



Telecom Costs Order CRTC 2005-2

Ottawa, 8 August 2005

Application for costs by ARCH: A Legal Resource Centre for Persons with Disabilities - *Regulatory framework for voice communication services using Internet Protocol*, Telecom Public Notice CRTC 2004-2

Reference: 8663-C12-200402892 and 4754-239

1. By letter dated 12 November 2004, ARCH: A Legal Resource Centre for Persons with Disabilities (ARCH) applied for costs with respect to its participation in the proceeding initiated by *Regulatory framework for voice communication services using Internet Protocol*, Telecom Public Notice CRTC 2004-2, 7 April 2004 (the Public Notice 2004-2 proceeding).
2. By letter dated 17 November 2004, TELUS Communications Inc. (TCI) filed comments in response to the application. By letters dated 22 November 2004, the Canadian Cable Telecommunications Association (the CCTA) and Quebecor Média Inc. (QMI) filed their responses to the application. By letter dated 30 November 2004, Aliant Telecom Inc., Bell Canada, Saskatchewan Telecommunications and Télébec, société en commandite (collectively, the Companies), jointly filed a response to the costs application.

The application

3. ARCH submitted that it met the criteria for an award of costs set out in subsection 44(1) of the *CRTC Telecommunications Rules of Procedure* (the Rules) because it represented a group or class of subscribers that could potentially receive a benefit or suffer a detriment as a result of the outcome of the proceeding, it participated responsibly and it contributed to a better understanding of the issues.
4. ARCH submitted a bill of costs with its application, claiming a total amount of \$34,065.77. This amount represents \$31,099.70 in legal costs, \$561.75 in expert fees and \$2,404.32 in disbursements.
5. ARCH submitted that the costs should be recovered from the Companies, Call-Net Enterprises Inc. (Call-Net), the CCTA, MTS Allstream Inc. (MTS Allstream), QMI and TCI, in proportion to each party's total telecommunications revenues.

Answers

6. TCI did not dispute the quantum of costs claimed nor the proposed respondents. It however objected to the basis on which ARCH proposed that the costs be borne by the respondents. TCI submitted that it would not be appropriate to allocate the costs "in proportion to each party's total telecommunications revenues" as proposed by ARCH. It noted that while the major cable television companies, like the other proposed costs respondents, have a significant interest in the outcome of this proceeding, they generally do not currently have significant telecommunications

revenues. As such TCI submitted that ARCH's allocation proposal would understate the share of the cost award that the cable companies' respective stakes in the proceeding would suggest they should bear. TCI therefore submitted that QMI and each of the members of the CCTA that actively participated in the proceeding, namely, Cogeco Cable Inc. (Cogeco), Rogers Communications Inc. (Rogers) and Shaw Communications Inc. (Shaw) should be required to pay equal shares of the costs award along with the other costs respondents proposed by ARCH.

7. QMI did not oppose the application for costs but disagreed with ARCH's proposed formula to recover these costs. QMI noted that under the proposed formula, a restricted subset of industry players would contribute to reimbursing ARCH's costs, which excluded, for example, a number of facilities-based competitive local exchange carriers and non-facilities-based Voice over Internet Protocol (VoIP) providers.
8. QMI objected to this proposal on a policy and a practical level. On a policy level, QMI noted that the impetus for the Public Notice 2004-2 proceeding came from two directions. First, from non-facilities-based VoIP providers, whose offerings raised serious questions regarding these providers' compliance with the existing local competition policy framework in areas such as 9-1-1 services and other social safeguards. Second, from incumbent local exchange carriers (ILECs), who called for a change in the existing local competition policy framework by removing a variety of regulatory restrictions set in place to control their local market dominance. In contrast, QMI argued, cable operators affirmed their intentions to launch their service in full compliance with the local competition policy framework and did not seek modifications to the existing framework. From this perspective, QMI questioned the appropriateness of cable operators as respondents to any costs applications resulting from the Public Notice 2004-2 proceeding.
9. On a practical level, QMI noted that cable operators generate substantial telecommunications revenues through the sale of Internet access services, which bear no relationship with the telephony matters discussed in the Public Notice 2004-2 proceeding. Therefore, QMI submitted that should the Commission decide that cable operators should contribute to ARCH's costs, the telecommunications revenues should be established on a basis that excludes the Internet access revenues.
10. The Companies did not object to ARCH's entitlement to costs or the amount claimed, but submitted that the scope of the appropriate costs respondents is wider than what ARCH proposed and should include all existing or potential VoIP service providers who participated actively in the proceeding.
11. The Companies submitted that in a proceeding such as this, where the focus is on determining a new regulatory framework, the share of revenues from traditional telecommunications services or market share of traditional telecommunications services is not a relevant or fair basis for allocating the costs, since it would inappropriately skew costs responsibility on the ILECs while assigning little or no costs to respondents who offer VoIP services.
12. The Companies noted that the Commission, when considering the appropriate costs respondents with respect to the introduction of local competition, was faced with a similar situation when many participants in the proceeding were not yet providing service and were only potential

competitors. The Companies noted that in Telecom Costs Order CRTC 96-15, 16 August 1996 (Costs Order 96-15), the Commission apportioned 75 percent (%) of the costs to the participating ILECs and 25% of the costs to existing or potential competitors who participated actively.

13. The Companies submitted that, in the context of the Public Notice 2004-2 proceeding, it would be equitable to allocated 40% of the costs to the ILECs, 40% to the participating cable companies, and 20% to the other existing and potential VoIP service providers who participated actively in the proceeding. The Companies submitted that it would be appropriate to allocate the responsibility for the ILECs' costs based on telecommunications revenues as they would continue to be a fair indicator of interest in the outcome of the proceeding as between the ILECs. With respect to the non-ILECs respondents, the Companies submitted it would be fair and expedient to allocate the costs responsibility on an equal shares basis.
14. The CCTA had no comments with respect to the appropriateness of a cost award to ARCH, but submitted that it was not an appropriate respondent. The CCTA submitted that the appropriate respondents were the ILECs. It submitted that ARCH did not provide reasons as to why particular carriers should be named as respondents. It submitted that another costs application regarding the Public Notice 2004-2 proceeding only named ILECs as respondents and the ILECs in that case did not object. The CCTA also noted that while the outcome of the Public Notice 2004-2 proceeding is of interest to its members, most are not yet active in the market under review. In the alternative, the CCTA submitted that should the Commission consider it appropriate to name respondents in addition to the ILECs, it should use the approach taken in Costs Order 96-15 and name as respondents all parties who provide or will provide the service at issue and who were active in the proceeding.
15. Regarding the allocation of costs, the CCTA submitted that the total telecommunications revenues is an inappropriate measure as it captures revenues that are both contribution ineligible and unrelated to the local voice services market. The CCTA proposed that the allocation should reflect the relative revenues shares of service providers in the local voice services market, which would have the majority of the costs allocated to the ILECs. In the alternative, the CCTA submitted that the Commission could forgo a revenue-bases measure and adopt the approach taken in Costs Order 96-15. In such case, the portion of the costs that should be borne by parties other than ILECs should be allocated "roughly equally" among the current and potential competitors in the market under consideration in the Public Notice 2004-2 proceeding and that actively participated in the proceeding.

ARCH's reply

16. ARCH submitted that the respondents and costs allocation it proposed are consistent with the Commission's previous decisions. It submitted the respondents were chosen because they were all Canadian carriers who offer or indicated their intention to offer VoIP services in the foreseeable future. ARCH submitted that these respondents were appropriate as they have a direct interest in the regulatory regime and are affected by the issues raised in the proceeding.

Commission analysis and determination

17. The Commission finds that ARCH has met the criteria for a costs award set out in subsection 44(1) of the Rules. Specifically, the Commission finds that ARCH: (a) represented a class of subscribers that has an interest in the outcome of the Public Notice 2004-2 proceeding of such a nature that the group of subscribers will receive a benefit or suffer a detriment as a result of the proceeding; (b) participated in a responsible way; and (c) contributed to a better understanding of the issues by the Commission.
18. 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.
19. The Commission notes that the rate claimed in respect of legal counsel fees is in accordance with the rate set out in the Legal Directorate's *Guidelines for the Taxation of Costs*, 15 May 1998. The Commission also finds that the total amount claimed by ARCH was necessarily and reasonably incurred and should be allowed.
20. With respect to the issue of the appropriate respondents, the Commission notes that it has generally determined that the appropriate respondents to an award of costs are the parties who have a significant interest in the outcome of the proceeding issues and have participated actively in the proceeding. However, the Commission has also been sensitive to the fact that if too large a number of respondents are named, the applicant may have to collect small amounts from many respondents.
21. Accordingly, the Commission names the following parties as respondents to the application: the Companies, TCI, MTS Allstream, the CCTA (on behalf of its members) and QMI.
22. Turning to the issue of the proper method of apportioning the costs awarded among the respondents, the Commission considers that the ILECs should be responsible for 75% of the costs, based on their telecommunications operating revenues (TORs). The cable companies should be responsible for the remaining 25%. Since three of the four major cable companies, Rogers, Shaw and Cogeco, are members of the CCTA, the CCTA should be responsible for 75% of the remaining 25% and QMI should be responsible for the remainder.
23. Accordingly, the Companies, TCI and MTS Allstream are to share \$25,549.33, which represents 75% of the costs awarded, in proportion to their most recent TORs, which is as follows:

the Companies	62%
TCI	30%
MTS Allstream	8%
24. Consistent with previous decisions, the Commission makes Bell Canada responsible for the payment on behalf of the Companies.
25. With respect to the other respondents, as mentioned above the Commission considers that they should be sharing the remaining costs, \$8,516.44 on a 75%/25% basis.

Directions as to costs

26. The Commission **approves** the application by ARCH for costs with respect to its participation in the Public Notice 2004-2 proceeding.
27. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to ARCH at \$34,065.77.
28. The Commission directs that the award of costs to ARCH be paid forthwith by the Companies, TCI, MTS Allstream, the CCTA and QMI according to the proportions noted in paragraphs 23 and 25.

Secretary General

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