



[CB-CDA 2022-051]

RULING OF THE BOARD

File: Television Retransmission (2014-2018) [Redetermination]

August 18, 2022

I. RULING

[1] The BDUs' response of July 29, 2022, to Ruling CB-CDA 2022-038, included improper submissions. These will not be considered by the Board. It is not necessary to have the Collectives make submissions in reply to the BDUs.

[2] The Board will proceed with its reconsideration of the two issues identified by the Federal Court of Appeal.

II. PROCEDURAL HISTORY

[3] In Ruling 2022-038, the Board established the procedure according to which the Board would proceed with this redetermination.

[4] The Ruling explicitly stated that Parties will not be able to file new evidence, and contemplated only two opportunities for parties to make submissions: i) to identify essential portions of the existing record, and ii) if sought by the Board, their calculations of the effect of the Board's preliminary conclusions.

[5] Furthermore, after a request for clarification, in Notice CB-CDA 2022-043, the Board provided a reminder that the references to essential portions of the existing record should not be accompanied by any new submissions.

[6] Nonetheless, in their response to the Ruling, the BDUs included submissions on the relationship of the decision of the Federal Court of Appeal in *Bell Canada v. Copyright Collective of Canada*, 2021 FCA 148 to the Board's original decision in *Tariff for the Retransmission of Distant Television Signals, 2014-2018*, CB-CDA 2019-056 and urged the Board to arrive at a particular outcome.

[7] The Collectives raised concerns about this in their letter of August 3, 2022, arguing that the BDUs' "letter is very clearly intended to convey the BDUs' submissions as to how the Board should redetermine the 2014-18 television retransmission tariff and, as such, is improper." The Collectives asked that the Board either strike the impugned portions of the BDUs' response, or that the Collective be permitted to file reply submissions.

III. ANALYSIS

[8] Portions of the BDUs' July 29, 2022 submissions received by the Board were unsolicited and went beyond that permitted by Ruling 2022-038—which clearly enumerated the opportunities that parties would have to make submissions—as well as Notice 2022-043.

[9] As such, the Board will not consider in its redetermination any improper submissions contained in the BDUs' response to Ruling 2022-038.

[10] Accordingly, it is not necessary for the Collectives to file submissions in reply.

Esther Bonin for
Lara Taylor
Secretary General