



Telecom Order CRTC 2015-460

PDF version

Ottawa, 8 October 2015

File numbers: 8663-S119-201500645 and 4754-480

Determination of costs award with respect to the participation of the Public Interest Advocacy Centre and the Consumers' Association of Canada in the proceeding leading to Telecom Decision 2015-320

Application

1. By letter dated 13 March 2015, the Public Interest Advocacy Centre (PIAC), on its own behalf and as counsel for the Consumers' Association of Canada (CAC) [collectively, PIAC/CAC] applied for costs with respect to their participation in the proceeding initiated by the SSi Group of Companies' (SSi) application for the implementation of third-party Internet access service in Northwestel Inc.'s (Northwestel) operating territory (the proceeding).
2. The Commission did not receive any interventions in response to the application for costs.
3. PIAC/CAC submitted that they 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 they represented a group or class of subscribers that had an interest in the outcome of the proceeding, they had assisted the Commission in developing a better understanding of the matters that were considered, and they had participated in a responsible way.
4. PIAC/CAC requested that the Commission fix their costs at \$4,791.63, consisting entirely of legal fees for external counsel and an articling student. PIAC/CAC filed a bill of costs with their application.
5. PIAC/CAC submitted that Northwestel and SSi are the appropriate parties to be required to pay any costs awarded by the Commission (the costs respondents).

Commission's analysis and determinations

6. 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.

7. PIAC/CAC have satisfied these criteria through their participation in the proceeding. In support of the argument for mandated third-party Internet access service in this particular case, PIAC/CAC provided persuasive legal and policy arguments highlighting consumers' interest in, and the importance of, the promotion of competition. PIAC/CAC's submissions thus helped the Commission in developing a better understanding of the matters that were considered in the proceeding.
8. The rates claimed in respect of legal 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 PIAC/CAC was necessarily and reasonably incurred and should be allowed.
9. 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.
10. 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. The Commission considers that Northwestel and SSi had a significant interest in the outcome of the proceeding and participated actively throughout the proceeding. Therefore, these parties are the appropriate costs respondents to PIAC/CAC's application for costs.
11. The Commission generally allocates the responsibility for payment of costs among costs respondents based on their telecommunications operating revenues (TORs),¹ as reported in their most recent audited financial statements. However, the Commission has occasionally departed from this approach to make the collection of a costs award easier for applicants or to reflect situations in which an allocation based only on TORs would not be fair.²
12. The purpose of the proceeding was to determine whether Northwestel should be required to provide third-party Internet access in Whitehorse and Yellowknife, and file any associated tariffs and cost studies. SSi initiated the proceeding and participated extensively, reflecting a significant interest in the outcome of the

¹ TORs consist of Canadian telecommunications revenues from local and access, long distance, data, private line, Internet, and wireless services.

² See paragraph 16 of Telecom Order 2009-447, in which the Commission assigned one party to be responsible for 50% of the costs and allocated the remaining 50% of the costs based on TORs.

proceeding and active participation to a degree similar to that of Northwestel. An allocation of costs based solely on TORs would lead to an undue burden being placed on Northwestel. Accordingly, it is appropriate in the circumstances to find both Northwestel and SSi equally responsible for payment of the cost award, as follows:

Company	Percentage	Amount
Northwestel	50%	\$2,395.82
SSi	50%	\$2,395.82

Directions regarding costs

13. The Commission **approves** the application by PIAC/CAC for costs with respect to their participation in the proceeding.
14. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to PIAC/CAC at \$4,791.63.
15. The Commission **directs** that the award of costs to PIAC/CAC be paid forthwith by Northwestel and SSi according to the proportions set out in paragraph 12 above.

Secretary General

Related documents

- *SSi Group of Companies – Application requesting implementation of third-party Internet access service in Northwestel Inc.’s operating territory*, Telecom Decision CRTC 2015-320, 20 July 2015
- *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 Communication Consumers in the Telecom Public Notice 2008-18 proceeding*, Telecom Order CRTC 2009-447, 24 July 2009
- *New procedure for Telecom costs awards*, Telecom Public Notice CRTC 2002-5, 7 November 2002