



Telecom Order CRTC 2012-225

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Ottawa, 18 April 2012

Determination of costs award with respect to the participation of the Utilities Consumers' Group in the Telecom Notice of Consultation 2011-302 proceeding

File numbers: 8678-C12-201107714 and 4754-394

1. By letter dated 25 November 2011, the Utilities Consumers' Group (UCG) applied for costs with respect to its participation in the proceeding initiated by Telecom Notice of Consultation 2011-302 (the proceeding).
2. On 6 December 2011, Northwestel Inc. (Northwestel) filed an answer to UCG's application. UCG filed a reply on 8 December 2011.
3. On 21 February 2012, Commission legal staff requested further information from UCG concerning its claim that Mr. Roger Rondeau acted on behalf of the organization as an outside consultant rather than an in-house consultant during the proceeding. By letter dated 8 March 2012, UCG responded to the Commission's request for information.

Application

4. UCG 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, UCG submitted that it represented the interests of Northwestel's residential and small business customers in Yukon, and that it provided a local perspective to the proceeding. UCG also submitted that it made every effort not to duplicate the work of the other parties and that it participated in all phases of the proceeding in a responsible, focused, punctual, and professional manner.
6. UCG requested that the Commission fix its costs at \$21,335.91, consisting of \$19,575.00 for outside consultant fees and \$1,760.91 for disbursements. UCG filed a bill of costs with its application.
7. UCG claimed 83 hours at a rate of \$225 per hour for consultant fees for Mr. Roger Rondeau, and 18 hours at a rate of \$50 per hour for consultant fees for Mr. Rob Hopkins.

8. UCG submitted that Northwestel is the appropriate party to be required to pay any costs awarded by the Commission (the costs respondent).
9. UCG noted, by a letter accompanying its 25 November 2011 application, that it was submitting the application after the Commission's filing deadline of 30 days following the close of record date. UCG requested that the Commission grant it an extension of time and accept its application for costs.
10. By letter dated 2 December 2011, UCG amended its costs claim to remove amounts claimed for the federal Goods and Services Tax (GST) since it does not remit GST at this time.

Answer

11. In response to the application, Northwestel objected, in part, to UCG's claim for costs. Northwestel referred to the *Guidelines for the Assessment of Costs* (the Guidelines), set out in Telecom Regulatory Policy 2010-963, for guidance with respect to evaluating whether UCG contributed to a better understanding of the issues, and whether the time requested was excessive. Northwestel submitted that the input by UCG's representative, Mr. Rondeau, did not contribute substantially to a better understanding of the issues because his submissions were not well-structured or focused. Northwestel also submitted that the time spent by Mr. Rondeau preparing UCG's submissions was excessive given his expertise as a senior consultant, for which he claimed commensurate rates.
12. With respect to UCG's request for an extension of time to the deadline for filing its application for costs, Northwestel did not object to the Commission accepting the application.
13. Northwestel submitted that, should the Commission accept UCG's request for an extension of time, the amount of costs claimed by UCG should be reduced by approximately 50 percent for Mr. Rondeau's services for the reasons noted above.

Reply

14. In reply, UCG submitted that the number of hours it claimed was not excessive, since this number was comparable to the number of hours claimed by other interveners in the same proceeding. UCG also submitted that its submissions were purposeful and demonstrated that it presented the issues and arguments of Northwestel's customers in Yukon. UCG noted that, as per paragraph 7 of the Guidelines, it is entirely within the Commission's discretion to determine whether an applicant has contributed to a better understanding of the issues. UCG therefore requested that the Commission reflect on the totality of UCG's participation in rendering its decision.

Commission's analysis and determinations

15. As a preliminary matter, while the Commission notes that UCG filed its application for costs 11 days following the set deadline, the Commission is of the opinion that considerations of public interest and fairness outweigh any potential prejudice that may be caused by accepting UCG's application. Accordingly, the Commission grants UCG the requested extension of time and considers UCG's application for costs in this decision.
16. The Commission notes Northwestel's request that UCG's award of costs be reduced because Mr. Rondeau's submissions did not contribute to a better understanding of the issues. However, the Commission considers that UCG, which is based in Yukon and represents the interests of customers in the North, offered a distinct point of view and made relevant submissions in the proceeding. The Commission considers that UCG represented a significant body of telephone subscribers to be affected by the outcome of the proceeding, that it participated responsibly, and that it contributed to a better understanding of the issues by the Commission. Accordingly, the Commission finds that the applicant has met the criteria for an award of costs under section 68 of the Rules of Procedure.
17. The Commission also notes Northwestel's request that the time claimed by UCG for Mr. Rondeau's services be reduced because the quality of UCG's submissions did not reflect Mr. Rondeau's experience and expertise as a senior consultant. Taking into consideration the time claimed and awarded in similar proceedings, the complex nature of the issues in the proceeding, and the Commission's conclusions noted above regarding UCG's submissions, the Commission considers that the amount of time UCG has claimed for Mr. Rondeau is reasonable.
18. The Commission notes that UCG has claimed an hourly rate of \$225 for services rendered by Mr. Rondeau as an outside consultant to UCG. Conversely, in previous awards of costs involving UCG, the Commission determined that Mr. Rondeau was most appropriately designated under the Commission's Guidelines as an in-house consultant to UCG.¹ Since UCG has not provided evidence that Mr. Rondeau is in fact an outside resource to UCG, the Commission considers that the most appropriate designation for Mr. Rondeau under the Guidelines remains as an in-house consultant to UCG. In light of the above, under the Guidelines, UCG is entitled to claim a daily rate of \$470 for 7 hours of work per day for the services of Mr. Rondeau, rather than an hourly rate. Since UCG has claimed 83 hours of work by Mr. Rondeau, this time claim is equivalent to 11 full days and six hours of work. As per paragraph 28 of the Guidelines, if fewer than seven hours in a day are worked, then the applicant shall reduce its claim for that day using quarter-day increments. In this case, a partial day consisting of six hours will be reported as three-quarters of a full day of work. The adjusted amount of UCG's claim for the services of Mr. Rondeau is thus \$5,522.50.

¹ See Telecom Costs Order 2006-13, Telecom Costs Order 2005-8, Taxation Order 2001-1, and Telecom Costs Order 99-13.

19. As per UCG's letter to the Commission dated 2 December 2011, the Commission has revised the amounts claimed for both Mr. Rondeau and Mr. Hopkins to remove amounts claimed for GST.
20. 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.
21. The Commission finds that the appropriate costs respondent to UCG's costs application is Northwestel. Accordingly, the Commission considers that Northwestel should be solely responsible for the payment of costs.

Directions regarding costs

22. The Commission **approves** the application by UCG for costs, with the modifications set out above, with respect to its participation in the proceeding.
23. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to UCG at \$8,183.41.
24. The Commission directs that the award of costs to UCG be paid forthwith by Northwestel.

Secretary General

Related documents

- *Review of price cap regulatory framework for Northwestel Inc. and related matters*, Telecom Notice of Consultation CRTC 2011-302, 6 May 2011, as amended by Telecom Notice of Consultation CRTC 2011-302-1, 22 June 2011
- *Revision of CRTC costs award practices and procedures*, Telecom Regulatory Policy CRTC 2010-963, 23 December 2010
- *Utilities Consumers' Group – Application for costs – Review of regulatory framework for Northwestel Inc.*, Telecom Public Notice CRTC 2006-1, Telecom Costs Order CRTC 2006-13, 2 November 2006
- *Utilities Consumers' Group - Application for costs - Telecom Public Notice CRTC 2004-6*, Telecom Costs Order CRTC 2005-8, 18 October 2005
- *New procedure for Telecom costs awards*, Telecom Public Notice CRTC 2002-5, 7 November 2002
- *Northwestel Inc. – Implementation of toll competition and review of regulatory framework, quality of service and related matters – Telecom Public Notice CRTC 99-21*, Taxation Order CRTC 2001-1, 28 February 2001
- *Application by Northwestel to remove joint marketing restrictions*, Telecom Costs Order CRTC 99-13, 2 December 1999