



Telecom Order CRTC 2023-15

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File numbers: 1011-NOC2020-0367 and 4754-706

Determination of costs award with respect to the participation of the Public Interest Advocacy Centre in the proceeding initiated by Telecom Notice of Consultation 2020-367

Application

1. By letter dated 8 August 2022, the Public Interest Advocacy Centre (PIAC) 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. 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 consumers across Canada's North, with a particular concern for vulnerable and low-income consumers. PIAC noted that it has a long history of representing the interests of these consumers in Commission proceedings concerning Canada's North – for example, its participation in the recent proceeding initiated by an application submitted by SSi Micro Ltd., doing business as SSi Canada (SSi Canada), to require Northwestel to provide a third-party Internet access service and the recent proceeding initiated by Northwestel's application to modify its tariff filing process for retail Internet services.
5. PIAC submitted that it had assisted the Commission in developing a better understanding of the matters that were considered by providing comments on affordability issues, satellite retail Internet access services and issues related to network outages in Canada's North.

6. PIAC requested that the Commission fix its costs at \$6,932.50, consisting entirely of in-house articling student fees. PIAC filed a bill of costs with its application.
7. PIAC submitted that Northwestel is the appropriate party to be required to pay any costs awarded by the Commission (the costs respondent) since the focus of the proceeding relates to Northwestel's regulatory regime.

Procedural issue

8. In its costs application, PIAC acknowledged that it was filing its application after the deadline set by the Commission in Telecom Notice of Consultation 2022-147, but requested that the Commission exercise its discretion and accept PIAC's application. In support of its request, PIAC submitted that it participated in all stages of the proceeding within the deadlines set by the Commission and that it devoted considerable time and effort to providing a public interest perspective on the issues raised in the proceeding. PIAC added that any prejudice caused by its late filing is outweighed by the public interest in encouraging the participation of groups like PIAC.
9. As such, to ensure that parties to the proceeding had an opportunity to comment on PIAC's late costs application, as well as on whether the Commission should exercise its discretion to accept PIAC's costs application, Commission staff issued a procedural letter that set out an additional process for parties to comment on PIAC's costs application. The Commission did not receive any comments in response to the procedural letter.
10. The Commission notes that PIAC provided an important public interest perspective on the issues raised in the proceeding and should therefore be allowed to apply for costs with respect to its participation in the proceeding. The Commission further notes that, given the additional process for parties to comment on PIAC's costs application, parties to the proceeding would not be prejudiced if the Commission accepted PIAC's costs application. Accordingly, the Commission is of the view that it would be in the public interest to accept PIAC's costs application.

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. Specifically, PIAC represents the interests of consumers across Canada's North, with a particular concern for vulnerable and low-income consumers. PIAC indicated that the positions it put forward reflected the interests of consumers in Canada's North given its experience representing these consumers in recent Commission proceedings related to the North.
- 13. PIAC has also satisfied the remaining criteria through its participation in the proceeding. In particular, PIAC's submissions, especially regarding the creation of a subsidy for residential Internet access services in Canada's North, its proposed changes to Wholesale Connect and issues related to outages and service disruptions, assisted the Commission in developing a better understanding of the matters that were considered. PIAC also participated in the proceeding in a responsible way by complying with the Rules of Procedure and by respecting the deadlines and processes set out in the proceeding.
- 14. The rates claimed with respect to in-house articling student 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 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. In its application, PIAC named Northwestel as the costs respondent. 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.
- 17. 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; Rogers Communications Canada Inc. (RCCI); SSI Canada; TekSavvy Solutions Inc.; and TELUS Communications Inc. (TCI).
- 18. 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.¹ 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.

19. 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.
20. 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, 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.
21. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated as follows:²

Company	Proportion	Amount
Northwestel	70%	\$4,852.74
RCCI	15%	\$1,039.88
TCI	15%	\$1,039.88

2019 Policy Direction

22. The Governor in Council issued a policy direction in which it directed the Commission to consider how its decisions can promote competition, affordability,

¹ TORs consist of Canadian telecommunications revenues from local and access, long distance, data, private line, Internet, and wireless services.

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

consumer interests, and innovation (the 2019 Policy Direction).³ The Commission considers that the awarding of costs in this instance is consistent with subparagraph 1(a)(iv) of the 2019 Policy Direction.

23. 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 PIAC promotes consumer interests.

Directions regarding costs

24. The Commission **approves** the application by PIAC for costs with respect to its participation in the proceeding.
25. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to PIAC at \$6,932.50.
26. The Commission **directs** that the award of costs to PIAC be paid forthwith by Northwestel, RCCI and TCI according to the proportions set out in paragraph 21.

Secretary General

Related documents

- *Telecommunications in the Far North, Phase II*, Telecom Notice of Consultation CRTC 2022-147, 8 June 2022
- *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
- *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

³ *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

- *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