



Telecom Costs Order CRTC 2006-8

Ottawa, 14 July 2006

Application for costs by ARCH Disability Law Centre – Bell Canada and Saskatchewan Telecommunications' request that the Commission stop applying the local exchange service winback restrictions on the basis that they unjustifiably infringe the right to freedom of expression in section 2(b) of the Canadian Charter of Rights and Freedoms, Telecom Decision CRTC 2006-16

Reference: 8622-B2-200505068 and 4754-261

1. By letter dated 11 January 2006, ARCH Disability Law Centre (ARCH) applied for costs with respect to its participation in the proceeding leading to *Bell Canada and Saskatchewan Telecommunications' request that the Commission stop applying the local exchange service winback restrictions on the basis that they unjustifiably infringe the right to freedom of expression in section 2(b) of the Canadian Charter of Rights and Freedoms*, Telecom Decision CRTC 2006-16, 6 April 2006 (the Decision 2006-16 proceeding).
2. On 18 January 2006, Bell Canada and Saskatchewan Telecommunications (SaskTel) (collectively, the Companies) filed comments in answer to ARCH's application. On 19 January 2006, TELUS Communications Inc. (TCI)¹ filed its comments in answer to the application. On 23 January 2006, the Canadian Cable Telecommunications Association (CCTA) filed its comments in answer to the application.
3. ARCH did not file a reply to the comments submitted regarding its costs application.

The application

4. ARCH submitted that it had met all of the criteria for an award of costs set out in subsection 44(1) of the *CRTC Telecommunications Rules of Procedure* (the Rules), which require that the applicant represent a group of subscribers that has an interest in the outcome of the proceeding (paragraph 44(1)(a)), that the applicant had participated responsibly in the proceeding (paragraph 44(1)(b)), and that it had contributed to a better understanding of the issues by the Commission through its participation in the proceeding (paragraph 44(1)(c)).
5. ARCH submitted that it is dedicated to defending and advancing the interests of Canadians with disabilities, and that it had raised issues pertaining to the *Canadian Charter of Rights and Freedoms* (the Charter) in other proceedings before the Commission. ARCH submitted that the

¹ Now TELUS Communications Company.

interpretation of section 1 of the Charter adopted by the Commission in the Decision 2006-16 proceeding would be directly relevant to these other proceedings and to telecommunications users who have disabilities, and that it therefore followed that persons with disabilities would be affected by the decision resulting from the Decision 2006-16 proceeding. ARCH further submitted that its comments provided an analysis of section 1 along with supporting jurisprudence, and that the comments were intended to provide a purely legal argument to assist the Commission to consider and interpret section 1 broadly. Finally, ARCH submitted that it participated in the Decision 2006-16 proceeding in a responsible way and used time efficiently. In particular, ARCH stated that it primarily relied on its own staff lawyer, who drew upon her extensive knowledge of Charter and constitutional law and litigation in drafting ARCH's comments.

6. ARCH submitted a bill of costs in the amount of \$2,250 ARCH did not include an amount for the Federal Goods and Services Tax (GST) in its claim.
7. ARCH took no position as to the appropriate cost respondents to its application.

Answers

8. In answer to the application, the Companies stated that they did not object to the application or the amount claimed, but they requested that future applications for costs include the documentation required by the Guidelines. The Companies submitted that any award of costs made by the Commission should be allocated amongst the telecommunications service providers and industry organizations that participated in the proceeding, in proportion to each party's level of interest and participation.
9. TCI and the CCTA opposed the application. With respect to paragraph 44(1)(a), TCI argued that ARCH had acknowledged that it did not have an interest in the outcome of the proceeding, when ARCH stated in its 24 November 2005 letter of intervention that it would take no position with respect to the facts of the case.
10. TCI further argued that it was unlikely that ARCH's participation had contributed to a better understanding of the issues by the Commission, as required by paragraph 44(1)(c). In particular, TCI argued that ARCH's comments provided little more than a description of some of the well-known jurisprudence relating to section 1 of the Charter. TCI argued that the fact that ARCH had raised Charter issues in other proceedings before the Commission did not entitle ARCH to reimbursement of its costs in the proceeding, in which ARCH had explicitly taken no position on the issues and in which the persons represented by ARCH had no unique interest.
11. TCI took no position on the question of whether ARCH participated in a responsible way, as required by paragraph 44(1)(b), nor on the quantum of ARCH's costs claim.
12. The CCTA agreed with TCI's arguments opposing the application, and submitted that in the event that the Commission were to award costs, the CCTA should not be a costs respondent. The CCTA submitted that the proper respondents were the applicants seeking to overturn the winback rule, namely the Companies. The CCTA argued that in a proceeding where

the debate arises from a challenge to the constitutionality of Commission decisions, interested parties such as the CCTA should not attract liability for costs simply because it offered argument and evidence in support of the Commission's rules.

Commission analysis and determination

13. The Commission finds that ARCH has satisfied the criteria for an award of costs set out in subsection 44(1) of the Rules. Specifically, the Commission finds that ARCH is representative of a group or class of subscribers that has an interest in the outcome of the proceeding, has participated in a responsible way, and has contributed to a better understanding of the issues by the Commission. The Commission notes in particular that ARCH represents a group of subscribers whose interests are directly affected by decisions that address Charter issues.
14. The Commission notes that the rates claimed in respect of legal fees are in accordance with the rates set out in the Legal Directorate's *Guidelines for the Taxation of Costs*, revised as of 15 May 1998. The Commission also finds that the total amount claimed by ARCH was necessarily and reasonably incurred and should be allowed.
15. The Commission is of the view 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 *New procedure for Telecom costs awards*, Telecom Public Notice CRTC 2002-5, 7 November 2002.
16. In determining the appropriate respondents to an award of costs, the Commission has generally looked at which parties are affected by the issues and have actively participated in the proceeding. The Commission has, however, also considered the potential administrative burden on applicants if they were required to collect small amounts from many respondents. Given the small size of the costs award in this case, the Commission finds that it would impose an unnecessary administrative burden on ARCH to require the collection of small amounts from all of the parties who participated in the Decision 2006-16 proceeding. The Commission therefore concludes that the appropriate respondents to the costs application are the Companies.
17. The Commission notes that Bell Canada filed submissions in the Decision 2006-16 proceeding on behalf of the Companies. Consistent with its general approach articulated in *Action Réseau Consommateur, the Consumers' Association of Canada, Fédération des associations coopératives d'économie familiale and the National Anti-Poverty Organization application for costs - Public Notice CRTC 2001-60*, Telecom Costs Order CRTC 2002-4, 24 April 2002 the Commission makes Bell Canada responsible for payment on behalf of the Companies, and leaves it to the Companies to determine the appropriate allocation of the costs among themselves.

Direction as to Costs

18. The Commission **approves** ARCH's application for costs with respect to its participation in the Decision 2006-16 proceeding.

19. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to ARCH at \$2,250.
20. The Commission directs that the award of costs to ARCH be paid forthwith by the Companies.

Secretary General

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