



**CB-CDA 2025-008**

**Order of the Board**

**Proceeding: Commercial Television Tariffs – Reproduction (2014-2024)**

January 23, 2025

**I. SUMMARY**

[1] On November 14, 2024, CMRRA wrote to the Board stating that “[t]he BDUs were not, and are not, entitled to withdraw as objectors while continuing to participate through CAB, without leave of the Board”.

[2] The BDUs explained in their December 6, 2024, reply that they are not users of the CMRRA Tariff 5 tariff and, in any event, were giving the Board formal notice of withdrawal.

[3] In its reply dated January 8, 2025, CMRRA argues that several of the objectors own both programming undertakings and distributions undertakings, and that on its face, the record suggests that the objections were made on behalf of the programming undertakings.

[4] For the reasons below, I disagree that a leave application is required. The designated objectors are no longer participants in this proceeding.

[5] Finally, given some of the parties’ involvement in another repertoire-use study (see Ruling CB-CDA 2024-100), the next case management conference (CMC) will be scheduled at a later date.

**II. BACKGROUND**

[6] During the last CMC on October 1, 2024, the parties undertook to report back on discussions regarding a possible general framework for a repertoire-use study (including chain of title audits) (see Order CB-CDA 2024-087).

[7] However, the BDUs had indicated that they would not be participating further in the remaining commercial television tariffs (2015-2024) proceeding, “subject to CMRRA’s confirmation”.

[8] CMRRA and SOCAN were asked to comment on the BDUs' withdrawal, the BDUs were permitted to respond, and, on request, CMRRA was permitted to reply.

### III. RULING

#### *CMRRA's Position*

[9] CMRRA notes that on August 2, 2022, counsel for the BDUs wrote to the Board, stating the following: "Please be advised that Cogeco Communications, Quebecor Media, Rogers Communication, and Shaw Communications hereby withdraw their objections to CMRRA Tariff 5, but reserve the right to participate in the examination of CMRRA Tariff 5 as members of the Canadian Association of Broadcasters."

[10] CMRRA contends that the BDUs were not, and are not, entitled to withdraw as objectors while continuing to participate through CAB, without leave of the Board. The BDUs must be subject to participatory obligations in the proceeding as it relates to CMRRA Tariff 5. It would be a breach of procedural fairness if BDUs were allowed to exercise participatory rights through CAB, while potentially being shielded from participatory obligations, such as the obligation to respond to interrogatories. CMRRA provides the following example: The Board's *Practice Notice on Interrogatory Process* (PN-2023-011) states that, unless ordered otherwise, "a trade association will not be required to seek information from their members to respond to an interrogatory question."

[11] According to CMRRA, the BDUs are major broadcasters of commercial television programming. Their evidence will be relevant and important to this proceeding, especially because CMRRA Tariff 5 is a tariff of first impression. If the BDUs cease to participate as objectors, it would risk depriving CMRRA and the Board of evidence that will assist in the examination of the proposed tariff.

[12] CMRRA takes the view that the BDUs' purported withdrawal is contrary to the *Practice Notice on Changing the Status of a Party* (PN 2023-010). Under this Practice Notice, a party may only withdraw from a proceeding on a fully unconditional basis. The BDUs' withdrawal is not fully unconditional because they intend to participate through CAB. While the Practice Notice was published in 2023, after the BDUs purported to withdraw, its purpose is applicable to the BDUs' attempt to shield themselves from the participatory obligations of an objector, for the reasons set out above.

[13] In its reply, CMRRA notes that several of the BDUs, including Rogers, Quebecor, and Bell, own and operate programming undertakings as well as broadcasting undertakings. CMRRA argues that the record does not show that the BDUs' owners were exclusively objecting on behalf of their broadcasting undertakings. Moreover, CMRRA argues that, particularly, "Rogers and Quebecor filed objections that, on their face, cover their programming undertakings - which include some of Canada's largest commercial television stations and specialty television services".

[14] Overall, CMRRA insists that information in the hands of the programming undertakings is important in this proceeding, especially because the Proposed Tariff is a

tariff of first impression. That information may not be available if the owners of the programming undertaking participate in the proceeding only through the CAB rather than as direct objectors.

#### *SOCAN's Position*

[15] With respect to SOCAN Tariff 2.A.R (2017-2024), on November 14, 2024, SOCAN confirmed that the BDUs have not objected to this proposed SOCAN tariff, but SOCAN generally supports CMRRA's submission on (1) the interpretation of the Board's Practice Notice and (2) the procedural fairness implications of allowing parties to partially withdraw from a proceeding.

#### *BDUs' Position*

[16] The BDUs explain that they are not subject to CMRRA Tariff 5 (2015-2019), which only applies to commercial television undertakings, not broadcasting distribution undertakings.

[17] The BDUs further explain that one should not conflate the BDUs with the companies that own them. Bell Canada, Rogers Communications Canada Inc, and Quebecor Media Inc all own both BDUs and commercial television stations.

#### *Analysis*

[18] Proposed CMRRA Tariff 5 applies to a "station", which means a programming undertaking as defined in the *Broadcasting Act*, S.C. 1991, c. 11.

[19] Under this statute, "programming undertaking" means an undertaking for the transmission of programs, either directly by radio waves or other means of telecommunication or indirectly through a distribution undertaking, for reception by the public by means of broadcasting receiving apparatus, but does not include such an undertaking that is an online undertaking; (*entreprise de programmation*). As such, a programming undertaking is not a distribution undertaking.

[20] Furthermore, the CRTC's (Canadian Radio-television and Telecommunications Commission) *Ownership Charts* clearly outline the corporate structure of programming undertakings, distribution undertakings, and their holding companies.<sup>1</sup> They are distinct activities exercised by distinct entities.

[21] This means that distribution undertakings are not CMRRA Tariff 5 users and their participation is not necessary.

[22] I therefore find no reasons to compel a distribution undertaking's participation.

[23] In terms of the objectors who own both programming undertakings and distribution undertakings, I also do not find any reason to compel their participation. If their

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<sup>1</sup> See <https://crtc.gc.ca/ownership/eng/ownership.htm>.

programming undertakings are not represented by the CAB, in effect, they will have fully withdrawn. If they are represented by the CAB, in effect, they are fully participating through this trade association, a customary practice in Board proceedings. In this regard, I remind Parties of the *Practice Notice on Interrogatory Process* (PN-2023-011), which addresses the issue of questions to members of a trade association during an interrogatory process.

[24] I order that the following parties be struck from the Parties of Record entry for the CMRRA Tariff 5 proceeding: Bell Canada, Rogers Communications Canada Inc, Bragg Communications Inc, Quebecor Media Inc, Cogeco Communications Inc, TELUS Communications Company, and the Canadian Communication Systems Alliance.

René Côté  
Case Manager