



## Telecom Order CRTC 2023-159

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Ottawa, 26 May 2023

*File numbers: 8646-N1-202108175 and 4754-681*

### **Determination of costs award with respect to the participation of the Public Interest Advocacy Centre in the proceeding that led to Telecom Decision 2022-343**

#### **Application**

1. By letter dated 14 March 2022, the Public Interest Advocacy Centre (PIAC) applied for costs with respect to its participation in the proceeding that led to Telecom Decision 2022-343 (the proceeding). In the proceeding, Northwestel Inc. (Northwestel) requested that the Commission modify the tariff approval process for its retail residential Internet services.
2. In its response dated 21 March 2022, Northwestel explicitly stated that it did not dispute any material aspect of PIAC's application but that it took issue with PIAC's restating of the proceeding's issues in its application.
3. In a letter dated 27 June 2022, PIAC submitted a supplemental cost claim following the reopening of the proceeding's record by the Commission. No interventions were received by the Commission regarding this supplemental claim.
4. 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.
5. In particular, PIAC submitted that it represents Canadian consumers in the North, particularly low income and vulnerable consumers. PIAC added that the specific method it used to represent this group or class of subscribers was to intervene on their behalf in order to prevent the degradation of competition in the North.
6. PIAC requested that the Commission fix its costs at \$3,770.00 for the original proceeding and \$750.00 in supplemental costs after the record was reopened, for a total of \$4,520.00 in legal fees. PIAC's claim included the federal Goods and Services Tax (GST) on fees less the rebate to which PIAC is entitled in connection with the GST. 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).
8. PIAC suggested that the costs respondent should be responsible for the full payment of the costs.

### **Commission's analysis**

9. 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.
10. 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, since it represents the interests of consumers across Canada, with a particular concern for vulnerable and rural consumers.
11. PIAC has also satisfied the remaining criteria through its participation in the proceeding. In particular, PIAC's submissions drew attention to consumer affordability mechanisms and established that, in its view, subsidy is crucial to the success of any measures to remove purely technical, legal, and physical barriers to rural broadband rollout. This assisted the Commission in developing a better understanding of the matters that were considered.
12. Furthermore, PIAC 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.
13. The rates claimed in respect of legal 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.

14. 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.
15. In its application, PIAC named Northwestel as the sole costs respondent, since Northwestel was the primary participant in the proceeding. 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.
16. The Commission considers that typically, 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> Northwestel's intervention, however, clearly and explicitly stated its lack of objection to being named the sole costs respondent.
17. Given Northwestel's status as the applicant and the limited number of interveners in the proceeding, as well as Northwestel's willingness to accept responsibility for the complete and total payment of costs associated with the proceeding, the Commission therefore finds that Northwestel is the appropriate costs respondent to PIAC's application for costs.

### **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 \$4,520.00.
20. The Commission **directs** that the award of costs to PIAC be paid forthwith by Northwestel.

Secretary General

### **Related documents**

- *Northwestel Inc. – Application to modify the approval process for the company's retail Internet service tariffs*, Telecom Decision CRTC 2022-343, 20 December 2022
- *Guidance for costs award applicants regarding representation of a group or a class of subscribers*, Telecom Information Bulletin CRTC 2016-188, 17 May 2016

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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.

- *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