



## Telecom Order CRTC 2023-14

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Ottawa, 23 January 2023

*File numbers: 1011-NOC2020-0367 and 4754-705*

### **Determination of costs award with respect to the participation of the First Mile Connectivity Consortium in the proceeding initiated by Telecom Notice of Consultation 2020-367**

#### **Application**

1. By letter dated 8 July 2022, the First Mile Connectivity Consortium (FMCC) applied for costs with respect to its participation in the proceeding initiated by Telecom Notice of Consultation 2020-367 (the proceeding). The Commission initiated the proceeding to review its regulatory framework for Northwestel Inc. (Northwestel). The proceeding also included an assessment of the state of telecommunications services in Canada's North.
2. The Commission did not receive any interventions in response to the application for costs.
3. The FMCC 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, the FMCC explained that it represents the interests of broadband Internet service providers that are established by residents of First Nations communities in rural, remote, and northern regions of Canada and that primarily provide telecommunications services to such communities (known as "community/regional intermediary organizations"). Specifically, the FMCC submitted that it contributed materially to meeting the unique needs of these organizations by working directly with them through regular consultations to ensure that their views and experiences were reflected in the FMCC's comments. The FMCC also submitted that it had assisted the Commission in developing a better understanding of the matters that were considered in the proceeding by providing comments on network improvements and oversight, affordability, local training and hiring, support for digital literacy and community engagement.
5. The FMCC requested that the Commission fix its costs at \$13,815.00, consisting entirely of consultant fees. The FMCC's claim included the federal Goods and Services Tax. The FMCC filed a bill of costs with its application.

6. The FMCC submitted that Northwestel, Rogers Communications Canada Inc. (RCCI), and TELUS Communications Inc. (TCI) are the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents).

### **Commission's analysis**

7. 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.
8. 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, the FMCC has demonstrated that it meets this requirement. The FMCC represents First Nations broadband service providers working in remote and northern regions, and First Nations residents of rural, remote and northern regions of Canada, as well as those residing in unserved and underserved regions across the country. As stated in Telecom Order 2017-164, although the individual members of the FMCC are telecommunications service providers, their status as community-based organizations with the distinct objective of providing rural and remote First Nations communities with Internet services distinguishes them from general commercial providers. When considered under the first of the costs criteria, the fact that the FMCC's members are able to represent the unique interests of First Nations subscribers and communities, as well as those of unserved and underserved subscribers and communities across Canada, qualifies them to claim costs when other telecommunications providers typically could not.
9. The FMCC has also satisfied the remaining criteria through its participation in the proceeding. In particular, the FMCC's submissions, especially regarding mandating and enforcing quality of service standards for Northwestel and how telecommunications service providers can better engage with Indigenous communities in Canada's North, assisted the Commission in developing a better understanding of the matters that were considered. The FMCC also participated in the proceeding in a responsible manner. The FMCC structured its submissions to

respond to questions raised by the Commission in areas where the FMCC and its contracted parties have expertise and direct experience.

10. The rates claimed with respect to consultant 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 the FMCC was necessarily and reasonably incurred and should be allowed.
11. 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 its application, the FMCC named Northwestel, RCCI and TCI as the appropriate costs respondents. The Commission has generally determined, however, 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.
13. The Commission considers that the following parties had a significant interest in the outcome of the proceeding and participated actively in the proceeding and are therefore the appropriate costs respondents: Iristel Inc., on behalf of itself and its affiliate Ice Wireless Inc.; Northwestel; RCCI; SSi Micro Ltd., doing business as SSi Canada; TekSavvy Solutions Inc.; and TCI.
14. The Commission also 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) as an indicator of the relative size and interest of the parties involved in the proceeding.<sup>1</sup> However, as set out in Telecom Order 2015-160, the Commission generally 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.
15. The Commission considers each application for costs on its own merits and with respect to the particular circumstances of the proceeding associated with the application. While in most cases the general practice of allocating the responsibility for payment of costs among costs respondents in accordance with their TORs is appropriate, the Commission retains the discretion to take alternative approaches to allocating costs when it is determined to be appropriate in the circumstances.
16. In this case, a strict application of the Commission's practice of allocating the responsibility for payment of costs based on TORs would result in RCCI and TCI being responsible for a greater proportion of costs than Northwestel. The Commission finds that making RCCI and TCI responsible for a greater proportion of costs would not appropriately reflect Northwestel's interest and participation in the proceeding,

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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.

given that a significant portion of the proceeding involved a review of Northwestel's regulatory framework. Therefore, in the circumstances of this case, the Commission considers that it would be appropriate to allocate 70% of the costs to Northwestel and 30% of the costs split evenly between RCCI and TCI, since they both participated in the proceeding actively and equally.

17. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated as follows:<sup>2</sup>

Company	Proportion	Amount
Northwestel	70%	\$9,670.50
RCCI	15%	\$2,072.25
TCI	15%	\$2,072.25

### 2019 Policy Direction

18. The Governor in Council issued a policy direction in which it directed the Commission to consider how its decisions can promote competition, affordability, consumer interests, and innovation (the 2019 Policy Direction).<sup>3</sup> The Commission considers that the awarding of costs in this instance is consistent with subparagraph 1(a)(iv) of the 2019 Policy Direction.
19. By facilitating the participation of a group that represents consumer interests, this order contributes to enhancing and protecting the rights of consumers in their relationships with telecommunications service providers. Since consumer groups often require financial assistance to effectively participate in Commission proceedings, the Commission is of the view that its practice of awarding costs, as exercised in this instance, enables such groups to provide their perspectives on how consumer interests may be affected by the outcomes of the proceedings. In light of the above, the Commission considers that its determination to award costs to the FMCC promotes consumer interests.

### Directions regarding costs

20. The Commission **approves** the application by the FMCC for costs with respect to its participation in the proceeding.

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

<sup>3</sup> *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives to Promote Competition, Affordability, Consumer Interests and Innovation*, SOR/2019-227, 17 June 2019

21. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to the FMCC at \$13,815.00.
22. The Commission **directs** that the award of costs to the FMCC be paid forthwith by Northwestel, RCCI and TCI according to the proportions set out in paragraph 17.

Secretary General

### **Related documents**

- *Call for comments – Review of the Commission’s regulatory framework for Northwestel Inc. and the state of telecommunications services in Canada’s North*, Telecom Notice of Consultation CRTC 2020-367, 2 November 2020
- *Determination of costs award with respect to the participation of the First Mile Connectivity Consortium in the proceeding leading to Telecom Regulatory Policy 2016-496*, Telecom Order CRTC 2017-164, 19 May 2017
- *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