



Telecom Order CRTC 2022-149

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Determination of costs award with respect to the participation of the Public Interest Advocacy Centre in the proceeding initiated by SSi Micro Ltd.'s application to require Northwestel Inc. to provide a third-party Internet access service

Application

1. By letter dated 19 March 2021, the Public Interest Advocacy Centre (PIAC) applied for costs with respect to its participation in the proceeding initiated by an application from SSi Micro Ltd. (SSi Micro) requesting that the Commission exercise its jurisdiction under the *Telecommunications Act* (the Act) to order Northwestel Inc. (Northwestel) to immediately introduce wholesale high-speed access (HSA) services (the proceeding).
2. The Commission did not receive any interventions in response to PIAC's application for costs.
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 assisted the Commission in developing a better understanding of the matters that were considered, and it participated in a responsible way.
4. In particular, PIAC submitted that it represents the interests of consumers across Canada's Far North, with a particular concern for vulnerable and low-income consumers. With respect to the specific reasons for which it submitted that it represents this group or class, PIAC argued that, given its extensive experience representing Canadian telecommunications consumers in the North and its participation in the Commission's recent wholesale Internet access and pricing proceedings, it was well positioned to advocate for consumer interests in this proceeding.
5. PIAC submitted that it had assisted the Commission in developing a better understanding of the matters that were considered by providing (i) submissions supporting SSi Micro's request to create an interim wholesale access rate, (ii) arguments in support of the Commission analyzing SSi Micro's application using the essential facilities framework as opposed to using the unjust discrimination

framework, and (iii) submissions as to why it would be unjust to deny SSi Micro's application on a procedural basis without having considered its merits.

6. PIAC requested that the Commission fix its costs at \$1,317.06, consisting of \$964.56 for external legal fees and \$352.50 for in-house articling student fees. PIAC's claim included the Ontario Harmonized Sales Tax (HST) on fees less the rebate to which PIAC is entitled in connection with the HST. PIAC filed a bill of costs with its application.
7. PIAC submitted that the responsibility for payment of 50% of its costs should be allocated to SSi Micro because it filed the application initiating the proceeding. It added that Northwestel should be responsible for the remaining 50% because, based on the most recent revenue data provided to the Commission by telecommunications service providers, no potential costs respondents other than Northwestel would have a sufficient revenue share to justify paying the small amount potentially awarded through this proceeding.

Commission's analysis

8. 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.
9. 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 represented the interests of consumers across Canada's Far North, with a particular concern for vulnerable and low-income consumers. PIAC indicated that the positions it put forward reflected the interests of consumers in Canada's Far North given its experience representing these consumers in Commission proceedings related to the Far North and in the Commission's recent wholesale Internet access and pricing proceedings.

10. PIAC has also satisfied the remaining criteria through its participation in the proceeding. As noted in Telecom Notice of Consultation 2022-147, determining whether to order Northwestel to introduce wholesale HSA services is an important and complex policy issue that is interconnected with other matters under consideration in that ongoing proceeding. The Commission considers that PIAC's submissions have assisted it in understanding the complexity and interconnectedness of the issues at hand. For example, PIAC argued that SSi's application represents an opportunity to resolve general confusion as to how wholesale rule revisions, regulatory reviews of Northern incumbents, and competition in the North fit together. Accordingly, the Commission considers that PIAC's submissions assisted it in developing a better understanding of the matters that were considered in the proceeding and contributed to its determination that SSi Micro's request be considered in the context of Telecom Notice of Consultation 2022-147.
11. Further, PIAC participated in the proceeding in a responsible way. Accordingly, the Commission considers that PIAC meets the criteria for an award of costs under section 68 of the Rules of Procedure.
12. The rates claimed in respect of external legal fees and in-house articling student fees 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.
13. 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.
14. 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 the following parties had a significant interest in the outcome of the proceeding and participated actively in the proceeding as it concerned wholesale HSA services in the Far North: the Competitive Network Operators of Canada; Iristel Inc. on behalf of itself and its affiliate Ice Wireless Inc.; Northwestel; SSi Micro; and TekSavvy Solutions Inc. Therefore, these parties are the appropriate costs respondents to PIAC's application for costs.
15. While PIAC argued that SSi Micro should bear responsibility for the payment of half of the costs claimed because SSi Micro filed the application initiating the proceeding, the Commission considers that, given the relatively small amount of the costs award and its general practice of not allocating less than \$1,000 in costs to be paid by a costs respondent, the circumstances of the proceeding do not give rise to a reason to depart from the Commission's standard practices.
16. Therefore, the Commission considers that, consistent with its practice, it is appropriate to allocate the responsibility for payment of costs among costs respondents based on their telecommunications operating revenues (TORs) as an

indicator of the relative size and interest of the parties involved in the proceeding.¹ 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.

17. Accordingly, the Commission considers it appropriate in this case to limit the responsibility for the payment of costs to Northwestel.

2019 Policy Direction

18. The Governor in Council issued a policy direction in which it directed the Commission to consider how its decisions can promote competition, affordability, consumer interests, and innovation (the 2019 Policy Direction).² The Commission considers that the awarding of costs in this instance is consistent with subparagraph 1(a)(iv) of the 2019 Policy Direction.
19. By facilitating the participation of a group that represents consumer interests, this order contributes to enhancing and protecting the rights of consumers in their relationships with telecommunications service providers. Since consumer groups often require financial assistance to effectively participate in Commission proceedings, the Commission is of the view that its practice of awarding costs, as exercised in this instance, enables such groups to provide their perspectives on how consumer interests may be affected by the outcomes of the proceedings. In light of the above, the Commission considers that its determination to award costs to PIAC promotes consumer interests.

Directions regarding costs

20. The Commission **approves** the application by PIAC for costs with respect to its participation in the proceeding.
21. Pursuant to subsection 56(1) of the Act, the Commission fixes the costs to be paid to PIAC at \$1,317.06.
22. The Commission **directs** that the award of costs to PIAC be paid forthwith by Northwestel.

Secretary General

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

² *Order Issuing a Direction to the CRTC on Implementing the Canadian Telecommunications Policy Objectives to Promote Competition, Affordability, Consumer Interests and Innovation*, SOR/2019-227, 17 June 2019

Related documents

- *Call for comments – Telecommunications in the Far North, Phase II*, Telecom Notice of Consultation CRTC 2022-147, 8 June 2022
- *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