



## Telecom Costs Order CRTC 2006-2

Ottawa, 23 February 2006

### **Application for costs by ARCH: A Legal Resource Centre for Persons with Disabilities - *Forbearance from regulation of local exchange services*, Telecom Public Notice CRTC 2005-2**

Reference: 8640-C12-200505076, 8640-A53-200403329 and 4754-257

1. By letter dated 6 November 2005, ARCH: A Legal Resource Centre for Persons with Disabilities (ARCH) applied for costs with respect to its participation in the proceeding initiated by *Forbearance from regulation of local exchange services*, Telecom Public Notice CRTC 2005-2, 28 April 2005 (the Public Notice 2005-2 proceeding).
2. By letter dated 15 November 2005, TELUS Communications Inc. (TCI) filed comments in response to the application. By letter dated 16 November 2005, Aliant Telecom Inc. (Aliant Telecom), Bell Canada, Saskatchewan Telecommunications (SaskTel) and Société en commandite Télébec (Télébec) (collectively, the Companies) jointly filed their response to the application. By letter dated 16 November 2005, Cybersurf Corp. (Cybersurf) filed its response to the application. By letters dated 17 November 2005, the Canadian Cable Telecommunications Association (CCTA) and Bragg Communications Inc., carrying on business as EastLink (EastLink), filed their responses 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 the criteria for an award of costs set out in subsection 44(1) of the *CRTC Telecommunications Rules of Procedure* (the Rules) as it represents a group of subscribers that will potentially suffer a detriment as a result of a decision in the Public Notice 2005-2 proceeding, it had participated responsibly in the Public Notice 2005-2 proceeding, and it had contributed to a better understanding of the issues.
5. In particular, ARCH submitted that its participation had contributed to a better understanding of the legal framework and duties relating to persons with disabilities in telecommunications.
6. ARCH submitted a bill of costs with its application, claiming a total amount of \$14,780.56. This amount represents \$12,920.00 in legal fees and \$1,860.56 in disbursements.
7. ARCH took no position as to the appropriate respondents for its costs application.

## Answers

8. In answer to the application, TCI, the Companies, and Cybersurf stated that they did not object to ARCH's application for costs. The CCTA and EastLink had no comment as to the appropriateness of the costs application.
9. TCI recommended that the respondents to the costs application include the cable companies, namely Rogers Communications Inc. (Rogers), Shaw Communications Inc. (Shaw), Cogeco Cable Inc. (Cogeco), Quebecor Media Inc. (QMI), and EastLink, as well as the incumbent local exchange carrier (ILEC), MTS Allstream Inc. (MTS Allstream). TCI submitted that these parties have a significant interest in the outcome of the proceeding and participated actively in the written and oral portions of the proceeding.
10. TCI further recommended that the costs be apportioned in the same manner adopted by the Commission in *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, Telecom Costs Order CRTC 2005-2, 8 August 2005 (Costs Order 2005-2), arising from *Regulatory framework for voice communication services using Internet Protocol*, Telecom Public Notice CRTC 2004-2, 7 April 2004 (Public Notice 2004-2), namely, that the ILECs be responsible for 75% of the costs based on their telecommunications operating revenues (TORs) and the cable companies be responsible for the remaining 25%.
11. The Companies submitted that in addition to the ILECs that participated in the proceeding, other parties (specifically, Call-Net Enterprises Inc., the CCTA, Cogeco, Cybersurf, EastLink, FCI Broadband, Microcell Telecommunications Inc., Primus Communications Canada Inc., QMI, Rogers, Shaw, UTC Canada, Vonage Canada Corp., Xit télécom inc. and Yak Communications (Canada) Inc.) were also appropriate costs respondents.
12. The Companies noted that in *Costs awarded to Action Réseau Consommateur et al. - Public Notice CRTC 2001-37*, Telecom Taxation Order CRTC 2002-2, 19 April 2002, the Commission found that it was appropriate to include competitors as costs respondents. The Companies further noted that the Commission has, on other occasions, named competitors as costs respondents where the competitors' interest in and participation in the proceeding has justified including competitors as costs respondents, including in Costs Order 2005-2.
13. The Companies noted that the Commission took the same approach to naming costs respondents in *Consumer Groups' application for costs – Regulatory framework for voice communication services using Internet Protocol*, Telecom Public Notice CRTC 2004-2, Telecom Costs Order CRTC 2005-4, 19 August 2005 (Costs Order 2005-4).
14. The Companies submitted that the non-ILEC parties named in paragraph 11 above had a level of participation and interest in the outcome of the Public Notice 2005-2 proceeding similar to that of the Companies and other ILECs. They further submitted that any costs award should be allocated based on the level of interest and participation of the respondents, and not on each respondent's share of TORs.

15. The Companies noted that when naming non-ILEC parties as costs respondents and allocating costs, the Commission has expressed a need to be 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. The Companies submitted that if the Commission were to confine the number of respondents for this reason, the following parties would qualify as having a high level of interest and participation: the CCTA, QMI, Rogers and Shaw.
16. The CCTA and EastLink submitted that the appropriate respondents to ARCH's request for costs were the ILECs, and that it would not be appropriate to name the CCTA or its member companies as appropriate respondents. The CCTA and EastLink further submitted that in the event that the Commission determines that parties other than the ILECs should be named as respondents, the substantial majority of the costs should be allocated to the ILECs, consistent with their position in the local exchange telephony market.
17. The CCTA submitted that while the CCTA and numerous other parties participated in the Public Notice 2005-2 proceeding, this did not necessarily require that all such parties be named as respondents. The CCTA noted that in *Public Interest Advocacy Centre - Application for costs - Telecom Public Notice CRTC 2005-3*, Telecom Costs Order CRTC 2005-14, 17 November 2005, the Commission determined that the ILECs were the appropriate respondents to a cost application related to the current price regulation regime for the ILECs, notwithstanding the fact that the CCTA had participated in the proceeding. The CCTA submitted that in *Application for costs by the Public Interest Advocacy Centre on behalf of the Consumer Groups - Amendments to Telecom Public Notice CRTC 2003-8, Review of price floor safeguards for retail tariffed services and related issues, Telecom Public Notice CRTC 2003-10*, Telecom Costs Order CRTC 2004-16, 25 November 2004, the Commission appropriately looked to the matter of the purpose of the proceeding in its determinations on costs.
18. The CCTA further submitted that the outcome of the Public Notice 2005-2 proceeding will significantly affect the terms and conditions under which the ILECs' local exchange services will be regulated or forborne, and that it therefore follows that the ILECs have the most direct and substantial interest in the outcome of the proceeding, since they stand to benefit the most from clear criteria for forbearing from regulation of their services.
19. The CCTA further submitted that the ILECs have as much interest in the outcome of this proceeding as was the case in *Forbearance from regulation of toll services provided by dominant carriers*, Telecom Public Notice CRTC 96-26, 24 July 1996, in which the Commission considered forbearance from regulation of toll services. The CCTA noted that in the Commission's determinations respecting applications for costs awards, the Commission named Stentor, which represented the ILECs, as the sole respondent, in the costs orders entitled *In re: Forbearance from Regulation of Toll Services Provided by Dominant Carriers - Telecom Public Notice CRTC 96-26*, Telecom Costs Order CRTC 97-16, 28 August 1997, and Telecom Costs Order CRTC 97-17, 20 October 1997. The CCTA submitted that it would be consistent with the approach taken in that proceeding respecting forbearance to name solely the ILECs as the respondents to ARCH's application for costs in the Public Notice 2005-2 proceeding.

20. EastLink supported the reasons given by the CCTA as to why the ILECs were the appropriate respondents to ARCH's application.
21. Cybersurf submitted that the proper respondents to ARCH's costs application are the Companies, TCI and MTS Allstream. Cybersurf further submitted that such a result would be consistent with Costs Orders 2005-2 and 2005-4, as well as *Application for costs by The British Columbia Old Age Pensioners' Organization et al. - Regulatory framework for voice communication services using Internet Protocol*, Telecom Public Notice CRTC 2004-2, Telecom Costs Order CRTC 2005-1, 8 August 2005. In these costs orders, the Commission apportioned the respective costs of the applicants in the proceeding initiated by Public Notice 2004-2 among the ILECs on the basis of their TORs. Cybersurf stated that since the proceeding initiated by Public Notice 2004-2 and the Public Notice 2005-2 proceeding are similar in breadth, scope and range of public issues examined, the apportionment of the costs of ARCH should be handled in the same manner.

### **Commission analysis and determination**

22. 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 Public Notice 2005-2 proceeding, has participated in a responsible way, and has contributed to a better understanding of the issues by the Commission.
23. 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.
24. 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.
25. 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. 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.
26. Accordingly, the Commission names the following parties as respondents to the application: the Companies, TCI and MTS Allstream (collectively, the respondent ILECs), as well as Cogeco, QMI, Rogers and Shaw (collectively, the respondent cable companies).
27. Turning to the issue of the proper method of apportioning costs awarded among the respondents, the Commission considers that the ILECs should be responsible for 75% of the costs, based on their TORs. The cable companies should be responsible for the remaining 25%.

28. Accordingly, the respondent ILECs are to share \$11,085.42, which represents 75% of the costs awarded, in proportion to their most recent TORs, which is as follows:

The Companies	59%
TCI	33%
MTS Allstream	8%

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

30. With respect to the respondent cable companies, the Commission considers that they should equally share \$3,695.14, representing the remaining 25% of the costs, such that each pays \$923.79.

**Direction as to costs**

31. The Commission **approves** the application by ARCH for costs with respect to its participation in the Public Notice 2005-2 proceeding.

32. Pursuant to subsection 56(1) of the *Telecommunications Act*, the Commission fixes the costs to be paid to ARCH at \$14,780.56.

33. The Commission directs that the award of costs to the Consumer Groups be paid forthwith by the Companies, TCI, MTS Allstream, Cogeco, QMI, Rogers and Shaw according to the proportions set out in paragraphs 28 and 30.

Secretary General

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