



Broadcasting Decision CRTC 2004-178

Ottawa, 12 May 2004

Bragg Communications Incorporated
Kingston, Nova Scotia

Bay Communications Incorporated
Yarmouth, Nova Scotia

Applications 2003-0732-3 and 2003-0733-1
Broadcasting Public Notice CRTC 2003-47
16 September 2003

Licence amendment

*In this decision, the Commission **denies** the applications by Bragg Communications Incorporated and its wholly-owned subsidiary, Bay Communications Incorporated, to change the classification of the broadcasting licences for the cable broadcasting distribution undertakings serving Kingston and Yarmouth from Class 1 to Class 2.*

The applications

1. The Commission received applications by Bragg Communications Incorporated and its wholly-owned subsidiary, Bay Communications Incorporated, (collectively referred to as Bragg) to amend the broadcasting licences for the cable broadcasting distribution undertakings (BDUs) serving Kingston and Yarmouth, respectively, in order to change the classification of each licence from Class 1 to Class 2. Bragg requested that the change in the class of each licence be made retroactive to 1 September 2002.
2. The Commission did not receive any interventions in connection with these applications.
3. In support of its request, Bragg stated that, prior to the expiration of each licence on 31 August 2002, the number of subscribers to each undertaking dropped below 6,000, the threshold of a Class 1 licence. Bragg also argued that, because the licences for these undertakings had been granted administrative renewals by the Commission¹, they had been renewed on an interim basis and that, for this reason, the circumstances of its present applications are similar to those addressed in the decision of the Supreme Court of Canada (the Court) in *The Canadian Radio-television and Telecommunications Commission v. Bell Canada* (1989) (1.S.C.R. 1722) (the Bell case). In that decision, the

¹ In *One-year administrative renewals*, Broadcasting Decision CRTC 2002-157, 2 July 2002, the Commission renewed the licences for each of these undertakings, from 1 September 2002 to 31 August 2003. Subsequently, in *Administrative renewals*, Broadcasting Decision CRTC 2003-291, 21 July 2003, the Commission renewed the licences from 1 September 2003 to 31 August 2004.

Court found that the Commission's express power to issue interim orders provides the Commission with "added flexibility" in regulating rates by permitting the Commission, in setting final rates, to revisit the period during which rates had been made interim.

The Commission's analysis and determination

4. The Commission considers that the circumstances of Bragg's applications are not similar to those considered by the Court in the Bell case. The Court's findings in the Bell case addressed the Commission's powers with respect to setting rates in the area of telecommunications. In the Commission's view, the Court's findings in that case are not relevant to the present applications. The Bell case dealt with the characteristics of interim orders while the present applications deal with the characteristics of broadcasting licences. Under the *Broadcasting Act*, the Commission cannot change the class of a licence through a licence amendment. A change in the class of a licence requires that the Commission issue a new licence. Accordingly, the Commission may only change the class of the licence, upon application by a party for a new licence. Given that those are not the circumstances in the present case, the Commission **denies** the applications by Bragg Communications Incorporated and its wholly-owned subsidiary, Bay Communications Incorporated, to amend the broadcasting licences for the cable BDUs serving Kingston and Yarmouth, respectively, in order to change the classification of each licence from Class 1 to Class 2.
5. The Commission notes that in *Call for comments on a proposed exemption order for cable broadcasting distribution undertakings that serve between 2,000 and 6,000 subscribers; and changes to the exemption order respecting cable systems having fewer than 2,000 subscribers*, Broadcasting Public Notice CRTC 2003-41, 29 July 2003, the Commission called for comments on a proposed exemption order for cable BDUs serving between 2,000 and 6,000 subscribers. The Commission intends to issue the final exemption order shortly, and notes that Bragg's cable BDUs serving Kingston and Yarmouth may qualify for this exemption order.

Secretary General

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