



Telecom Costs Order CRTC 2005-4

Ottawa, 19 August 2005

Consumer Groups' application for costs - *Regulatory framework for voice communication services using Internet Protocol*, Telecom Public Notice CRTC 2004-2

Reference: 8663-C12-200402892 and 4754-240

1. By letter dated 19 November 2004, the Public Interest Advocacy Centre (PIAC), on behalf of the Consumer Groups applied for costs with respect to their joint 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. The Canadian Cable Telecommunications Association (the CCTA) and TELUS Communications Inc. (TCI) filed responses on 22 and 29 November 2004, respectively. Aliant Telecom Inc., Bell Canada, Saskatchewan Telecommunications and Télébec, société en commandite (collectively, the Companies), filed a joint response to the application on 30 November 2004.

The application

3. The Consumer Groups submitted that they met the criteria for an award of costs set out in subsection 44(1) of the *CRTC Telecommunications Rules of Procedure* (the Rules) because they represented a body of subscribers that have a clear interest in the outcome of the proceeding, they participated responsibly in that they made an effort to co-ordinate the intervention with the other subscriber group intervener in an attempt to minimize duplication and to focus the submissions, and contributed to a better understanding of the issues.
4. The Consumer Groups submitted a bill of costs with the application, claiming a total amount of \$42,831.29. This amount represents \$39,512.37 in legal fees, \$3,150.00 in consultant/analyst fees and \$168.92 in disbursements. The Consumer Groups reduced the counsel accounts by 10 percent (%) to reflect the time spent in learning about Voice over Internet Protocol (VoIP).
5. The Consumer Groups did not name any respondents and took no position on the appropriate respondents on the application. It served a copy of the costs application to the interested parties to the Public Notice 2004-2 proceeding.

Answers

6. The CCTA had no comments regarding the appropriateness of a costs award to the Consumer Groups, but submitted that it was not an appropriate respondent. The CCTA asked that the comments it filed on 22 November 2004 in response to the costs application made by ARCH: A Legal Resource Centre for Persons with Disabilities (ARCH) for its participation in the Public Notice 2004-2 proceeding (ARCH's costs application) be considered in the context of this costs application.

7. The CCTA, in the comments it had provided in ARCH's application for costs, submitted that the appropriate respondents were the incumbent local exchange carriers (ILECs). 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 Telecom Costs Order CRTC 96-15, 16 August 1996 (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.
8. 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 revenue 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.
9. TCI did not object to the application for costs, but reiterated its support for the group of cost respondents proposed by ARCH in its application for costs in the context of the Public Notice 2004-2 proceeding, as TCI was of the view that ARCH's proposal for costs strikes the right balance between two extremes inherent in the Commission's established guidelines for costs awards, being "ILEC-only" costs orders versus costs orders against the full range of parties that participated in a proceeding.
10. TCI agreed with the CCTA that the full range of costs respondents in this proceeding properly includes "existing VoIP providers such as Primus, Yak and Vonage, as well as those telecommunications service providers with an expressed interest in the market such as MCI Canada, Cybersurf and other". However, TCI submitted that to name these and others as costs respondents would likely create too large and unwieldy a group for the costs recipients to collect from. Accordingly, TCI submitted that the group of costs respondents proposed by ARCH, being the Companies, TCI, Call-Net Enterprises Inc. (Call-Net), MTS Allstream Inc. (MTS Allstream), CCTA (on behalf of its members) and Quebecor Media Inc. (QMI), is the most appropriate group.
11. TCI noted that Call-Net's submission was one of the two received in early 2004 requesting that the Commission address the regulatory requirement for the provision of VoIP services. TCI submitted that MTS Allstream's responsibility for any cost order should take into account its combined size and interest in the outcome of this proceeding as both an ILEC in Manitoba and a competitive local exchange carrier elsewhere in Canada. TCI submitted that each of the CCTA members that actively participated in the proceeding (being Cogeco Cable Canada Inc. (Cogeco), Rogers Communications Inc. (Rogers) and Shaw CableSystems GP (Shaw)), as well as QMI, should be required to pay equal shares of any costs award in this proceeding.

along with the other costs respondents proposed by ARCH. It 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 Cogeco, Rogers and Shaw should be required to pay equal shares of the costs award along with the other costs respondents proposed by ARCH.

12. The Companies did not object to either the Consumer Groups' entitlement to costs or the amount claimed. The Companies submitted that the appropriate cost respondents should include all existing or potential VoIP service providers who participated actively in the proceeding. The Companies submitted, in respect to allocation of costs, that it would be equitable to allocate 40% of the costs to the ILECs, 40% to the cable companies and 20% to the other existing and potential VoIP service providers who participated actively in the proceeding. In support of this position, the Companies relied on their letter of 30 November 2004, in response to the costs application of ARCH.
13. The Companies, in their 30 November 2004 letter, 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.
14. 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 Costs Order 96-15, the Commission apportioned 75% of the costs to the participating ILECs and 25% of the costs to existing or potential competitors who participated actively.
15. 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.
16. The Companies also noted what appeared to be an error in relation to the disbursement for photocopies, since the total amount for 9,484 copies is shown as \$142.26, based on a rate of \$0.15 per copy. The Companies noted that the rate of \$0.15 per copy amounts to \$1,422.60, a difference of \$1,280.34. The Companies did not object to a claim for the larger amount if this is the correct figure.

Commission analysis and determination

17. The Commission finds that the Consumer Groups has met the criteria for a costs award set out in subsection 44(1) of the Rules. Specifically, the Commission finds that the Consumer Groups: (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.
20. Regarding the disbursements, the Commission notes what seem to be a typographical error in the amount for photocopies. As noted by the Companies, the amount for 9,484 photocopies at the rate of \$0.15 is \$1,422.60, rather than \$142.26. Therefore, this increases the total amount claimed to \$44,111.63.
21. Having regard to the above, the Commission finds that the total amount claimed by the Consumer Groups was necessarily and reasonably incurred and should be allowed.
22. 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.
23. 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.
24. 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 the three 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.
25. Accordingly, the Companies, TCI and MTS Allstream are to share \$33,083.72, 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%

26. Consistent with previous decisions, the Commission makes Bell Canada responsible for the payment on behalf of the Companies.

27. With respect to the other respondents, as mentioned above the Commission considers that they should be sharing the remaining costs, \$11,027.91 on a 75%/25% basis.

Directions as to costs

28. The Commission **approves** the application by the Consumer Groups for costs with respect to its participation in the Public Notice 2004-2 proceeding.
29. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to PIAC, on behalf of the Consumer Groups at \$44,111.63.
30. The Commission directs that the award of costs to PIAC be paid forthwith by the Companies, TCI, MTS Allstream, CCTA and QMI according to the proportions noted in paragraphs 25 and 27.

Secretary General

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