



Telecom Decision CRTC 2005-45

Ottawa, 16 August 2005

Tatlayoko Think Tank - Application to Review and Vary Telecom Costs Order CRTC 2004-6

Reference: 8662-W32-200308131 and 4754-225

*In this Decision, the Commission **denies** an application by the Tatlayoko Think Tank Ltd. to review and vary Tatlayoko Think Tank Ltd. application for costs - Applications for stay and review and vary of Telecom Decision CRTC 2003-27 and Telecom Decision CRTC 2002-56, Telecom Costs Order CRTC 2004-6, 23 April 2004.*

Background

1. In *Tatlayoko Think Tank Ltd. application for costs - Applications for stay and review and vary of Telecom Decision CRTC 2003-27 and Telecom Decision CRTC 2002-56, Telecom Costs Order CRTC 2004-6, 23 April 2004 (Costs Order 2004-6)*, the Commission denied an application for an award of costs to Tatlayoko Think Tank Ltd. (TTT) for its participation in the proceeding that led to *Applications for stay and review and vary of Telecom Decision CRTC 2002-56 and Telecom Decision CRTC 2003-27, Telecom Decision CRTC 2004-56, 26 August 2004 (Decision 2004-56)*.
2. In *Costs Order 2004-6*, the Commission denied TTT's application for costs based on its conclusion that TTT did not meet the third criterion set out in subsection 44(1) of the *CRTC Telecommunications Rules of Procedure (the Rules)* for an award of costs, since TTT's intervention did not contribute to the Commission's better understanding of the issues in the proceeding that led to *Decision 2004-56*. In this regard, the Commission determined that the issues raised by TTT were not relevant to the proceeding.

Application

3. In its review and vary application, dated 6 May 2004, TTT requested that the Commission review and vary *Costs Order 2004-6* and grant its claims for costs.
4. As submitted in its original application for costs, TTT requested that the Commission fix its costs at \$4,033.90 for consultant fees. TTT's claim included the Federal Goods and Services Tax (GST) on fees. TTT filed a bill of costs with its application.
5. In its review and vary application, TTT submitted that it meets the review and vary criteria established in *Guidelines for Review and Vary Applications*, Telecom Public Notice CRTC 98-6, 20 March 1998 (Public Notice 98-6). TTT submitted that the Commission's *Costs Order* finding was too narrow, that there was an error of fact, and that there was a failure to adhere to the basic principle of fairness. As a result, TTT argued that there was substantial doubt as to the correctness of the Commission's decision in *Costs Order 2004-6*.
6. With regard to TTT's submission that the Commission's finding was too narrow, TTT alleged that the Commission staff letter of 16 June 2003, setting out procedures and deadlines for West Coast Teltech. Ltd. (West Coast) and A&A Call Link Telesolutions Ltd.'s (A&A)

review and vary application led TTT to believe that interested parties to *Framework for expansion of local calling areas and related issues*, Public Notice CRTC 2001-47, 27 April 2001 (Public Notice 2001-47) were invited to comment on all aspects of *Framework for the expansion of local calling areas*, Telecom Decision CRTC 2002-56, 12 September 2002 (Decision 2002-56) and *Follow-up proceeding to Telecom Decision CRTC 2002-56 – Foregone toll revenue compensation for expanded local calling areas*, Telecom Decision CRTC 2003-27, 7 May 2003 (Decision 2003-27).

7. With respect to its submission that there was an error of fact, TTT stated that no other party to the proceeding that led to Decision 2004-56 presented the perspective of how the issues outlined in Public Notice 2001-47 and the implications of Decisions 2002-56 and 2003-27 affect rural ratepayers. In this regard, TTT stated that it had focused on the key issues in the proceeding relating to the review and vary of these decisions. TTT submitted as an example that it had argued that Decision 2002-56 failed to address the concerns of rural ratepayers and did not take into account the financial circumstances of many municipal governments. TTT further submitted that an expanded local calling area (LCA) would translate to increased rates for rural ratepayers.
8. In support of its claim that there was a failure to adhere to the basic principle of fairness, TTT alleged that it was only aware of the process to file comments on West Coast's and A&A's review and vary application because of a fax from the Commission staff received on 16 June 2003. Further, TTT indicated that contrary to the Commission's own directions, the Commission failed to notify TTT of Costs Order 2004-6. TTT stated that in past instances, interested parties such as itself would have been informed by fax of decisions and changes to processes.

Position of parties

9. In responses dated 28 May 2004, and 9 June 2004, TELUS Communications Inc. and Saskatchewan Telecommunications, respectively, stated that they agreed with the Commission's determination that the issues and arguments raised by TTT were not directly relevant to the issues that were under consideration. They submitted that the application to review and vary of Costs Order 2004-6 should be rejected.
10. TTT did not file reply comments.

Commission's analysis and determination

11. In Public Notice 98-6, the Commission established guidelines for review and vary applications made pursuant to section 62 of the *Telecommunications Act* (the Act). The Commission indicated that in order to exercise its discretion pursuant to section 62 of the Act, an applicant must demonstrate that there is substantial doubt as to the correctness of the original decision, for example due to:
 - i) an error in law or in fact;
 - ii) a fundamental change in circumstances or facts since the decision;
 - iii) a failure to consider a basic principle which had been raised in the original proceeding; or
 - iv) a new principle which has arisen as a result of the decision.

12. In Costs Order 2004-6, the Commission determined that the issues raised by TTT were not relevant to the proceeding and therefore TTT did not contribute to the better understanding of the Commission. The Commission notes that TTT argued that the Commission's decision in Costs Order 2004-6 to deny the award for costs was too narrow as TTT believed all aspects of Decision 2002-56 were open for comment in the proceeding that led to Decision 2004-56. The Commission notes that the staff letter of 16 June 2003 simply set out the timeline and process for the participants in the Public Notice 2001-47 proceeding to comment on the applications to stay and review and vary Decision 2002-56 and Decision 2003-27. The Commission further notes that the mention in that letter of Public Notice 2001-47 merely served to identify the parties who were invited to participate in the proceeding, and not to open other issues or reopen settled issues. Accordingly, the Commission does not find merit in TTT's allegation that TTT was led to believe that it was invited to comment on all aspects of Decisions 2002-56 and 2003-27. Accordingly, the Commission considers that its determination in that Costs Order was not too narrow.
13. The Commission notes that TTT also argued that the Commission committed an error of fact in deciding, in Costs Order 2004-6, that TTT did not contribute to a better understanding of the issues in the proceeding that led to Decision 2004-56. The Commission notes that West Coast and A&A's application for review and vary was only concerned with whether the Commission should reconsider its finding that local resellers were not considered to be toll competitors for LCA expansion, and therefore were not eligible for compensation for foregone toll revenues. The Commission is of the view that TTT's comments were not relevant to West Coast and A&A's review and vary proceeding. The Commission therefore concludes that it did not commit an error of fact in determining that TTT did not contribute to the Commission's better understanding of the issues.
14. The Commission is not persuaded by the arguments made by TTT in support of its submission that the Commission committed procedural errors. The Commission notes that TTT did make its submissions within the prescribed time period and did not ask for an extension of time in the stay and review and vary proceeding. Accordingly, the Commission concludes that TTT was not denied its opportunity to participate in that proceeding. In regard to providing TTT with notice of the Costs Order, the Commission is of the view that TTT was able in a timely manner to make the present application to challenge the Costs Order and was not prejudiced by any delay in communication of the decision to it. The Commission therefore considers that there were no procedural errors or breach of fairness as alleged by TTT.
15. In light of the above, the Commission concludes that TTT has not established that there is substantial doubt as to the correctness of Costs Order 2004-6. Accordingly, the Commission **denies** TTT's application to review and vary Costs Order 2004-6.

Secretary General

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