Inc.

Application

1. By letter dated 19 March 2024, the Public Interest Advocacy Centre (PIAC) applied for costs with respect to its participation in the proceeding initiated by an application from TekSavvy Solutions Inc. (TekSavvy) requesting the Commission to grant both interim and final relief and to preserve *status quo* of the access to Cogeco Communications Inc.'s copper and coaxial facilities by competitors.
2. TekSavvy filed an intervention, dated 1 April 2024, 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 all consumers across Canada, who have an interest in the choice and affordability of telecommunications services. With respect to the specific methods by which PIAC has submitted that it represents this group or class, PIAC explained that it conducted extensive research related to consumer interests, including recent reports looking at transparency, affordability, and choice in telecommunications and broadcasting providers.
5. PIAC submitted that it had assisted the Commission in developing a better understanding of the matters considered in this proceeding and raised additional considerations. Notably, PIAC highlighted that the Commission must ensure consumers have access to just and reasonable rates, which occurs when competitors are able to offer their services to current and new end-users at competitive rates. PIAC also emphasized that the Commission must safeguard consumer choice and ensure no end-user is left without affordable service of their choice as a result of network changes.
6. PIAC further submitted it had participated in a responsible way and complied with the Commission Rules of Procedure.

7. PIAC requested that the Commission fix its costs at \$1,137.74, consisting entirely of legal fees. PIAC claimed \$843.99 for 2.8 hours at the hourly rate of \$290 for an external counsel and \$293.75 for 1.25 days at the daily rate of \$235 for an in-house articling student. 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 submitted that it is appropriate for 50% of the costs awarded by the Commission to be paid by TekSavvy and the other 50% to be paid by all other parties based on their most recent report of annual telecommunications services revenues.

Answer

9. TekSavvy answered that it agrees that PIAC has met the eligibility requirements for a cost claim but disagrees with PIAC's suggested apportionment of the costs.
10. Teksavvy suggested that the Commission use the standard approach in accordance with the *Guidelines for the Assessment of Costs* (the Guidelines) as set out in Telecom Regulatory Policy 2010-963. TekSavvy raised that, as per the Guidelines, the cost should be allocated in proportion to telecommunications operating revenues (TORs) of the participating parties and that, if a responding party is found to be responsible for less than \$100 of a total costs award, that party will be generally excluded.

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 is a national non-profit organization and registered charity that represents the interests of all retail consumers of telecom services across Canada, including low-income and other vulnerable consumers.
13. PIAC has also satisfied the remaining criteria through its participation in the proceeding. In particular, PIAC's submissions, especially regarding consumers' interests and choices to have access to affordable telecommunications services even if there is a network change,

assisted the Commission in developing a better understanding of the matters that were considered.

14. The rates claimed in respect of legal fees are in accordance with the rates established in 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.
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. Using this standard approach, the potential respondents with a significant interest are: Bragg Communications Inc., carrying on business as Eastlink; Rogers Communications Canada Inc.; TekSavvy; and TELUS Communications Inc.
17. 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. Based on the standard practice of calculating the appropriate allocation of costs based on TORs and considering the \$1,000 rule, the only cost respondent required to pay the total cost claim amount would be TELUS Communications Inc.
18. However, the Guidelines set out the key principles that the Commission seeks to implement through its cost regime. These include ensuring that the process gives sufficient flexibility to take into account particular circumstances where relevant, and that the approach taken is fair, efficient, and effective.
19. Given that this proceeding was initiated by TekSavvy and that this party has the most direct and significant interest in the outcome of this proceeding, the Commission considers it appropriate to depart from its practice of allocating the responsibility for payment of costs between costs respondents based on their TORs or, if appropriate, on their wireless operating revenues.
20. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated entirely to TekSavvy.

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 \$1,137.74.
23. The Commission directs that the award of costs to PIAC be paid forthwith by TekSavvy.

Dissenting opinion

24. The dissenting opinion of Commissioner Bram Abramson is attached to this order.

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

Dissenting opinion of Commissioner Bram Abramson

1. The Commission ordinarily awards costs in proportion to the relevant telecommunications operating revenues of participating parties with a significant interest in the proceeding's outcome.
2. In this decision, the majority of the Telecommunications Committee, on behalf of the Commission,¹ has departed from the Commission's ordinary practice. Instead, it has allocated responsibility for payments of costs entirely to TekSavvy Solutions Inc. (TekSavvy), because TekSavvy has the "most direct and significant interest in the outcome of this proceeding."
3. I disagree with this approach. In my view, it mischaracterizes the policy implications of the issue before us, and of the broader regulatory framework choices we have made. In particular, it fails to recognize a hands-off approach as one regulatory choice among others.
4. The Commission's counterparts in other countries have generally established frameworks by which to supervise the salutary, investment-intensive, and systemically important process of copper decommissioning. We, by contrast, have not. This choice has shifted the cost of the competitive and consumer risks that inevitably accompany such a significant change to the competitors and consumers affected by it.
5. In my view, departing from our ordinary approach on the basis that it is primarily the applicant, TekSavvy, that has the most direct and significant interest, fails to take account of this choice. As a result, it is inconsistent with how we have approached other disputes that, though bilateral on the surface, likewise reflect broader policy implications beneath. That inconsistency sends a policy signal of which we should be mindful.

Hands-off copper decommissioning

6. For public telecommunications networks' first century, telephone and cable were made of copper. In their second century, wireline networks are made of fibre. Transitioning from the former to the latter is an epochal change demanding significant investment in telecommunications facilities. This investment involves laying new fibre. The old copper is gradually removed, returned to the circular economy.
7. Copper decommissioning is thus the endpoint in a substantial and costly renewal process. Where undertaken, it signifies completion of in-ground residential and commercial network facilities more stable, more permanent, and more bandwidth-abundant than any direct-to-

¹ Telecommunications Committee, *By-Law No. 10*, paragraph (e) ("[a]ny act or thing done by the Telecommunications Committee shall be deemed to be an act or thing done by the members"), pursuant to paragraph 11(1)(b) and subsection 12(3) of the *Canadian Radio-television and Telecommunications Act*, provides for duties to be delegated to standing committees by by-law. The delegation to standing committees whose remit is made explicit through by-law is distinguished from other forms of delegation, like the assignment of particular cases, and of members to those cases, by way of panel: subsection 6(2); *Shoan v. Canada (Attorney General)*, 2016 FCA 261 (CanLII), paragraph 6.

consumer satellite facility. That is why copper decommissioning is an important step in the role broadband plays in community economic development.

8. While salutary, copper decommissioning also presents risks, as any transformative change might. Among these are potential competitive distortions and consumer vulnerabilities. In many countries, a regulatory framework is established to oversee and manage copper decommissioning.²
9. Not in Canada.³ Here, copper decommissioning has proceeded without active regulatory oversight. When competitive distortions or consumer vulnerabilities arise despite the efforts of those decommissioning their copper, it falls to affected competitors or consumers to seek regulatory recourse.
10. This placement of responsibility is a risk allocation choice in Canada’s approach to copper decommissioning. It has shifted certain risk costs from those conducting the decommissioning—where other regulatory frameworks might place them—onto those impacted by it.
11. The majority’s decision now reflects a second, downstream risk allocation choice. It directs the additional cost of regulatory intervention, to address risks that materialize, toward those already bearing the risks. The dollar costs are not, on this proceeding, significant ones. But the apportionment conveys a broader policy stance.

Cost allocation as policy signal

12. The Commission’s current approach to determining appropriate costs is set out in section 56 of the *Telecommunications Act*; sections 60-70 of the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure*; Telecom Regulatory Policy 2010-963 and its attached Guidelines; and Telecom Information Bulletin 2016-188.
13. But the Commission’s current approach to allocating those costs is set out in less detail. Paragraphs 28-32 of Telecom Regulatory Policy 2010-963 outline the general approach. Telecom Order 2015-160 adds the \$1,000 floor. The method for weighing the relative significance of parties’ interest in a proceeding, and thereby including them as cost

² See, e.g., *In the Matter of Technology Transitions, Policies and Rules Governing Retirement of Copper Loops by incumbent Local Exchange Carriers, Special Access for Price Cap Local Exchange Carriers, and AT&T Corporation Petition for Rulemaking to Reform Regulation of ILEC [incumbent local exchange carrier] Rates for Interstate Special Access Services*, RM-11358 (GN 13-5) and RM-10593 (WC 05-25), FCC 15-97, 6 August 2015 (U.S.); *European Electronic Communications Code*, Directive (EU) 2018/1972, 11 December 2018, article 81 (“Migration from legacy architecture”) and *Report on a consistent approach to migration and copper switch-off*, BEREC BoR (22) 69, 9 June 2022 (European Economic Area countries); *Copper Withdrawal Code*, ISBN 978-1-869458-57-7, 10 December 2020, replaced by *Copper Withdrawal Code 2024*, ISBN 978-1-991085-33-7, 5 February 2024 (New Zealand).

³ Note, however, Telecom Regulatory Policy 2024-180, paragraph 52: “The Commission notes that various parties raised on the record of this proceeding issues related to the decommissioning practices of both the cable carriers and the ILECs. The Commission will address issues related to decommissioning practices through further process shortly” and CRTC Staff Letter, 13 August 2024: “The Commission stated however that it will shortly address issues related to decommissioning practices through further process.”

respondents, is largely to be gleaned from past decisions. In recent years, cost allocation has typically been proportional to the telecommunications operating revenues of participating providers.

14. Sometimes the Commission has departed from this approach if a particular party—typically, the applicant—has a disproportionate or one-sided interest in the matter. This exception, however, suggests that the issue at hand lacks broader policy concerns beyond the applicant’s proprietary interests. For instance, when Bell Mobility Inc. brought a complaint against Videotron Ltd. regarding roaming tariffs, TELUS Communications Inc. (TCI), although “not directly affected by the underlying dispute,” nonetheless had “a significant interest in the outcome of the proceeding. In particular, TCI has a significant interest in the Commission’s determinations on the wholesale wireless roaming regime to which TCI is subject.”⁴
15. I believe a similar situation exists here. TCI had a significant interest in the Commission’s wholesale wireless roaming framework. Similarly, the parties decommissioning copper have a significant interest in the framework governing copper decommissioning, currently a straightforward hands-off one. If the past decision not to establish a supervisory framework for copper decommissioning has effectively transferred risk from those decommissioning to the affected competitors or consumers, then the majority’s current decision—that TekSavvy’s interest in the proceeding is the most direct and significant—fails to acknowledge the risk-shifting inherent in that previous choice. It ignores our broader policy choices, reducing them to a bilateral dispute.
16. That, as I have written elsewhere, is not the better approach. We are engaged in shifting the focus of our telecommunications regulatory frameworks from wireline voice services to a broadband, data-centric, Internet-Protocol-dominated world. The task of systematically identifying and updating the major components of these frameworks in ways that are more than *ad hoc* continues to abide.

⁴ See Telecom Order 2023-389, paragraph 19. The costs were ultimately borne entirely by Bell Mobility Inc., but this reflected an equal apportionment of the claimed costs according to wireless operating revenues as then filtered through the \$1000 floor—as distinct from an asymmetrical apportionment of the costs.