



Telecom Order CRTC 2024-241

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Ottawa, 17 October 2024

File numbers: 1011-NOC2022-0147 and 4754-736

Determination of costs award with respect to the participation of Robert Gary Hopkins in the proceeding initiated by Telecom Notice of Consultation 2022-147

Application

1. By letter dated 20 February 2024, Robert Gary Hopkins (the applicant) applied for costs with respect to their participation in the proceeding initiated by Telecom Notice of Consultation 2022-147 (the proceeding). In the proceeding, the Commission considered the actions it should take to improve telecommunications services in communities in the Far North.
2. Northwestel Inc. (Northwestel) filed an intervention, dated 4 March 2024, in response to the application. The applicant filed a reply dated 14 March 2024.
3. In support of their application for costs, the applicant submitted that they brought a lot of history and context about the current state of telecommunications services in the Far North.
4. The applicant requested that the Commission fix their costs at \$12,721.22, consisting of \$12,000.00 for consultant and analyst fees and \$721.22 for disbursements. The consultant fees comprised 10 days (6 for preparation and 4 for attendance at the hearing) at a rate of \$1,200.00 per day. The disbursements comprised \$84.00 for travel, \$288.42 for two days of accommodation in a hotel, \$156.80 for one month of Starlink Internet service, and \$192.00 for four days of meals. The applicant's claim did not include any taxes for their consultant fees but did include the federal Goods and Services Tax (GST) on some disbursements. The applicant stated that they are not entitled to a rebate in connection with any applicable tax.
5. The applicant made no submission as to the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents).

Answer

6. In its answer, Northwestel disputed the entirety of the applicant's costs claim on the grounds that it is unsupported by the Commission's rules and is both unreasonable and excessive.
7. In particular, Northwestel submitted that the applicant did not demonstrate how they assisted the Commission in developing a better understanding of the matters that were considered. Northwestel highlighted that the only justification the applicant provided for their costs was that they brought a lot of history and context about the state of telecommunications services

in the Far North, which, in Northwestel's assessment, is vague and unsubstantiated. Accordingly, in Northwestel's view, the applicant should not be entitled to a costs award.

8. Northwestel submitted that if the Commission determines that the applicant is entitled to a certain amount of costs, these should be limited to reasonably incurred out-of-pocket disbursements and not include time preparing for or attending the hearing. This approach would be consistent with the guidance relating to the participation of individuals in proceedings provided by the Commission in the *Guidelines for the Assessment of Costs* (the Guidelines), as set out in Telecom Regulatory Policy 2010-963. This would bring the total potential costs award to \$276.21 (a reduction of \$12,445.01). The \$276.21 would include \$84.00 for intercity car travel, \$144.21 for one night of hotel accommodation, and \$48.00 for one day of meals.
9. Concerning the applicant's claimed amount of \$12,000 in consultant fees, Northwestel disputed the amount and number of days claimed. It stated that the rate of \$1,200 per day exceeded the daily rate for in-house fees set out in the Guidelines, and that the 10 days claimed for preparation and attendance at the hearing was excessive.
10. Concerning the applicant's claimed disbursements, Northwestel challenged the applicant's claim for one month of Starlink Internet service, arguing this was not reasonably incurred as a result of participating in the hearing. Specifically, Northwestel argued that this is a household expense not directly related to the applicant's participation in the proceeding.
11. In addition, Northwestel challenged the applicant's claim for hotel accommodation and meal costs. It argued that these costs were unreasonable considering the applicant appeared before the Commission for less than half a day and is based in Tagish, which is an hour's drive from Whitehorse.
12. Northwestel also challenged how the applicant filed their application for costs. Northwestel noted that, per the Guidelines, all claimed disbursements must be sworn to be in accordance with Exhibit A of Form IV, and that the applicant did not fulfill this requirement. Instead, the applicant signed their own affidavit with an unknown stamp.

Reply

13. In their reply, the applicant stated that their claim of \$1,200 per day is not unreasonable nor excessive for someone of their knowledge and experience, which spans 30 years. The applicant added that their claimed disbursements were reasonable and much lower than what Commission staff claimed under Government of Canada travel allowances.
14. The applicant clarified that they had, in fact, been present at the hearing on all four days, but opted to stay in a private residence instead of commercial accommodation for two of those days. The applicant explained that was the reason they claimed for four days of meals but only two nights in a hotel.
15. The applicant also implied that Northwestel was the appropriate costs respondent that should pay for its claim.

Commission's analysis

16. In paragraph 13 of the Guidelines, the Commission stated that “[...] an applicant who is an individual who has participated in a Commission proceeding on his or her own behalf will generally only be compensated for out-of-pocket disbursements and will generally not be compensated for time spent preparing for or appearing at a hearing.”
17. The criteria for an award of costs are set out in section 68 of the *Canadian Radio-television and Telecommunications Commission Rules of Practice and 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.
18. 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. Specifically, the Commission noted in paragraph 9 that blanket statements that a costs applicant represents a group or a class of subscribers, without further elaboration, will generally not be sufficient for the Commission to conclude that a costs applicant satisfies this criterion. As stated in paragraph 10, applicants must clearly and specifically identify and describe the group or class of subscribers they purport to represent. Submissions in respect of this criterion should also explain the specific method or methods by which the costs applicant represents the group or class of subscribers. In other words, as stated in paragraph 14, costs applicants should describe how the positions they put forward in the substantive proceeding for which costs are being claimed reflected the interests of the group or class of subscribers they claim to represent.
19. The Commission finds that the applicant's submissions on the development of the telecommunications industry in the Far North, as well as the way in which their experience in the broadcasting industry shaped their views about the importance of reconciliation with Indigenous peoples provided a unique perspective. This perspective assisted the Commission in developing a better understanding of the matters that were considered. The Commission also considers that the applicant participated in the proceeding in a responsible way.
20. However, the Commission finds that the applicant participated in the proceeding as an individual with a personal interest in the proceeding. The applicant drew on their personal experiences to express general positions on the issues considered in the proceeding. The applicant has not demonstrated that these positions reflected the views of a group or class of

subscribers on behalf of whom they were empowered to speak in any structured or concrete way.

21. The Commission considers the cost of one month of Starlink Internet service is an expense for personal use and not incurred for the purposes of participating in the proceeding.
22. The Commission notes that while the applicant did not comply with the Guidelines in that they signed their own affidavit, they were physically present at the hearing and in plain view of the Commission. Therefore, in this exceptional circumstance and in light of the amount ultimately awarded in this decision, the Commission will not require the applicant to refile a sworn affidavit. Furthermore, the Commission finds that requiring an affidavit in the present case would be inefficient and create more process for all parties without any material change to the Commission's determination.
23. In light of the above, the Commission finds the total amount of costs the applicant incurred to participate in a single day of Commission hearings is \$276.21. This includes travel to the hearing location, one night of accommodation in a hotel, and a day's worth of meals. The Commission considers this to be the appropriate amount of costs to award the applicant.
24. 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.
25. As the total award in this case is lower than \$1,000, the Commission finds that the responsibility for payment of costs should be entirely allocated to Northwestel.

Directions regarding costs

26. The Commission approves, with modifications, the application by Robert Gary Hopkins for costs with respect to their participation in the proceeding.
27. Pursuant to subsection 56(1) of the Act, the Commission fixes the costs to be paid to Robert Gary Hopkins at \$276.21.
28. The Commission directs that the award of costs to Robert Gary Hopkins be paid forthwith by Northwestel.

Secretary General

Related documents

- *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; 2022-147-3, 13 October 2023; and 2022-147-4, 24 November 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

- *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