

March 27, 2015

**[CB-CDA 2015-015]**

**NOTICE OF THE BOARD**

Eastlink can provide a Reply the Collectives' Submissions stated below no later than **Wednesday, April 1, 2015.**

Regards,

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**From:** Massam, Laurent  
**Sent:** March-27-15 1:04 PM  
**To:** McDougall, Gilles: CB-CDA  
**Cc:** N. MacDonald; A. Walter; A. Mainville-Neeson; B. Sgambetterra; C. Rathwell; J. Hickey; K. Milbourn; L. Gibson; N. Dorval; P. Dinsmore; S. McCormack; H. Intven; J. Callaghan; G. Piasetzki; A. Malek; M. Koch; L. Watt; M. Estabrooks, A. Thomas; Y. Wexler; David W. Kent; J. Ohara; R. Sheahan; M. Hayes; J. Green; K. Hayes; J. Kerr-Wilson  
**Subject:** RE: TV Retransmission 2014-2018: Eastlink notice of withdrawal

Mr. McDougall,

I write on behalf of CCC, CBRA, CRC, BBI, DRTVC, FWS, MLB and SOCAN (Collectives) in response to Bragg Communications Inc.'s (operating as Eastlink) notice withdrawing its objection to the proposed 2014-2018 Retransmission Tariff.

The Collectives acknowledge Eastlink's decision to withdraw. However, the Collectives object to Eastlink's request that its interrogatory answers be destroyed, and not made part of the record.

Eastlink chose to object to the proposed Tariff and to participate in the interrogatory process. Eastlink posed interrogatories and received responses, and answered relevant interrogatories posed to it.

Having provided responses, Eastlink should not now be permitted to prevent the Collectives, and ultimately the Board, from considering disclosed relevant information merely because it no longer objects to the proposed Tariff.

There is no provision in the Directive on Procedure or the Confidentiality Order that provides that interrogatory responses of a party that subsequently withdraws shall be destroyed and not made part of the record.

To the contrary, the Directive on Procedure provides that "a participant shall file as evidence [...] those responses to interrogatories to which they know they intend to refer."<sup>1</sup>

The Confidentiality Order provides that disclosed confidential and highly confidential information is to be destroyed only within 30 days following completion of the proceeding, including any applications for judicial review and any appeals therefrom.<sup>2</sup>

There is no provision for the destruction of answers following a voluntary withdrawal.

Eastlink's responses have been provided to the Collectives. Therefore, in accordance with the Directive on Procedure and the Confidentiality Order, the Collectives should be entitled to file those interrogatory answers if they will be relied upon.

In addition to the foregoing, it would be extremely prejudicial if a participant could at any time of its choosing prevent the use of its interrogatory answers simply by withdrawing from the proceedings.

Relevant information and documents obtained through interrogatories are relied upon and incorporated into participants' statements of case and associated experts' reports. If, by withdrawing, a participant could unilaterally prohibit the use of their answers, no party could know with certainty whether the information they had been provided with and had based their case and evidence upon would ultimately be available at the hearing of the matter.

Excluding relevant information in this manner would also work a great disservice to the Board. It would prevent the Board from being presented with and considering relevant information that would otherwise be available.

In this instance, Eastlink's answers have been carefully considered and, in part, relied upon by the Collectives and their experts in the analysis and preparation of their case and evidence. Requiring the Collectives to remove any information and conclusions based on Eastlink's answers will prevent the Collectives from presenting that relevant information to the Board, and will cause prejudice to the Collectives.

In the circumstances, it is respectfully submitted that notwithstanding Eastlink's voluntary withdrawal from the proceeding, its responses to interrogatories must remain available to be made part of the record if filed for the Board's consideration.

[<sup>1</sup>] Directive on Procedure, Section B5.

[<sup>2</sup>] Confidentiality Order, Para 12.

Yours very truly,

Laurent Massam

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**From:** Natalie MacDonald

**Sent:** Wednesday, March 25, 2015 8:01 AM

**To:** G. McDougall

**Cc:** N. MacDonald; A. Walter; A. Mainville-Neeson; B. Sgambetterra; C. Rathwell; J. Hickey; K. Milbourn; L. Gibson; N. Dorval; P. Dinsmore; S. McCormack; H. Intven; J. Callaghan; G. Piasetzki; A. Malek; M. Koch; L. Watt; M. Estabrooks, A. Thomas; Y. Wexler; David W. Kent; J. Ohara; R. Sheahan; M. Hayes; J. Green; K. Hayes; J. Kerr-Wilson; L. Massam

**Subject:** TV Retransmission 2014-2018: Eastlink notice of withdrawal

Dear Mr. McDougall,

Bragg Communications Inc. (operating as "Eastlink") hereby provides notice to the Copyright Board that Eastlink is withdrawing our objection to the TV Retransmission tariff

and we will not be taking part in the rest of the proceeding. We are also requesting that Eastlink's interrogatory responses be destroyed and not made part of the record.

If you require further information please do not hesitate to contact me.

Regards,

Natalie MacDonald