



## Telecom Order CRTC 2024-244

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*File numbers: 1011-NOC2022-0147 and 4754-737*

### **Determination of final costs award with respect to the participation of the First Mile Connectivity Consortium in the proceeding initiated by Telecom Notice of Consultation 2022-147**

#### **Application**

1. By letter dated 20 February 2024, the First Mile Connectivity Consortium (FMCC) applied for final costs incurred after 31 May 2023 with respect to its 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 the Far North.
2. Northwestel Inc. (Northwestel) filed an intervention, dated 4 March 2024, in response to the FMCC's application. The FMCC filed a reply dated 8 March 2024.
3. The Commission notes that, by letter dated 27 October 2023, the FMCC applied for interim costs incurred up to 31 May 2023. In Telecom Order 2024-91 (the interim costs order), the Commission approved, on an interim basis, the FMCC's interim application for costs of \$73,950.04. In paragraph 47 of the interim costs order, the Commission noted that a final costs order would be issued following the Commission's review of the FMCC's final costs application.
4. 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.
5. In particular, the FMCC submitted that it represents the interests of First Nations broadband Internet service providers (ISPs) operating in rural, remote, and northern regions of Canada. The FMCC noted that members of First Nations communities who reside in remote and outlying regions of the country established these ISPs.<sup>1</sup> The FMCC also noted that the

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<sup>1</sup> Specifically, FMCC noted that it represents (i) First Nations Technology Council, British Columbia; (ii) Broadband Communications North, Manitoba; (iii) Clear Sky Connections, Manitoba; (iv) Keewaytinook Okimakanak K-Net Services, Ontario; (v) Western James Bay Telecom Network, Ontario; (vi) Mattawa First Nations Management, Ontario; (vii) First Nations Education Council, Quebec; (viii) Eeyou Communications Network, Quebec; and (ix) Atlantic First Nations Tech Services, Atlantic Canada.

proceeding focused on issues relevant to the FMCC members given their efforts to deploy broadband-capable networks in rural, remote, and northern regions of Canada.

6. The FMCC further submitted that it had assisted the Commission in developing a better understanding of the matters that were considered by providing comments on the barriers and conditions faced by Indigenous and other community-based ISPs operating in rural, remote, and northern regions of Canada, as well as consumers living in those regions.
7. The FMCC requested that the Commission fix its additional costs incurred after 31 May 2023 at \$22,207.50, consisting entirely of external consultant fees (97 hours at a rate of \$225 per hour). The FMCC's claim for Rob McMahon included the federal Goods and Services Tax (GST) on fees less the rebate to which the FMCC is entitled in connection with the GST, amounting to \$382.50.
8. The FMCC submitted that Northwestel and TELUS Communications Inc. (TCI) are the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents) in an allocation to be determined by the Commission.

## **Answer**

9. In its answer, Northwestel submitted that the FMCC's interim and total costs claims were unreasonable and excessive relative to the level and value of the FMCC's participation in the proceeding. It specifically noted the Commission's determination in Telecom Order 2017-376 where costs were reduced for legal counsel work and disbursements. It also took issue with the amount the FMCC claimed for the use of a consultant and the FMCC's identification of appropriate costs respondents.
10. Regarding the costs it considered excessive and unreasonable, Northwestel took issue with the FMCC's claim of \$22,207.50 for drafting two documents totalling 50 pages, equating to \$444.15 per page. It also suggested that there was duplication of work in the FMCC billing \$2,250 for 10 hours of "review file" among three of its consultants. Northwestel also took issue with the \$10,125 the FMCC billed for its final comments, amounting to 45 hours of work for a single 24-page document. Northwestel drew a comparison to the Public Interest Advocacy Centre (PIAC), which claimed 58.3 hours to prepare and submit its request for information (RFI) responses, final submission, and final reply comments across 54 pages, whereas the FMCC claimed 97 hours but did not file final reply comments, resulting in more hours spent despite less work completed.
11. Northwestel argued that a 60% reduction in the FMCC's costs would be appropriate based on the Commission's determination in Telecom Order 2014-433, where excessive fees relative to other interveners led to a 60% reduction in claimed costs.
12. Regarding the amount claimed for an FMCC consultant (Sally Braun), Northwestel submitted that the consultant should not have been billed at the external hourly rate but rather the internal daily rate, and that these costs should be reduced from \$4,275 to \$1,410.
13. Finally, regarding costs respondents, Northwestel submitted that, in addition to itself and TCI, Competitive Network Operators of Canada (CNO), Iristel Inc., and SSi Micro Ltd.

should have been included because they participated in the proceeding and had a significant interest in its outcome. Northwestel pointed to Telecom Order 2023-365, where the Commission considered an interim costs claim from PIAC in this proceeding and determined that these companies were also appropriate costs respondents.

## **Reply**

14. In its reply, the FMCC submitted that its claim was not excessive nor unreasonable. It further submitted that it appropriately included consultant fees in its claims.
15. The FMCC submitted that its review of the file involved analyzing Commission documents thoroughly, summarizing key points, and posing questions for the FMCC members to review. Concerning its response to the Commission's RFI, the FMCC submitted that the questions posed warranted careful consideration due to the document's 41-page length. The FMCC also submitted that to ensure comprehensive final comments, it considered in-person testimony, written submissions from multiple parties, and earlier submissions. The FMCC emphasized that its costs claim reflected the actual time it spent as a non-profit organization comprising nine members. The FMCC stressed that it requires time to ensure meaningful internal consultations occur when it participates in Commission proceedings.
16. Concerning its consultant fees, the FMCC noted that the consultant's other duties with the organization are undertaken on an unpaid voluntary basis. Because the consultant does not participate in paid work for the FMCC, they should be considered an external consultant per the Commission's definition in Telecom Regulatory Policy 2010-963.
17. Concerning the appropriate costs respondents, the FMCC agreed with Northwestel's submission but deferred to the Commission on the appropriate allocation of costs.

## **Commission's analysis**

18. 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.
19. 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 the interests of First Nations ISPs

operating in rural, remote, and northern regions of the country. In particular, the FMCC submitted that it developed its intervention materials in consultation with its members and other northern partners to ensure that their views and experiences were reflected.

20. In addition, as stated in Telecom Order 2017-164, although the primary members of the FMCC are telecommunications service providers (TSPs), 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 TSPs. When considered under the first of the costs criteria, the fact that the FMCC's members represent the unique interests of First Nations subscribers and communities qualifies them to claim costs when other TSPs typically could not.
21. The FMCC has also satisfied the remaining criteria through its participation in the proceeding. In particular, the FMCC's submissions, especially regarding the barriers and conditions faced by Indigenous and other community-based ISPs, assisted the Commission in developing a better understanding of the matters that were considered. Accordingly, the Commission finds that the applicant meets the criteria for an award of costs under section 68 of the Rules of Procedure.

#### **Unreasonable or excessive costs**

22. In subsection 70(2) of the Rules of Procedure, the Commission states that “[t]he total amount of costs must not exceed the total amount of costs necessarily and reasonably incurred by the applicant [...]”. In addition, as referred to by Northwestel, the Commission has previously reduced costs claims it has deemed excessive. The Commission notes that this evaluation is undertaken on the specific circumstances of a given case.
23. While the Commission has compared claims by different interveners in the past, this method is merely one indicator of whether a costs claim may be excessive or unreasonable. Similarly, a granular per-page costing of an intervener's submission or restating the total amount claimed may also contribute to the Commission finding costs excessive or unreasonable. No single factor is determinative, and the Commission considers the entirety of a claimant's participation in a proceeding, as well as the scope of the proceeding itself, to assess whether costs were necessarily and reasonably incurred.
24. In Telecom Order 2014-433, costs were reduced by 60% because the scope of the proceeding was narrow, and the information filed by the costs applicant was beyond that scope. In that case, the Commission used the claims of other interveners to better appreciate the amount of an appropriate costs award. In Telecom Order 2017-376, costs were reduced because the applicant claimed hundreds of hours more than what other costs applicants did. Specifically, excessive costs were incurred for the work of junior counsel, which could have been undertaken more efficiently. These cases have limited applicability to the FMCC's current application for costs.
25. In the present case, the Commission does not consider that the costs claimed by the FMCC are excessive or unreasonable. While organizations should always take care to avoid the duplication of work, use the most cost-effective resources possible, and ensure that any

consultation they undertake is meaningful and relates to the core questions posed by the Commission, the fact that one organization chose to devote more time than another to a specific proceeding does not determine whether one or either of the parties acted reasonably. Organizations differ in structure and may require more or less time to effectively participate in Commission proceedings in order to ensure that stakeholders are sufficiently consulted. In addition, the Commission considers that the FMCC's participation provided a better understanding of the issues, and its submissions remained within the scope of the broader proceeding. Consequently, a reduction of costs would not be appropriate in the present case.

### **Consultant fees**

26. The Commission notes that the issue of whether the FMCC appropriately claimed consultant fees was also put forward in the FMCC's interim application for costs.
27. The Commission stated in the interim costs order that it considered the FMCC correctly claimed external consultant rates. It noted that the FMCC is a volunteer organization with no full-time paid staff, and members balance their FMCC activities with other professional commitments. In addition, the consultant is not the sole director of the FMCC, but is a member of the volunteer board of directors and does not participate in any paid work for the FMCC related to their role within the organization. For these reasons, the Commission was satisfied that the consultant was sufficiently independent of the FMCC to claim external consultant rates, and that the rates claimed were in accordance with those established in the *Guidelines for the Assessment of Costs*, as set out in Telecom Regulatory Policy 2010-963. The Commission considers that this rationale continues to apply in its current determination of final costs award.

### **Disposition on costs**

28. Accordingly, the Commission finds that the total amount claimed by the FMCC was necessarily and reasonably incurred and should be allowed.
29. 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.

### **Costs respondents and allocation of costs**

30. 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.
31. In Telecom Order 2023-365 and in the interim costs order, the Commission recognized that while Northwestel had a significant interest in the outcome of the proceeding and had actively participated in it, TCI and other TSPs also had a significant interest and had actively participated. The Commission considers that this continues to be the case such that the appropriate costs respondents to the FMCC's application for costs are CNOC; Iristel Inc., on its own behalf and on behalf of its affiliate Ice Wireless Inc.; Northwestel; SSi Micro Ltd., doing business as SSi Canada; and TCI.

32. In Telecom Order 2023-365 and in the interim costs order, the Commission further considered that it was appropriate to allocate 70% of the costs to Northwestel and the remaining 30% to the other costs respondents based on their telecommunications operating revenues (TORs).<sup>2</sup> The Commission considers that this continues to be the appropriate allocation for the FMCC's final costs claim. However, 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.
33. The Commission notes that the FMCC's total costs for the proceeding, including both its interim and final costs, amount to \$96,157.54. The Commission considers that this sum should be used in calculating the allocation between Northwestel and the other costs respondents, and against which the \$1,000 minimum amount should apply. This leads to the addition of CNOC as a costs respondent, and requires adjusting the amounts to be paid to account for those already paid by TCI as a result of the interim costs order. Consequently, Northwestel remains responsible for 70% of FMCC's total costs, TCI becomes responsible for 28.5% instead of 30%, and CNOC becomes responsible for 1.5% or \$1,442.36.<sup>3</sup>
34. Accordingly, the Commission finds that the responsibility for payment of the outstanding costs should be allocated as follows:<sup>4</sup>

<b>Company</b>	<b>Proportion</b>	<b>Amount</b>
Northwestel	70%	\$15,545.25
TCI	24%	\$5,219.89
CNOC	6%	\$1,442.36
Total	100%	\$22,207.50

### **Directions regarding costs**

35. The Commission approves the final costs application by the FMCC with respect to its participation in the proceeding, including making final the costs approved on an interim basis in Telecom Order 2024-91.

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<sup>2</sup> TORs consist of Canadian telecommunications revenues from local and access, long distance, data, private line, Internet, and wireless services.

<sup>3</sup> The proportion of total costs includes both the interim costs already paid to the FMCC and the final costs claimed by the FMCC in the present application. The table in paragraph 34 reflects only the proportion of final costs to be paid to the FMCC.

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

36. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to the FMCC for its participation in the proceeding after 31 May 2023 at \$22,207.50.
37. The Commission directs that the award of costs to the FMCC be paid forthwith by Northwestel, TCI, and CNOC according to the proportions set out in paragraph 34.

Secretary General

### **Related documents**

- *Determination of costs award with respect to the participation of the First Mile Connectivity Consortium in the proceeding initiated by Telecom Notice of Consultation 2022-147*, Telecom Order CRTC 2024-91, 1 May 2024
- *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*, Telecom Order CRTC 2023-365, 10 November 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; 2022-147-3, 13 October 2023; and 2022-147-4, 24 November 2023
- *Determination of costs award with respect to the participation of OpenMedia in the proceeding that led to Telecom Regulatory Policy 2017-104*, Telecom Order CRTC 2017-376, 23 October 2017
- *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
- *Determination of costs award with respect to the participation of the DiversityCanada Foundation in the proceeding initiated by Telecom Notice of Consultation 2013-338*, Telecom Order CRTC 2014-433, 15 August 2014
- *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