



## Telecom Order CRTC 2011-322

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Ottawa, 13 May 2011

### **Determination of costs award with respect to the participation of the Public Interest Advocacy Centre in the Broadcasting and Telecom Notice of Consultation 2010-509 proceeding**

File number: 4754-377

1. By letter dated 17 December 2010, the Public Interest Advocacy Centre (PIAC) applied for costs with respect to its participation in the proceeding initiated by Broadcasting and Telecom Notice of Consultation 2010-509 (the proceeding).
2. On 15 February 2011, Bell Aliant Regional Communications, Limited Partnership; Bell Canada; and Télébec, Limited Partnership (collectively, Bell Canada et al.) filed comments in response to PIAC's application. On 21 February 2011, TELUS Communications Company (TCC) also filed comments in response to the application. PIAC did not file any reply comments.

#### **Application**

3. PIAC submitted that it had met the criteria for an award of costs set out in subsection 44(1) of the *CRTC Telecommunications Rules of Procedure* (the Rules) because it represented a group of subscribers that had an interest in the outcome of the proceeding, it had participated responsibly, and it had contributed to a better understanding of the issues by the Commission through its participation in the proceeding.
4. PIAC requested that the Commission fix its costs at \$4,762.53, consisting entirely of outside counsel 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.
5. PIAC made no submission as to the appropriate costs respondents.

#### **Answer**

6. In response to the application, Bell Canada et al. and TCC stated that they did not object to PIAC's eligibility for costs nor to the amount claimed. However, they both submitted that all telecommunications service providers (TSPs) that were parties to the proceeding should be named as costs respondents, and that the responsibility for payment of costs should be allocated among these TSPs in proportion to their

respective share of telecommunications operating revenues (TORs).<sup>1</sup> Bell Canada et al. and TCC also submitted that the responsibility for payment of costs should be apportioned in accordance with the Commission's *Guidelines for the Assessment of Costs*, adopted in Telecom Regulatory Policy 2010-963.

7. In addition, TCC requested that the Commission allocate the responsibility for payment of costs in a manner that is neutral with respect to corporate structure, taking into account the TORs of TSP affiliates. TCC outlined this proposed approach in greater detail in its 7 January 2011 submission filed in response to applications for costs by various costs applicants for their participation in the proceeding initiated by Telecom Notice of Consultation 2010-43.

### **Commission's analysis and determinations**

8. The Commission finds that PIAC has satisfied the criteria for an award of costs set out in subsection 44(1) of the Rules. Specifically, the Commission finds that PIAC represented a group or class of subscribers that had an interest in the outcome of the proceeding, it participated responsibly, and it contributed to a better understanding of the issues by the Commission.
9. The Commission notes that PIAC's costs application was filed before the *Guidelines for the Assessment of Costs* came into force on 23 December 2010. Accordingly, the Commission's Legal Directorate's *Guidelines for the Taxation of Costs*, revised as of 24 April 2007, apply to this application.
10. The Commission notes that the rates claimed in respect of legal fees are in accordance with the rates established in the *Guidelines for the Taxation of Costs*. The Commission finds that the total amount claimed by PIAC was necessarily and reasonably incurred, and should be allowed.
11. The Commission considers that 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.
12. In determining the appropriate respondents to an award of costs, the Commission has generally considered which parties are affected by the issues and have actively participated in the proceeding. The Commission notes, in this regard, that the following TSPs actively participated in the proceeding and had a significant interest in its outcome: Bell Canada et al.; Bragg Communications Inc., operating as EastLink; MTS Allstream Inc. (MTS Allstream); Rogers Communications Inc. (RCI); Shaw Communications Inc.; and TCC.

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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.

13. The Commission further notes, however, that in allocating costs among respondents, it has also been sensitive to the fact that if numerous respondents are named, the applicant may have to collect small amounts from many respondents, resulting in a significant administrative burden to the applicant.
14. In light of the above, and given the relatively small size of the costs award and the large number of potential costs respondents in this case, the Commission considers that it is appropriate, in the present circumstances, to limit the respondents to Bell Canada et al., MTS Allstream, RCI, and TCC.
15. The Commission notes that it generally allocates the responsibility for payment of costs among respondents based on the respondents' TORs as an indicator of the relative size and interest of the parties involved in the proceeding. The Commission does not consider it appropriate in this case to look beyond the corporate structures of the companies that participated in this proceeding and therefore will not include the TORs of TSP affiliates that did not participate in the proceeding, as requested by TCC.
16. The Commission considers that, in the present circumstances, it is appropriate to apportion the costs among the respondents in proportion to their TORs, based on their most recent audited financial statements. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated as follows:

Bell Canada et al.	48%
TCC	38%
MTS Allstream	7%
RCI	7%

17. The Commission notes that Bell Canada et al. filed joint submissions in the proceeding. Consistent with its general approach articulated in Telecom Costs Order 2002-4, the Commission makes Bell Canada responsible for payment on behalf of Bell Canada et al., and leaves it to the members of the companies to determine the appropriate allocation of the costs among themselves.

### **Directions regarding costs**

18. The Commission **approves** the application by PIAC for costs with respect to its participation in the proceeding.
19. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to PIAC at \$4,762.53.
20. The Commission directs that the award of costs to PIAC be paid forthwith by Bell Canada on behalf of Bell Canada et al., by TCC, by MTS Allstream, and by RCI, according to the proportions set out in paragraph 16.

Secretary General

## Related documents

- *Revision of CRTC costs award practices and procedures*, Telecom Regulatory Policy CRTC 2010-963, 23 December 2010
- *Converged Rules of Procedure*, Broadcasting and Telecom Notice of Consultation CRTC 2010-509, 23 July 2010, as amended by Broadcasting and Telecom Notice of Consultation CRTC 2010-509-1, 3 September 2010
- *Proceeding to review access to basic telecommunications services and other matters*, Telecom Notice of Consultation CRTC 2010-43, 28 January 2010, as amended by *Obligation to serve and other matters*, Telecom Notice of Consultation CRTC 2010-43-1, 5 March 2010; Telecom Notice of Consultation CRTC 2010-43-2, 30 March 2010; and Telecom Notice of Consultation CRTC 2010-43-3, 23 July 2010
- *New procedure for Telecom costs awards*, Telecom Public Notice CRTC 2002-5, 7 November 2002
- *Action Réseau Consommateur, the Consumers' Association of Canada, Fédération des associations coopératives d'économie familiale and the National Anti-Poverty Organization application for costs – Public Notice CRTC 2001-60*, Telecom Costs Order CRTC 2002-4, 24 April 2002