



Telecom Order CRTC 2014-61

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Ottawa, 14 February 2014

Determination of costs award with respect to the participation of First Mile Connectivity Consortium in the proceeding initiated by Telecom Notice of Consultation 2012-669

File numbers: 8663-C12-201215302, 8695-J64-201209578, 8662-N1-201305821, and 4754-432

1. By letter dated 6 September 2013, the Centre for Policy Research on Science and Technology (CPROST) at Simon Fraser University, on behalf of First Mile Connectivity Consortium (First Mile), filed an application for costs with respect to First Mile's participation in the proceeding initiated by Telecom Notice of Consultation 2012-669 (the proceeding). The proceeding addressed Northwestel Inc.'s (Northwestel) regulatory framework, Modernization Plan, and related matters. On 20 September and 2 December 2013, First Mile, on its own behalf, filed additional information in support of the application with the Commission.
2. The Commission did not receive any interventions in response to the application.

Application

3. First Mile stated that CPROST had filed the application for costs because First Mile is not an incorporated legal entity and could not accept or disperse any costs that the Commission may award. First Mile submitted that, if the application were successful and the funds awarded to First Mile were paid to CPROST, CPROST would, upon receiving the award, disperse all such funds directly to the relevant individual claimants.
4. First Mile noted that its application for costs was filed after the Commission's deadline, as set out in section 65 of the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (the Rules of Procedure), of 30 days following the close of record date of a proceeding.
5. First Mile submitted that the Commission should nonetheless consider the application for an award of costs because First Mile is a small organization spread over a large geographic area, it has limited resources, and it is inexperienced vis-à-vis participating in Commission proceedings and the costs application process.
6. First Mile submitted that it had met the criteria for an award of costs set out in section 68 of 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.

7. In particular, First Mile submitted that it represents Aboriginal communications organizations in northern Canada, and that it worked with these organizations and with First Nations communities, including several located within Northwestel's operating territory, to coordinate its submissions in the proceeding. It also submitted that its evidence, such as specifics about First Nations community networks, offered the Commission a unique perspective in the proceeding. It added that its submissions were detailed, structured, and highly relevant to the issues before the Commission.
8. First Mile requested that the Commission fix its costs at \$53,088.43, consisting of \$32,550.00 for expert witness fees, \$18,711.00 for consultant fees, and \$1,827.43 for disbursements. First Mile's claim included the federal Goods and Services Tax (GST), where applicable. First Mile filed a bill of costs with its application.
9. First Mile made no submission as to the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents).

Commission's analysis and determinations

10. As a preliminary matter, although First Mile's application for costs was filed several weeks following the deadline, the Commission is of the view that, in the specific circumstances of this case, considerations of fairness and public interest support accepting and considering the merits of the application. Accordingly, the Commission determines that it is appropriate to vary the application of the Rules of Procedure in this case and will consider First Mile's application for an award of costs.
11. The Commission notes that First Mile arranged for CPROST to file the application for costs on First Mile's behalf, given First Mile's unincorporated status. In this regard, the Commission notes that it has previously awarded costs to unincorporated entities.¹
12. Nonetheless, the Commission is satisfied that, in the circumstances, if any costs are awarded to CPROST on behalf of First Mile, CPROST will disperse them directly to First Mile's relevant claimant members.
13. The Commission finds that First Mile has satisfied the criteria for an award of costs set out in section 68 of the Rules of Procedure. Specifically, the Commission finds that First Mile represented a group or class of subscribers that had an interest in the outcome of the proceeding, it assisted the Commission in developing a better understanding of the matters that were considered, and it participated in a responsible way.

¹ For example, the Coalition of Communication Consumers in Telecom Order 2009-397.

14. The Commission notes that the rates claimed in respect of expert witness and consultant fees are in accordance with the rates established in the Commission's *Guidelines for the Assessment of Costs*, as set out in Telecom Regulatory Policy 2010-963. The Commission finds that the total amount claimed by First Mile was necessarily and reasonably incurred and should be allowed.
15. The Commission considers that 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. The Commission finds that the appropriate costs respondent to First Mile's costs application is Northwestel.

Directions regarding costs

17. The Commission **approves** the application for costs submitted by CPROST, on behalf of First Mile, with respect to First Mile's participation in the proceeding.
18. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to First Mile at \$53,088.43.
19. The Commission directs that the award of costs be paid forthwith by Northwestel to CPROST.
20. Upon receiving this costs award, CPROST shall forthwith disperse the funds to the relevant claimant members of First Mile.

Secretary General

Related documents

- *Review of Northwestel Inc.'s Regulatory Framework, Modernization Plan, and related matters*, Telecom Notice of Consultation CRTC 2012-669, 6 December 2012, as amended by Telecom Notices of Consultation CRTC 2012-669-1, 15 February 2013; and 2012-669-2, 30 April 2013
- *Revision of CRTC costs award practices and procedures*, Telecom Regulatory Policy CRTC 2010-963, 23 December 2010
- *Determination of costs award with respect to the participation of the Coalition of Canadian Consumers in the Telecom Public Notice 2008-14 proceeding*, Telecom Order 2009-397, 30 June 2009, as amended by Telecom Order CRTC 2009-397-1, 3 July 2009
- *New procedure for Telecom costs awards*, Telecom Public Notice CRTC 2002-5, 7 November 2002