



Telecom Order CRTC 2023-365

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Determination of costs award with respect to the participation of the Public Interest Advocacy Centre in the proceeding initiated by Telecom Notice of Consultation 2022-147

Application

1. By letter dated 2 August 2023, the Public Interest Advocacy Centre (PIAC) applied for costs incurred until 31 May 2023 with respect to its participation in the proceeding initiated by Telecom Notice of Consultation 2022-147 (the proceeding).¹ In the proceeding, the Commission is considering what actions it should take to improve telecommunications services in communities in the Far North.
2. Northwestel Inc. (Northwestel) and TELUS Communications Inc. (TCI) filed interventions, dated 10 October 2023, in response to PIAC's application.
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 in the Far North, particularly low-income and vulnerable consumers who are relatively less likely to be able to afford reliable telecommunications. PIAC noted that it has a long history of representing consumers, particularly low-income and other vulnerable consumers, in Commission proceedings, and that it has participated in various Commission proceedings involving the Far North and Northwestel.
5. PIAC further submitted that it had assisted the Commission in developing a better understanding of the matters that were considered by submitting comments that addressed the burdens on all consumers in the Far North who face high service costs and lack of availability and reliability of service.

¹ In a Secretary General letter dated 27 September 2023, the Commission approved, with modifications, a procedural request filed by PIAC to allow parties to file an application for costs for their participation up to 31 May 2023 in the proceeding.

6. PIAC requested that the Commission fix its costs at \$48,884.91, consisting of \$45,822.91 for legal fees and \$3,062.00 for disbursements.
7. PIAC submitted that all potential costs respondents based on the most recent data provided to the Commission are the appropriate parties to be required to pay any costs awarded by the Commission.

Answer

8. Northwestel submitted that it had no comments on PIAC's costs application, but argued that it should not be entirely responsible for PIAC's costs. It noted that although the proceeding primarily concerns its incumbent territory, it also includes communities that were or are in TCI's incumbent territory, and that other telecommunications service providers (TSPs) actively participated in and have an interest in the proceeding.
9. Northwestel suggested that the Commission allocate costs in a manner consistent with the allocation in Phase 1 of the proceeding,² in which Northwestel would be responsible for 70% of the costs and the remaining 30% would be split evenly among the other costs respondents.
10. TCI submitted that it did not take a position on PIAC's eligibility for costs or the amount of costs claimed, but argued that PIAC's entire costs claim should be allocated to Northwestel because Phase II of the Far North proceeding primarily concerns a review of Northwestel's regulatory framework and services in its incumbent territory. TCI added that it has already contributed to the costs of interveners in a number of proceedings on the same subject matter (e.g., competitive framework, wholesale service requirements, price caps, subsidy and affordability) as they relate to TCI's incumbent territory and should not have to pay to support the same considerations as they relate to Northwestel's incumbent territory.
11. TCI suggested that the Commission depart from its practice of allocating the responsibility for payment of costs based on telecommunications operating revenues (TORs)³ and allocate any costs related to PIAC's costs claim solely to Northwestel. It added that a strict application of the Commission's practice would not appropriately reflect the significant interests of Northwestel's participation in the proceeding as compared to the diminutive interest of TCI.

² See Telecom Orders 2023-14 and 2023-15.

³ TORs consist of Canadian telecommunications revenues from local and access, long distance, data, private line, Internet, and wireless services.

Commission's analysis

12. 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.

13. 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 in the Far North, particularly low-income and vulnerable consumers who are relatively less likely to be able to afford reliable telecommunications. PIAC indicated that the positions it put forward reflected the interests of consumers in the Far North given its experience representing these consumers in recent Commission proceedings related to the Far North and Northwestel.

14. PIAC has also satisfied the remaining criteria through its participation in the proceeding. In particular, PIAC's submissions, especially regarding the creation of an affordability subsidy for low-income and vulnerable consumers in the Far North and subsidies in general, overage charges, and increased access to Northwestel's network by wholesale competitors, 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.

15. The rates claimed in respect of legal fees and disbursements 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.

16. 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.

17. The Commission has generally determined 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. While the Commission recognizes that Northwestel has a significant interest in the outcome of the proceeding and has actively participated in the proceeding, it considers that TCI and other TSPs also have a significant interest and have actively participated in the proceeding.
18. As the Commission stated in Telecom Notice of Consultation 2022-147, the proceeding is expected to result in a new regulatory policy for telecommunications services in the Far North, which may change existing obligations for TSPs or impose new ones. Therefore, the potential outcomes of this proceeding are not limited to Northwestel, but may also apply to TCI and other TSPs operating in the Far North. In addition, TCI and other TSPs have filed lengthy and detailed submissions and appeared at the public hearing, demonstrating their significant interest and active participation in the proceeding.
19. The Commission therefore considers that the following parties are the appropriate costs respondents given that they have a significant interest in the outcome of the proceeding in question and have participated actively in the proceeding: Competitive Network Operators of Canada; Iristel Inc., on behalf of itself and its affiliate Ice Wireless Inc.; Northwestel; SSi Micro Ltd., doing business as SSi Canada; and TCI.
20. It is also the Commission's general practice to allocate the responsibility for payment of costs among costs respondents based on their TORs as an indicator of the relative size and interest of the parties involved in the proceeding.
21. The Commission considers that it would not be appropriate to depart from its normal practice of allocating costs based on TORs and allocate all costs solely to Northwestel given that TCI and other TSPs also have a significant interest in the outcome of the proceeding and have actively participated in the proceeding. However, the Commission considers that using TORs as an indicator of the relative size and interest of the parties involved in the proceeding would not appropriately reflect Northwestel's interest and participation in the proceeding. Therefore, as proposed by Northwestel and in light of the circumstances of this case, the Commission considers it appropriate to allocate 70% of the costs to Northwestel and 30% of the costs among the other costs respondents on the basis of their TORs.⁴
22. As set out in Telecom Order 2015-160, the Commission 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.

⁴ In this order, the Commission has used the TORs of the costs respondents based on their most recent audited financial statements.

23. Accordingly, the Commission finds that the responsibility for payment of costs should be allocated as follows:

Company	Proportion	Amount
Northwestel	70%	\$34,219.44
TCI	30%	\$14,665.47

Directions regarding costs

24. The Commission **approves, on an interim basis**, 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 \$48,884.91.
26. The Commission **directs** that the award of costs to PIAC be paid forthwith by Northwestel and TCI according to the proportions set out in paragraph 23.
27. As the Commission indicated in the Secretary General Letter dated 27 September 2023, this costs award is an interim costs order. PIAC is therefore expected to file a supplemental final costs application, including any costs incurred after 31 May 2023, at which time a final costs order will be issued.

Secretary General

Related documents

- *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*, Telecom Order CRTC 2023-15, 23 January 2023
- *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*, Telecom Order CRTC 2023-14, 23 January 2023
- *Call for comments – Telecommunications in the Far North, Phase II*, Telecom Notice of Consultation CRTC 2022-147, 8 June 2022, as amended by Telecom Notices of Consultation CRTC 2022-147-1, 14 July 2022; 2022-147-2, 24 October 2022; and 2022-147-3, 13 October 2023
- *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