

April 10, 2015

**[CB-CDA 2015-020]**

## **RULING OF THE BOARD**

On March 25, 2015, Bragg Communications Inc. (c.o.b. as EastLink) ("EastLink") gave notice to the Board that it was withdrawing its Statement of Objection to the Proposed Tariff and would therefore no longer participate to the proceeding. EastLink also requested that its responses to interrogatories be destroyed and not made part of the record.

On March 27, 2015, BBI, CBRA, CCC, CRC, DRTVC, FWS, MLB and SOCAN (the "Collectives"), while acknowledging the decision of EastLink to withdraw from the proceeding, objected to EastLink's request that its interrogatory responses be destroyed and not made part of the record. They argued that a party should not be permitted to prevent the Collectives and the Board from considering relevant information if it no longer objects to the Proposed Tariff. The Collectives added that they should be entitled to file EastLink responses to interrogatories in accordance with the Directive on Procedure and the Confidentiality Order. In their view, the position taken by EastLink would be prejudicial to the Collectives who have already considered EastLink responses in the preparation of their case and evidence.

In reply, EastLink confirmed that its request was limited to confidential responses to interrogatories, arguing that such withdrawal would not be prejudicial to the Collectives and adding that since it was no longer a party to the proceeding, it would not be consulted for the use of its confidential information in accordance with section 10 of the Confidentiality Order.

For the following reasons, EastLink's request that its responses to interrogatories be destroyed and not made part of the record is denied.

In accordance with section B.3 of the Directive on Procedure, responses to interrogatories were served by EastLink on the Collectives who addressed them. The Collectives are then authorized to file their case and evidence with the Board, including responses to interrogatories to which they intend to refer (Directive on Procedure, section B.5). The Board agrees with the Collectives that it would be prejudicial to them to be prevented from using the responses served by EastLink which were relied upon and incorporated into their case.

In accordance with section 10 of the Confidentiality Order, a party wishing to use confidential information during the proceeding shall attempt to agree with the supplier (defined as a participant to the proceeding who supplies information) on a manner in which the information may be put into the public record. Any confidentiality claim shall then be dealt with pursuant to the Directive on Procedure. Section 15 of the Confidentiality Order also provides that the Board may issue further direction if needed, when the order is inappropriate for dealing with confidential information.

The Board agrees with EastLink that since it is no longer a participant to the proceeding, it would not have the right to be consulted for the use of its confidential information in accordance with section 10 of the Confidentiality Order, as adopted by the Board on August 12, 2014.

Confidential information is defined as being so sensitive that its disclosure to unauthorized persons would reasonably be expected to result in injury to the supplier (Confidentiality Order, section 1). In the event the Collectives wish to use information that, in the opinion of EastLink is confidential, such disclosure to the public may be prejudicial and an opportunity should be given to EastLink to file with the Board a request for confidential treatment.

The August 12, 2014 Confidentiality Order is not appropriate for dealing with confidential information of a party who is no longer a participant to the proceeding, nor is the Directive on Procedure. Therefore and in accordance with section 15 of the Confidentiality Order and section A.11 of the Directive on Procedure, the Board issues the following additional direction:

“Notwithstanding its withdrawal from the proceeding and solely for the purpose of the treatment of confidential information provided by EastLink to the Collectives and its use during the proceeding, EastLink shall be deemed to be a participant and benefit from section A.8 of the Directive on Procedure and from the provisions of the Confidentiality Order, in particular sections 10 and 11.”