



Telecom Order CRTC 2016-153

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File numbers: 8657-C12-201505505 and 4754-502

Determination of costs award with respect to the participation of the Council of Senior Citizens' Organizations of British Columbia, the National Pensioners Federation, and the Public Interest Advocacy Centre in the proceeding initiated by Broadcasting and Telecom Notice of Consultation 2015-239

Application

1. By letter dated 14 December 2015, the Public Interest Advocacy Centre (PIAC), on its own behalf and on behalf of the Council of Senior Citizens' Organizations of British Columbia and the National Pensioners Federation (collectively, PIAC et al.), applied for costs with respect to their participation in the proceeding initiated by Broadcasting and Telecom Notice of Consultation 2015-239 (the proceeding). In that proceeding, the Commission asked for input on the service that the Commissioner for Complaints for Telecommunications Services Inc. (CCTS) provides to consumers; the consumer experience with the CCTS; public awareness of the CCTS; company participation in the CCTS; and the mandate, activities, structure, and funding of the CCTS.
2. TELUS Communications Company (TCC) filed an answer, dated 17 December 2015, in response to PIAC et al.'s application for costs. PIAC et al. filed a reply dated 22 January 2016.
3. PIAC et al. submitted that they 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 they represented a group or class of subscribers that had an interest in the outcome of the proceeding, they had assisted the Commission in developing a better understanding of the matters that were considered, and they had participated in a responsible way.
4. In particular, PIAC et al. submitted that they represent the interests of Canadian consumers and users of telecommunications services. Moreover, they submitted that they advocate for equitable access, affordability, and protection of telecommunications users, as well as other public interest goals such as access to a means of independent complaints resolution. PIAC et al. further submitted that their contribution focused on the interests of consumers and on strengthening the CCTS's ability to fulfill its mandate and assist communications service customers in an independent and effective manner. Finally, they submitted that they offered a distinct

point of view during the proceeding as organizations representing the interests of Canadian telecommunications users.

5. PIAC et al. requested that the Commission fix their costs at \$19,955.73, consisting of \$12,720.63 for legal fees, \$7,050.00 for analyst fees, and \$185.10 for disbursements. PIAC et al.'s claim included the Ontario Harmonized Sales Tax (HST) on fees less the rebate to which PIAC et al. are entitled in connection with the HST. PIAC et al. filed a bill of costs with their application.
6. PIAC et al. submitted that the telecommunications service providers that participated in the proceeding are the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents).

Answer

7. In response to the costs application, TCC did not object to PIAC et al.'s entitlement to an award of costs in the proceeding. However, TCC noted that the proceeding was a combined broadcasting and telecommunications proceeding and that there are no provisions for awarding costs related to broadcasting issues under the *Telecommunications Act* (the Act). To that end, TCC noted that PIAC et al. had failed to indicate the proportion of their costs that were related to broadcasting issues.
8. TCC argued that PIAC et al. should be required to resubmit their costs application indicating the proportion of time spent on telecommunications issues as opposed to broadcasting issues.
9. TCC submitted that if parties do not file evidence indicating time spent between telecommunications and broadcasting matters, the Commission should make an order that only two thirds of the total costs are entitled to be awarded, with the assumption that one third of the time spent on the proceeding was spent on broadcasting matters.

Reply

10. PIAC et al. argued that it was nearly impossible to time-keep and categorize each minute of their time as telecommunications or broadcasting. Further, PIAC et al. submitted that, due to the administrative burden involved, they disagreed that they should resubmit their initial costs application.
11. PIAC et al. suggested that the Commission publicly state what it considered to be a reasonable apportionment of time in a combined telecommunications and broadcasting proceeding. Costs applicants could then make the case if this percentage of time was not reflective of their actual work.

Request for information

12. In a letter dated 12 February 2016, it was noted that the proceeding related to both telecommunications and broadcasting issues, and that this is important because the Commission may only award costs related to telecommunications matters under the Act.
13. The letter noted that the Commission cannot predetermine the amount of time spent by costs applicants in combined telecommunications and broadcasting proceedings. In particular, it was noted that the overall division of issues in the proceeding does not necessarily translate into the amount of time that any specific costs applicant spends on either telecommunications or broadcasting matters. It was noted that only the individual costs applicant knows the amount of time allocated to particular issues and whether these issues related to telecommunications or broadcasting matters.
14. Accordingly, all costs applicants to the proceeding, including PIAC et al., were requested to provide the percentage of time spent on telecommunications matters during the proceeding, including support as to how parties determined the allocation of time spent on telecommunications as opposed to broadcasting matters.
15. In its response, dated 22 February 2016, PIAC et al. submitted that the proceeding was largely related to telecommunications matters, as the CCTS had resolved only telecommunications complaints. Further, upon review of their dockets, discussion with lawyers on the file, and a review of the record, PIAC et al. submitted that it was impossible to determine an exact division of time between telecommunications and broadcasting matters. However, based on the professional judgment of PIAC et al.'s General Counsel, the overall apportionment of time in the proceeding is best represented as 90% for telecommunications and 10% for broadcasting.
16. No answers with respect to PIAC et al.'s response to the request for information were received from other parties.

Commission's analysis and determinations

17. 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.

18. PIAC et al. have satisfied these criteria through their participation in the proceeding. In particular, they made constructive submissions with respect to how the CCTS could be strengthened to fulfill its mandate, including recommendations on how to enhance public awareness of the CCTS. Further, PIAC et al. contributed useful comments with respect to the CCTS's structure and how the independence and integrity of the CCTS could be protected. Their submissions represented a distinct point of view offered by organizations representing the interests of Canadian telecommunications users. In this way, PIAC et al. assisted the Commission in developing a better understanding of the matters that were considered.
19. The rates claimed in respect of analyst and legal fees are in accordance with the rates established in the Commission's *Guidelines for the Assessment of Costs*, as set out in Telecom Regulatory Policy 2010-963.
20. The proceeding related to both telecommunications and broadcasting issues. As noted above, the Commission may only award costs related to telecommunications matters under the Act. However, parties are free to apply to the Broadcasting Participation Fund for the portion of time that they dedicated to broadcasting matters in the proceeding.
21. Based on the record of the proceeding, the Commission finds that the 90% allocation of time by PIAC et al. to telecommunications matters is acceptable, and that the total amount claimed in their initial costs application should be adjusted to \$17,960.16 (90% of their initial costs claim). The Commission finds that the amended total amount claimed by PIAC et al. was necessarily and reasonably incurred and should be allowed.
22. 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.
23. 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. The Commission considers that the following parties had a significant interest in the outcome of the proceeding and participated actively in the proceeding: Bell Canada; Bragg Communications Incorporated, operating as Eastlink; the Canadian Network Operators Consortium Inc.; Cogeco Cable Inc.; MTS Inc. and Allstream Inc.; Quebecor Media Inc., on behalf of Videotron G.P.; Rogers Communications Partnership (RCP); Saskatchewan Telecommunications; Shaw Communications Inc. (Shaw); TBayTel; and TCC.

24. 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 telecommunications operating revenues (TORs)¹ as an indicator of the relative size and interest of the parties involved in the proceeding.
25. However, as set out in paragraph 21 of 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.
26. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated as follows:

Company	Percentage	Amount
TCC	34.2%	\$6,142.37
RCP	31.0%	\$5,567.65
Bell Canada	28.6%	\$5,136.61
Shaw	6.2%	\$1,113.53

Directions regarding costs

27. The Commission **approves with changes** the application by PIAC et al. for costs with respect to their participation in the proceeding.
28. Pursuant to subsection 56(1) of the Act, the Commission fixes the costs to be paid to PIAC et al. at \$17,960.16.
29. The Commission **directs** that the award of costs to PIAC et al. be paid forthwith by TCC, RCP, Bell Canada, and Shaw according to the proportions set out in paragraph 26 above.

Secretary General

Related documents

- *Review of the structure and mandate of the Commissioner for Complaints for Telecommunications Services Inc.*, Broadcasting and Telecom Notice of Consultation CRTC 2015-239, 4 June 2015, as amended by Broadcasting and Telecom Notices of Consultation CRTC 2015-239-1, 24 July 2015, and 2015-239-2, 25 September 2015

¹ TORs consist of Canadian telecommunications revenues from local and access, long distance, data, private line, Internet, and wireless services. In this order, the Commission has used the TORs of the costs respondents based on their most recent audited financial statements.

- *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*