



**Canadian  
Association of  
Broadcasters**

**L'Association  
canadienne des  
radiodiffuseurs**

April 21, 2005

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

Dear Ms. Rhéaume:

**Re: Broadcasting Public Notice CRTC 2004-61: Call for comments on a request by the CCTA for the addition of HD Net and Discovery HD Theater to the lists of satellite services eligible for digital distribution**

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 2004-61 (PN 2004-61).
2. The Commission is seeking comment on a request by the CCTA to add HD Net and Discovery HD Theater (“the services”) to the lists of satellite services eligible for distribution on a digital basis (“the lists”).
3. The CAB strongly opposes the CCTA’s request to add these services to the lists, for the following reasons:
  - (i) It is premature to consider the addition of non-Canadian high-definition (HD) services to the lists before the regulatory framework for Canadian HD services is established;
  - (ii) These services would be directly competitive with Canadian specialty and pay services;

- (iii) Approval of these services could discourage partnerships between foreign broadcasters and Canadian programming services, and could delay or prevent the launch of Canadian HD specialty and pay services;
  - (iv) Approval of non-Canadian HD services raises capacity issues with respect to the ability of BDUs to carry a preponderance of Canadian HD services.
4. Accordingly, **the CAB strongly urges the Commission to reject the CCTA's request to add HD Net and Discovery HD Theatre to the lists of satellite services eligible for digital distribution. If the Commission concludes that it is premature to reject the CCTA's request at this time, the CAB submits that the Commission should defer its consideration of the CCTA's request until after it has issued its determinations with respect to the HD framework and digital migration proceedings, and a framework for the authorization of foreign HD services is in place and known to all affected parties.**

**It is premature to consider the addition of non-Canadian HD services to the lists before the regulatory framework for Canadian HD services is established.**

- 5. The CAB submits that it is inappropriate for the Commission to consider the CCTA's request at the same time as it considers a proposed regulatory framework for the licensing and distribution of Canadian HD specialty and pay services.
- 6. In the absence of a formal regulatory framework for the distribution of Canadian HD services, it is difficult, if not impossible, for existing Canadian services to assess the implications of the addition of these non-Canadian HD services with respect to existing transitional HD specialty and pay services, or on future licensed Canadian HD specialty and pay services. For example, it is impossible for Canadian programmers to accurately predict what impact these services will have on their ability to secure sufficient HD programming to meet any future access threshold, before knowing what that threshold will actually be.
- 7. In Broadcasting Public Notice CRTC 2004-58 (PN 2004-58), in which the Commission calls for comments on a proposed framework for the distribution of HD services, the Commission acknowledges that as part of this proceeding it "...must determine the regulatory framework under which it will evaluate applications to add new non-Canadian high definition pay and specialty services that have no analog or low definition digital counterpart services to the lists of eligible satellite services." In these circumstances, the CAB firmly believes that the principle of procedural fairness requires that Canadian broadcasters have the right to know the regulatory framework by which requests for the addition of non-Canadian HD services to the lists will be judged, in order to fully comment on such requests.
- 8. The CAB further submits that the fundamental 'Canada first' principles under the Broadcasting Act, and the Commission's stated objectives to ensure "the continued

predominance of Canadian services in the emerging digital distribution environment”<sup>1</sup> requires that the Commission establish the regulatory framework for Canadian HD specialty and pay services before it considers applications to add non-Canadian services to the lists.

9. To do otherwise would give these non-Canadian HD services a head start over Canadian HD services, allowing them to occupy valuable spectrum before Canadian services have the chance to launch. Moreover, approval of these services would discourage partnerships between Canadian and foreign broadcasters. These consequences would run completely counter to the ‘Canada first’ principles of the Broadcasting Act, and the Commission’s stated objectives with respect to the predominance and priority of Canadian services in the digital environment.
10. The CAB submits that Canadian services should be given an opportunity to avail themselves of the new HD transitional framework before the Commission considers authorizing new non-Canadian HD services.

**These services would be directly competitive with Canadian specialty and pay services.**

11. HD is a consumer technology that allows higher quality sounds and images. It is not, however, a format or genre unto itself, nor should it be considered as a parallel or subsidiary broadcasting system.
12. As such, the CAB submits that the Commission’s analysis and determinations with respect to the CCTA’s request must be technology-neutral, and consistent with existing policies with respect to the consideration of requests to add non-Canadian services to the lists. Accordingly, the Commission should assess the extent to which HD Net and Discovery HD Theatre are either totally or partially competitive with Canadian specialty or pay television services pursuant to existing policy, without regard to the technical format in which it is broadcast.
13. Moreover, the CAB notes that the development of HD specialty services in the United States has taken a different turn than is contemplated in the Commission’s policy for Canada. That is, individual services are not making the transition to HD by gradually adding HD material to their program schedules. Instead, program groups are assembling all of the available HD material associated with a group of services or genres into a single combined channel. As such, while such a service may appear not to be competitive with existing Canadian services because of the balance of genres within its combined schedule, in fact it is directly competitive with services in all of the genres and sub-genres it covers.
14. That is, it directly competes for all of the HD programming that otherwise might be available to the Canadian services, and it directly competes for the viewers who are interested in those genres of programs.
15. HD Net is described as a general interest service that offers programming in a number of genres, including: sports (NHL, major league soccer, horse racing, NASCAR, boxing),

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<sup>1</sup> See paragraph 37, Public Notice CRTC 2000-6: *Licensing framework policy for new digital pay and specialty services*, 13 January, 2000.

documentary (consisting primarily of home-and-garden and home-improvement programs), children's programs, drama, music and movies. It appears to be wholly or partially competitive with a number of Canadian specialty and pay services, including TSN, Sportsnet, the Score, HGTV, Prime, YTV, Much Music and The Movie Network.

16. Discovery HD Theater offers programming focused on nature, wildlife, science and technology, and world culture. Only a portion of the programming carried on Discovery HD Theater is originally produced for this service, the balance being duplicated HD versions of programming from the main Discovery service. Its programming is clearly wholly or partially competitive with several Canadian services, including Discovery Channel, Discovery Civilizations, Animal Planet, TechTV, Outdoor Life Network, and CTV Travel.
17. The proposed services, in offering programming drawn from, and central to, a range of well-defined genres, compete directly with the Canadian services that occupy those genres.
18. Moreover, the launch of these "combination" services is clearly a transitional strategy. As an HD Net executive made clear during a presentation at a recent Canadian Satellite Users Association (CSUA) conference, it is their intention to split HD Net into multiple, separate services as more HD programming becomes available in specific genres (i.e., into HD Net Movies, HD Net Sports etc).
19. In other words, a combination service that appears *partially* competitive with a number of Canadian specialty services today will become a number of niche services that are *directly* competitive with specific Canadian services tomorrow.
20. Accordingly, the Commission should assess HD Net as a 'service in transition', and therefore exercise the greatest caution in considering its authorization. Key to that assessment is a recognition of the difficulty the Commission would face in 'de-listing' these HD Net niche services once they had been introduced to consumers.

**Approval of these services could discourage partnerships between foreign broadcasters and Canadian programming services, and could delay or prevent the launch of Canadian HD specialty and pay services.**

21. The CAB is further concerned that approval of the CCTA's request could effectively delay or prevent the launch of Canadian HD services, for two reasons: (i) it could affect the availability and/or cost of HD programming, and (ii) it could discourage partnerships between Canadian and non-Canadian HD services.

***Availability and/or cost of HD programming would be affected.***

22. The CAB notes that the availability of popular HD programming (or the lack thereof), will be a determining factor as to if and when Canadian specialty and pay services are able to either operate a transitional HD service, or to make the transition to a fully HD version of their service.
23. The CAB notes that in Public Notice CRTC 2003-61, *The regulatory framework for the distribution of digital television signals*, the Commission acknowledged the concern that Canadian

broadcasters might be unable to obtain HD television rights to non-Canadian programming. As the CAB points out in its reply to the HD framework proceeding, at present the amount of HD programming currently broadcasting in United States is limited and insufficient to meet the needs of Canadian services in most genres attempting to transition to HD.

24. Given the short-supply of HD programming in specific genres, the CAB submits that the Commission should be avoid taking steps that discourage programming partnerships between foreign and Canadian services. Approval of these services would send the message that foreign HD services are advised to withhold the HD rights to their programming in order to leverage direct market entry, as opposed to entering into productive programming partnerships with Canadian specialty services.
25. Notwithstanding the boiler-plate commitments from foreign services that they will not exercise exclusive or preferential rights in relation to the distribution of their programming in Canada, the CAB submits that approval of these services will only serve to increase competition for the Canadian rights to popular HD programming, to the detriment of Canadian services. This competition will inflate the cost of the Canadian rights to popular HD programming at a time when Canadian services are attempting to transition to HD.
26. For example, the CAB notes that paragraph 9 of HD Net's March 24, 2004 letter to the CCTA (attached by the CCTA to its March 30, 2004 reply to deficiency questions from the Commission), clearly indicates that HD Net is attempting to secure the Canadian rights to NHL games for broadcast in Canada.
27. Approval of these services could therefore weaken the ability of Canadian specialty and pay services to access a sufficient amount of HD programming to launch transitional HD services, or to meet the Commission's proposed thresholds for guaranteed carriage once they do.

***Partnerships with non-Canadian services would be discouraged.***

28. The CAB notes that in Public Notice 2004-96, *Improving the Diversity of third-language television services – A revised approach to assessing requests to add non-Canadian third-language services to the lists of eligible satellite services for distribution on a digital basis*, the Commission states that it:
 

. . . continues to support and encourage alliances between Canadian and non-Canadian services as an efficient and appropriate way to achieve the objectives of the Act, whether through arrangements in which non-Canadian services supply programming to a Canadian service and/or through equity participation by non-Canadian services up to the maximum permitted by Canadian law.” (para. 48)
29. The CAB submits that approving non-Canadian HD services to gain entry to the Canadian market at a time when Canadian specialty and pay services are attempting to transition to HD will provide a powerful incentive for non-Canadian HD services (that make no direct contribution to the Canadian broadcasting system), to gain early entry to the Canadian market by way of the lists, rather than by way of programming/branding partnerships with Canadian programmers. Such partnerships carry great benefit to Canada in that the revenues of foreign programming can be used to support Canadian programming that would

otherwise be uneconomic, and as such are in keeping with the goals of the Broadcasting Act. To discourage such partnerships goes against the goals of the Act.

**Approval of non-Canadian HD services raises capacity issues with respect to the ability of Canadian services to transition to HD.**

30. The CAB notes that in PN 2004-58, the Commission acknowledges that “the bandwidth demands of high definition are as much as five times greater than low definition.” (para. 43)
31. The CAB submits that by allowing non-Canadian HD services to occupy the field, limited HD bandwidth will be available for new Canadian HD services, further delaying the transition of many services to HD.
32. In conclusion, the CAB notes that the federal government has recently released its response to the report, “Our Cultural Sovereignty”, issued by the Commons Standing Committee on Canadian Heritage. In its response, the government notes the serious challenges faced by Canadian broadcasters in making the transition to HD, and says, **“the Government will review its current approach to ensure that its programs encourage, not impede, the transition.”**
33. The CAB submits that the approval of these foreign HD services would in fact impede the ability of Canadian broadcasters to make the transition. It would impede the ability of Canadian services to find the HD programming they need, and authorize services that will be directly competitive with both the SD and HD versions of Canadian services. As such these applications should be rejected by the Commission in keeping with the goals of the Act and in the spirit of the government’s approach to its own programs.
34. The CAB appreciates the opportunity to participate in this proceeding,

Sincerely,



David Keeble  
Senior Vice-President,  
Policy and Regulatory Affairs,  
Canadian Association of Broadcasters

c.c. The Canadian Cable Telecommunications Association

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