



**Canadian
Association of
Broadcasters**

**L'Association
canadienne des
radiodiffuseurs**

April 4, 2005

****Via E-Mail****

Ms. Diane Rhéaume
Secretary General
Canadian Radio-television and Telecommunications Commission
Ottawa, Ontario
K1A 0N2

Dear Ms. Rhéaume:

Re: Broadcasting Public Notice CRTC 2005-20: Call for comments on a proposal to add RAI International to the lists of eligible satellite services for distribution on a digital basis

1. The Canadian Association of Broadcasters (CAB) – the national voice of Canada’s private broadcasters, representing the vast majority of Canadian programming services, including private television and radio stations, networks and specialty, pay and pay-per-view television services – is pleased to submit these comments concerning the issues raised in Broadcasting Public Notice CRTC 2005-20 (PN 2005-20).
2. The Commission is seeking comment on a request by Rogers Cable Communications Inc (“Rogers”) to add RAI International to the lists of eligible satellite services for distribution on a digital basis (“the lists”).
3. The CAB notes that in Broadcasting Public Notice 2004-96 (PN 2004-96), the Commission relaxed its policies with respect to consideration of applications to add general-interest non-Canadian services to the lists where those services are competitive with existing, licensed Canadian third-language services operating in the same language.
4. In PN 2004-96, the Commission introduced two measures (the ‘buy-through’ and ‘distributor must-offer’ rules) to mitigate the impact on subscription revenues of Canadian third-language services that operate in the same language as a new non-Canadian third-language service.

5. With respect to RAI International, the CAB is concerned that this service, if authorized for distribution in Canada, could raise issues relating to programming rights and advertising sales.

Programming rights

6. In Broadcasting Public Notice 2004-50, the Commission outlined its analysis and determinations with respect to an earlier request to add RAI International to the lists. In denying that request, the Commission cited RAI International's practice of withdrawing and withholding rights to its programming as a factor in its decision: ". . . based on the record of this proceeding, the Commission is not persuaded that RAI International would not hold, obtain, nor would it exercise preferential or exclusive programming rights to at least some of its programming if its service were added to the digital lists."
7. The CAB understands that between 1984 and 2004, RAI provided an average of more than 10 hours per day of original programming to Canadian broadcasters. Based on Appendix A of the Rogers request, it is clear that there is currently a sharply reduced amount of RAI programming being made available to Canadian broadcasters.
8. The CAB is concerned that the information provided by RAI in this appendix suggests that RAI may already be withholding programming rights in order to facilitate its future entry to the Canadian market. If so, it would be in clear contravention of the Commission's policy, as set out in PN 2004-96, to the effect that "the provider of a non-Canadian service would have to satisfy the Commission that it does not currently, nor will it in the future, deal in rights to programming in a manner that unduly precludes a Canadian programming undertaking from acquiring that programming."(emphasis added)

Advertising

9. Paragraph 14 of the Rogers request clarifies that what would be distributed in Canada is actually RAI International 2, which is also available in the United States, Central and Latin America. The CAB also notes that the website for a leading Italian advertising agency Sipra contains rate-card information for local advertisers who wish to buy advertising on RAI International 2.¹ As recently as March 2005 RAI International 2 was already carrying commercial spots from Canadian advertisers, and it has done so in the past as well.
10. The CAB also notes with concern the recent media reports with respect to fines levied against RAI by the Italian telecommunications regulator for "repeatedly breaching advertising limits between 1998 and 2003."²

¹ http://www.sipra.it/newmedia/dossier//rai_international.pdf

² "Italian Canadian Lobby says it paid off to turn up volume on RAI television access." Jeff Heinrich, Montreal Gazette, March 13, 2005. A2.

Specific Conditions

11. It is clearly standard business practice for RAI International to sell advertising in each regional market where it is carried. Moreover, RAI has an equally clear track record of failing to honour advertising restrictions, even in its home market. Furthermore, there remains a concern, as the Commission has previously noted, that RAI would exercise preferential or exclusive programming rights in Canada, despite its commitments to the contrary.
12. Accordingly, the CAB urges the Commission to introduce specific conditions with respect to RAI International's distribution in Canada, should it approve the Rogers request.
13. Specifically, the CAB submits that **the Commission should make RAI International's presence on the lists conditional on RAI International not exercising preferential or exclusive programming rights in Canada, and on RAI International not soliciting advertising from Canadian advertisers.**
14. Moreover, the Commission should make it clear that it will act expeditiously upon any complaints it receives with respect to the exercise of preferential or exclusive programming rights, or the solicitation of Canadian advertising, by RAI International, and that in the event that RAI International is found to have breached these conditions, it will be removed from the lists until such time as it is re-sponsored and re-approved for distribution in Canada.
15. The CAB notes that Appendix A of the Rogers request states that "RAI International does not hold, will not obtain, nor will it exercise any preferential or exclusive programming rights in relation to the distribution of its programming in Canada, and that paragraph 61 of the Rogers request states that "RAI International will . . . not be soliciting advertising in Canada." Given these commitments, the CAB submits that the proposed conditions should be acceptable to Rogers and to RAI International.
16. The CAB appreciates the opportunity to make its views known with respect to this proceeding.

Sincerely,



David Keeble
Senior Vice-President
Policy and Regulatory Affairs

C.c.: Rogers Cable Communications Inc (via fax: 416-935-4875)