



25 July 2015

John Traversy
Secretary General
CRTC
Ottawa, ON K1A 0N2

Via GCKey

Dear Mr. Secretary General,

Re: Review and variance of Telecom Order CRTC 2015-194, Application 8662-P8-201505033 by the Public Interest Advocacy Centre

- 1 The Forum for Research and Policy in Communications (FRPC) is a non-profit and non-partisan organization established to undertake research and policy analysis about communications, including broadcasting. The Forum supports a strong Canadian communications system that serves the public interest.
- 2 We are writing in support of CAC-PIAC's application for the CRTC to review and vary *Determination of costs award with respect to the participation of the Consumers' Association of Canada and the Public Interest Advocacy Centre in the proceeding leading to Telecom Decision CRTC 2015-70 regarding the expiry of certain time-limited exogenous factors*, (Ottawa, 15 May 2015), <http://www.crtc.gc.ca/eng/archive/2015/2015-194.htm> (the 2015-70 proceeding).

Background

- 3 CAC-PIAC intervened in the 2015-70 proceeding, and submitted a five-page intervention.
- 4 The CRTC referred to CAC-CAC-PIAC's submissions in the Commission's 2015-70 decision:

18. CAC/PIAC submitted that Bell Canada et al. had minimized the impact on themselves by proposing to reflect only a portion of the impact of the exogenous factors' expiry. In CAC/PIAC's view, it appeared that Bell Canada et al. had determined whether price adjustments should be granted to their customers only after retroactively granting themselves any available headroom in their relevant service baskets. Further, CAC/PIAC submitted that the amalgamation of Bell Aliant's and Bell Canada's data could cause distortions in the data.

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33. CAC/PIAC argued that Bell Canada et al.'s rebates should include compound interest, noting that the applicants had full use of the funds in question, and their customers did not, for periods of several years in some cases.

- 5 CAC-PIAC subsequently applied for the costs associated with preparing its intervention, in accordance with section 68 of the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure*. The costs were based on roughly five days' of work (35.4 hours) used by outside counsel to prepare the intervention. CAC-PIAC's application described this work. It

... submitted detailed comments and identified a number of significant concerns arising in relation to the outcomes sought by the Bell companies in the proceeding. The subject matter of the Bell companies' application require a careful analysis of the manner in which price caps regulation and exogenous factors operate and of the extent to which, in CAC-PIAC's view, the Bell companies appear to have exploited aspects of the price caps regime in a manner which harms consumers and is inconsistent with the public interest

CAC-PIAC's 14 November 2014 application (Commission file # 8661-B54-201408930), at 2.

- 6 The CRTC issued its determination about CAC-PIAC's application six months after the application was filed, in *Determination of costs award with respect to the participation of the Consumers' Association of Canada and the Public Interest Advocacy Centre in the proceeding leading to Telecom Decision 2015-70 regarding the expiry of certain time-limited exogenous factors*, Telecom Order 2015-194 (Ottawa, 15 May 2015)
- 7 In its Order the CRTC agreed that CAC-PIAC had represented a group or class of subscribers affected by the outcome of Telecom Decision CRTC 201570, that it had assisted the Commission's understanding of the issues considered, and that it had participated responsibly in the proceeding.
- 8 While it did not challenge CAC-PIAC's description of the work it had undertaken in the proceeding (set out above at paragraph 4) the CRTC said that "[t]he proceeding initiated by Bell Canada et al.'s application was narrowly focused and was not unduly complex."
- 9 The CRTC then said that CAC-PIAC should have used articling students or junior counsel to prepare its submission, and that it should have taken just under three days (21.2 hours), rather than five days (35.4 hours) for this work:

8. ... that the amount of time claimed by CAC/PIAC of 35.4 hours is excessive in light of the nature of the proceeding and the degree of the costs applicants' participation in it. The proceeding initiated by Bell Canada et al.'s application was narrowly focused and was not unduly complex. CAC/PIAC's written intervention was similarly narrowly focused. Further, CAC/PIAC used the services of senior legal counsel at the highest allowable rate. Costs applicants should rely on articling students or junior counsel to the extent possible to avoid incurring excessive costs, as stated in the Commission's *Guidelines for the Assessment of Costs*.

9. In light of the above, the Commission finds that the time claimed by CAC/PIAC should be reduced by 40%. Consequently, the Commission finds that legal fees of \$6,402.29 for external counsel was necessarily and reasonably incurred, and should be the total amount of costs allowed.

10 CAC-PIAC is asking the Commission to review and vary Telecom Order CRTC 2015-194.

11 Having reviewed the materials related to the 2015-70 proceeding and the CRTC's determination, FRPC supports CAC-PIAC's application, for the reasons that follow.

A proceeding's narrow focus does not mean the proceeding lacks complexity

12 FRPC notes the CRTC's comment that the time used by CAC-PIAC was "excessive" because the 2015-70 proceeding was "narrowly focussed and was not unduly complex".

13 FRPC respectfully disagrees that 2015-70 proceeding "was not unduly complex".

14 At the outset, we note that the 2015-70 proceeding was initiated by an application filed by two companies (Bell Canada and Bell Aliant) which affected three companies (Bell Aliant, Bell Canada and Télébec) and six tariff notices (495, 496, 7438, 7439, 474 and 475). In our view, proceedings that involve more than one applicant, more than one company, and multiple tariff notices generally tend to be more complex than proceedings involving one applicant, one company, and one tariff notice.

15 Even if the 2015-70 proceeding were not complex because of the multiple parties and tariff pages that were at issue, our review of the application suggests that effective participation in the proceeding would have required a responsible intervener to review each of the ten documents and 66 pages that comprised the application:

- A 22-page application, *Proposed Price Index Adjustments, Rate Reductions and Rebates Associated with the Expiry of Certain Time-Limited Exogenous Adjustments*
- App 1 (6 pages)
- App 2 (5 pages), and
- Seven appended spreadsheets, containing 36 pages of information and data.

16 In our view, proceedings in which applications consist of lengthy documents, several appendices and multiple spreadsheets tend to raise more complex issues than proceedings involving a single, one-page document.

17 FRPC respectfully notes that a responsible intervener would also likely find it necessary to review materials related to the application, such as the 69 pages of CRTC materials cited in the application itself: Telecom Decisions CRTC 2007-27 (34 pages long), 2007-

60 (3 pages), 2007-88 (9 pages), 2007-89 (9 pages), 2007-124 (7 pages), 2008-65 (4 pages) and 2009-35 (5 pages).

18 The examination of materials such as these might in turn lead a responsible intervener to review other relevant documents. In FRPC's experience relevant materials such as these take time to review in the detail necessary to evaluate their implications, if any, for an application.

19 A responsible intervener would in our view next have to analyze the steps being proposed by the applicant, which in this matter involved:

- Price cap model adjustments
- Residential non-High-Cost-Serving-Area baskets
- Deferral account drawdowns, and
- Exogenous amounts and their expiry dates in capped baskets.

20 Interveners would also have to review and analyze information provided by the three applicants, such as these tables from Appendix 2 of the Bell Canada-Bell Aliant Application ("Supporting Calculations for Revised SBLs, Rate Reductions and Rebates"):

Calculation of the Rebate and Rate Reduction Corresponding to the ELCA Exogenous Amounts Assigned to the Residential Non-HCSA Services Basket and Reflected as a Drawdown from Bell Canada's Deferral Account

Table 1a
Bell Canada

Calculation of the Amount Associated with the Exogenous Adjustment Related to the Ottawa, Gatineau and Hamilton ELCA's for the Residential Non-HCSA Services Basket

Amount approved as an Exogenous Adjustment as per Decision 2007-124 (7 December 2007), per year, for a three-year period	A1	\$1,400,000
Ratio used to allocate the Exogenous Adjustment to Residential Non-HCSAs (based on the 2006 average residential NAS in-service in Non-HCSAs)	B1	59.2%
Exogenous Amount Assigned as an Annual Drawdown to Bell Canada's Deferral Account effective 1 June 2007	$C1 = A1 \times B1$	\$829,368

Table 1b
Bell Aliant

Calculation of the Amount Associated with the Exogenous Adjustment Related to the Sudbury ELCA for the Residential Non-HCSA Services Basket

Amount approved as an Exogenous Adjustment as per Decision 2008-65 (22 July 2008), per year, for a three-year period	A2	\$285,379
Ratio used to allocate the Exogenous Adjustment to Residential Non-HCSAs (based on the 2007 average residential NAS in-service in Non-HCSAs)	B2	37.7%
Exogenous Amount Assigned as an Annual Drawdown to Bell Aliant's Deferral Account effective 1 June 2007	$C2 = A2 \times B2$	\$107,710

Table 1c
Bell Aliant and Bell Canada

Calculation of the Rate Reduction and Rebate Amounts Associated with the Reversal of the ELCA Exogenous Factors for the Residential Non-HCSA Services Baskets

Total Exogenous Amount Assigned as an Annual Drawdown to Bell Canada's Deferral Account effective 1 June 2007	$C = C1 + C2$	\$937,078
Total Bell Canada and Bell Aliant 2006 Average Residential Basic Individual Line NAS in Non-HCSAs in Ontario and Quebec (Note)	2006 NAS	5,650,804
Reduction to the Monthly Rate per Residential Individual and Multi-party Line NAS in Ontario and Quebec (represents the amount by which rates were not decreased for the three-year period during which the Exogenous Adjustment was in effect, from 1 June 2007 to 31 May 2010)	$D_{ELCA} = C / 2006 \text{ NAS} / 12$	(\$0.01)
Exogenous Factor Expiry Date	31 May 2010	
Rebate Period End Date	31 December 2014	
Number of Months between Expiry Date and Rebate Period End Date	M_{ELCA}	55
Total Rebate associated with ELCA Z-Factors, per Residence Individual Line and Multi-party Line NAS	$REBATE_{ELCA} = M_{ELCA} \times D_{ELCA}$	(\$0.55)

Note: The rate reduction and rebate requirements should be calculated using the total average 2006 in-service base for residential single line and multi-party line NAS. However, information about the 2006 multi-party line NAS base is no longer available. Therefore, the average 2006 in-service base for the single line NAS has been used to calculate the monthly amount per NAS. Since residential multi-party line NAS is a very small component of the total residential NAS in-service base, the monthly per NAS amount, rounded to the nearest cent, would not change from the amount shown above if we had unitized the total exogenous amount (C) by the total average 2006 residential NAS base.

- 21 In our experience, applications that do not contain formulae, descriptions of calculation methods, expiry dates and end dates are generally far less complex than applications such as that addressed by the 2015-70 proceeding.
- 22 The CRTC's analysis and determination in the 2015-70 decision also speak to the proceeding's complexity:

35. Bell Canada et al.'s application covers four separate exogenous events that expired, in some cases, over four years before they filed the application. Further, the applicants reviewed their approved exogenous adjustment expiry dates only after becoming aware, in May 2014, of NorthernTel, Limited Partnership's (NorthernTel) situation regarding the expiry of one of its time-limited exogenous factors.

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39. The Commission considers that the interest rate used to calculate compound interest should match the cost of debt that applied to each applicant over the period of time customers were overcharged. In addition to being the interest rate that companies would be charged by financial institutions when they borrow funds, the cost of debt is also the interest rate that the Commission directed the large ILECs to apply annually to funds to be included in their deferral account

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- 23 FRPC respectfully submits that in its experience, proceedings that engage multi-year periods, expiration dates, the cost of interest, compound interest, the cost of debt for individual applicants, and the calculation of appropriate customer rebates based on the preceding factors are complex.
- 24 Last, but not least, FRPC notes that a responsible intervener would have to draft a well-reasoned argument – and in the case of outside counsel, would have to do this in consultation with his/her client before, during and after the drafting occurs – before revising and finalizing the intervention for filing with the CRTC.
- 25 The counter-intuitive truth is that writing well takes time, as the French mathematician and philosopher Blaise Pascal wrote in 1657: “Je n’ai fait celle-ci plus longue que parce que je n’ai pas eu le loisir de la faire plus courte.” Even if CAC-PIAC submitted a relatively brief intervention to the 2015-70 proceeding its brevity does not mean that the submission could have been researched, drafted, reviewed, revised and finalized, in less time. To the contrary: less-experienced counsel might well have submitted a longer draft, that in turn would consume more of the applicants’ time, and of the Commission’s time.
- 26 To conclude with respect to the matter of complexity, FRPC respectfully submits that the issues addressed by the 2015-70 proceeding, the applicant’s proposals and the evidence adduced were complex. Considering the matter from another perspective – if this proceeding was not unduly complex, as the CRTC argued, what would an ‘unduly complex’ proceeding actually look like? In our view, the complexity of the issues and the application itself clearly required the time set out in CAC-PIAC’s cost application to review the materials, to analyze them within the framework of relevant CRTC policies and decisions, to consider and formulate CAC-PIAC’s response, and to draft, review and revise that response. CAC-PIAC’s application for costs was not excessive, and should not be reduced.

Experienced counsel use less time in complex proceedings

- 27 FRPC would also like to briefly address the CRTC’s view that CAC-PIAC should have employed less-experienced counsel in this proceeding.
- 28 Junior or inexperienced counsel can often assist more senior counsel in CRTC proceedings, particularly when they provide basic legal and other research.
- 29 In FRPC’s experience, however, counsel with specialized expertise save time in complex proceedings. Specialists are able to locate and understand relevant precedents more quickly, are more familiar with the points that will resonate with decision-making authorities, and typically marshal arguments more efficiently than their junior colleagues. Specialists’ experience therefore enables them to use less time

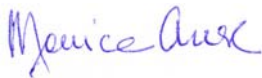
in dealing with a matter in their area of expertise. If CAC-PIAC had had to rely on inexperienced or junior counsel we suspect that significantly more time would have been needed to compose its intervention – possibly compromising this non-profit organization’s other deadlines.

- 30 We respectfully submit that CAC-PIAC is best placed to know how to use its limited staff resources and should be permitted to make decisions about which counsel should be used on which proceedings.

Conclusion

- 31 For the reasons set out above FRPC supports CAC-PIAC’s application for the CRTC to review and vary the determination in Telecom Order CRTC 2015-194, and to grant the application as submitted.

Sincerely yours,



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