



Canadian
Association of
Broadcasters

L'Association
canadienne des
radiodiffuseurs

April 29, 2005

VIA EMAIL

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

Dear Ms. Rhéaume:

Re: Launch of mobile broadcasting services by Rogers Wireless, Bell Mobility and LOOK Communications Inc.

1. The Canadian Association of Broadcasters (“CAB”) is writing with regard to recent announcements by Rogers Wireless (“Rogers”), Bell Mobility (“Bell”) and LOOK Communications Inc. (“LOOK”) concerning the imminent launch of mobile broadcasting services in Canada. For the reasons outlined below, the CAB requests the Commission to seek clarification as to the nature of these new broadcasting services in order to determine the appropriate form of regulation pursuant to the *Broadcasting Act* (the “Act”).

Information available to date

2. In a press release issued on April 14, 2005 (attached as Appendix A), Rogers announced that it intended to provide Rogers’ customers with “real-time access to live television programming” including exclusive Blue Jays content, news, sports and entertainment. According to the press release, the service will be delivered over Rogers’ navigate mobile Internet service and is expected to be available in the second quarter of 2005.
3. Although the list of content providers is not confirmed, Rogers indicated that it will offer at least eight channels when it launches and that it is in discussions with several providers, including MSNBC, CP24, NBC On-Line, Discovery, TLC, The Weather Channel, MétéoMédia, NBC Mobile, Major League Baseball Highlights (featuring Blue Jays content), Comedy Time and Toon World. At least three of the proposed U.S. services (Discovery, Comedy Time and Toon World) are not currently authorized by the Commission for distribution in Canada. Moreover, these three services are competitive with licensed Canadian programming undertakings.

4. Rogers plan to use MobiTV, a software platform which is already being used to provide U.S. cellphone users with live feeds of television and on-demand content to their cellphones (currently available to Sprint, Cingular/AT&T Wireless and Midwest Wireless subscribers)¹. MobiTV was developed by Idetic, Inc., a privately held company based in Berkeley, California.²
5. On the same day, Bell made a similar announcement, stating that “the company has been working to secure unique Canadian content that will complement Idetic’s robust U.S. offering” and that it anticipated offering MobiTV at the beginning of May. According to press reports, Bell will offer more than a dozen channels, including Fashion TV, FOX Sports, and TLC³.
6. The press releases issued by Rogers and Bell provide only a cursory outline of the planned services, so the CAB does not yet have a full understanding of how Bell and Rogers intend to implement their respective services. Based on the information provided to date, however, both mobile television services would appear to constitute broadcasting and, as such, they would be subject to the jurisdiction of the Commission under the Act. The CAB notes that, at this time, neither Rogers nor Bell is licensed by the Commission to carry on such a broadcasting activity.
7. Moreover, if MobiTV intends to aggregate and deliver programming signals to broadcasting distribution undertakings (“BDUs”) for a fee, it would appear to be functioning as an unlicensed relay distribution undertaking (“RDU”). Since MobiTV is owned by Idetic Inc., a non-Canadian controlled company, it is not eligible to hold a broadcasting licence in Canada, nor is it eligible for exemption under the Commission's exemption order respecting terrestrial RDUs.
8. On April 19, 2005 LOOK Communications Inc. (“LOOK”) also announced its strategy of becoming a mobile broadband multimedia service provider. LOOK has not specifically identified the content it plans to carry, but states it plans to provide over 80 channels of live video, data carousel broadcasting channels and over 100 channels of digital audio broadcasting. According to LOOK’s press release (attached as Appendix B), the service is expected to be launched in 2006.
9. In the case of LOOK, the CAB notes that it has a broadcasting licence allowing it to use its allocated MDS spectrum to deliver broadcasting signals. The change to mobile reception, however, would fundamentally alter the nature of the service and its competitive position. At a minimum, there should be public discussion of how and whether such a service can be licensed.

¹ See MobiTV website, <http://www.mobitv.com/about/company/index.html>

² See <http://www.idetic.com/company.html>

³ “Appearing soon on a cellphone near you: TV news and sports”, Globeandmail.com (15 April 2005), online at www.theglobeandmail.com/servlet/story/LAC.20050415.RROGERS15/BNPrint/

Are the broadcasting services proposed by Bell and Rogers exempt under the New Media Exemption Order?

10. As neither Rogers nor Bell has applied for a broadcasting licence, it appears that both companies are planning to distribute MobiTV on the assumption that this service falls under the *New Media Exemption Order* (“Exemption Order”) set out in Public Notice CRTC 1999-197. However, the CAB believes that there is considerable uncertainty as to whether the activities proposed by Bell and Rogers do in fact come clearly under the scope of the Exemption Order.
11. In the Exemption Order the Commission exempted “new media broadcasting undertakings”, defined as undertakings that provide broadcasting services delivered and accessed over the Internet, in accordance with the interpretation of “broadcasting” set out in the 1999 *Report on New Media*, Broadcasting Public Notice CRTC 1999-94 (“New Media Report”).
12. In the New Media Report, the Commission had determined that “some new media services fall under the Broadcasting Act’s definitions of ‘program’ and ‘broadcasting.’ These include digital audio services and audio/visual signals.” The Commission concluded, however, that regulation of such services was not necessary to achieve the objectives of the Act, taking into account the fact that Canadian content was flourishing on the Internet.
13. The Commission did not explicitly define “the Internet” when it issued the Exemption Order. It did, however, append a glossary to the New Media Report which provided the following description:

The Internet is a distribution system that is capable of handling a wide variety of data (text, pictures and sound) in any number of formats. ... The Internet is a distributed, inter-operable, packet-switched network

A distributed network has no one central repository of information or control, but is comprised of an interconnected web of "host" computers, each of which can be accessed from virtually any point on the network

An interoperable network uses “open protocols” ..., and allows multiple services to be provided to different users over the same network.
14. This description does not appear to preclude the use of mobile telephones as a point of contact to the Internet. The key question is the openness of the specific network with respect to the broadcast services available to its users, i.e. that any computer – and hence any source of broadcasting – that is available on the Internet should also be available to users of the mobile phone service. If a wireless operator offers only a limited subset of video or audio signals, then the user is not accessing “the Internet”. It is therefore at the very least questionable as to whether this activity fits under the Exemption Order.

15. In addition, the CAB notes that several other factors may be at issue in the determination of exempt status. Does the use of a mobile phone terminal, using specialized or proprietary software over dedicated spectrum, constitute “accessing” the public Internet? If services offered to one group of mobile phone subscribers are not accessible to other Internet users, are they truly accessible via the Internet? These questions also need answers before the determination of the status of these services can be determined.

Would MobiTV be functioning as an unlicensed RDU?

16. Under the *Broadcasting Distribution Regulations*, an RDU is defined as “a distribution undertaking that receives the programming services of radio or television programming undertakings and distributes them only to one or more other distribution undertakings.”
17. According to MobiTV’s website, “the MobiTV service consists of a Java™ application that runs on your mobile phone and a network that broadcasts TV content. We work directly with TV stations and content providers and have licenses to broadcast the content you see.” MobiTV provides a list of channels that it offers to U.S. subscribers.⁴
18. It appears therefore that MobiTV is contracting with content providers to provide and/or aggregate their signals, which it then converts and delivers in an encrypted form to a broadcasting distribution undertaking for a fee. This is precisely the function carried out by an RDU. However, an RDU may only distribute authorized services, and must distribute them without curtailment or alteration, except for narrowly specified exceptions not relevant in these circumstances.
19. As an RDU, MobiTV would be subject to either licensing by the Commission or to exemption under a relevant exemption order, if it were a Canadian owned or controlled company. Since MobiTV is owned by Idetic Inc., a privately held U.S. company based in California, it cannot be licensed under the Act, nor is it eligible to avail itself of the Commission’s *Exemption Order Respecting Terrestrial Relay Distribution Network Undertakings* (Public Notice CRTC 2000-10).
20. The CAB believes therefore that MobiTV could be acting as an unlicensed, non-exempt RDU and, as such, would not be eligible to operate in Canada.

⁴ Namely: MSNBC, NBC Mobile, The Discovery Channel, TLC, ABC News Now, Fox Sports, CNBC, CSTV, Vegas Sports, Vegas Scoreline, CMC Music Channel, CMC Beat Lounge, Country Music Channel, Comedy Time, FashionTV, CNet, Discovery Kids, Toon World TV Classics, Discovery en espanol, C-SPAN and C-SPAN2.

The regulatory framework for mobile broadcasting services needs to be clarified

21. The CAB submits that the regulatory framework under which mobile broadcasting services would be offered in Canada is unclear. Based on information available, mobile services such as those proposed by Rogers and Bell do not appear to fall under the New Media Exemption Order, nor are they currently licensed under the Act. Similarly, the mobile broadband multimedia service proposed by LOOK does not appear to be authorized under its current broadcasting licence. Finally, the involvement of MobiTV with Rogers and Bell raises questions as to whether it would be operating an unlicensed, non-exempt RDU.
22. The CAB further submits that, from a broadcasting policy perspective, it is important to address this issue on an urgent basis. If the providers of mobile broadcasting services were permitted to operate without any licensing requirement or without having to adhere to any terms or conditions that the Commission might deem appropriate to further the objectives of the Act, then they would undermine the integrity of the regulatory framework that applies to licensed broadcasting undertakings. Ultimately, the potentially ubiquitous nature of mobile broadcasting services would raise issues of competitive equity, calling into question the regulatory obligations imposed on licensed undertakings.
23. For example, unlicensed mobile broadcasting services could carry non-Canadian services not otherwise authorized for distribution in Canada. As noted previously, Rogers intends to deliver at least three such services. If the Commission were to permit this, then it would, in effect, be permitting the creation of a new grey or black market, where subscribers could access signals not available elsewhere in Canada.
24. This in turn would give the providers of unlicensed mobile broadcasting services an undue competitive advantage in the marketplace, and could have a detrimental effect on the audiences and revenues of licensed Canadian services whose non-Canadian competitors are carried on the mobile service.
25. For all of these reasons, the CAB urges the Commission to act quickly to seek clarification as to the status of the mobile services proposed by Rogers, Bell and LOOK with respect to the regulatory framework that should apply to such services under the Act. As a first step, the CAB suggests that the Commission require Rogers, Bell and LOOK to file detailed information and plans regarding their respective mobile broadcasting services, so that all parties can obtain a full understanding of the proposed content of such services and how they will be assembled, packaged and delivered to subscribers.

26. Whatever public discussion ensues will involve consideration of what broadcasting services may be carried, but we believe that the Commission should make it clear to all potential operators and RDUs that, in advance of a determination of their status, no unauthorized or unlicensed broadcasting services, whether foreign or Canadian, should be made commercially available.
27. Given the imminent launch of these services in Canada, the CAB believes that time is of the essence in addressing these important questions. Were the services to launch without authorization, they may later be determined to have been broadcasting without a licence. Moreover, it would be very difficult to withdraw any ineligible broadcasting services from commercial distribution after they have been launched.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Glenn O'Farrell". The signature is fluid and cursive, with the first name "Glenn" and last name "O'Farrell" clearly distinguishable.

Glenn O'Farrell
President and CEO

Attachments (2)

APPENDIX A

Rogers first in Canada to announce the arrival of live television on your wireless phone

- Rogers and MobiTV deliver live TV to the palm of your hand -

TORONTO, and BERKELEY, CA, April 14 /CNW/ - Rogers Wireless and MobiTV today announced the arrival of Rogers Mobile Television in Canada, providing Rogers Wireless customers with real-time access to live television programming including exclusive Toronto Blue Jays content, news, sports and entertainment programming via Rogers Wireless' navigate mobile Internet service. The service is expected to be commercially available in the second quarter.

Rogers Mobile Television service is powered by MobiTV, the world's first network and platform providing live television on wireless phones. Rogers Wireless customers who subscribe to the service will be able to watch exclusive Toronto Blue Jays real-time highlight clips and the companies will offer live programming on at least eight channels, including that from Canadian content providers, at the time of launch. Discussions are ongoing with stations to be available on Rogers Mobile Television, including: MSNBC, CP24, NBC On-Line, Discovery, TLC, The Weather Channel, Meteo Media, NBC Mobile, Major League Baseball Highlights - featuring exclusive Blue Jays content, Comedy Time, and ToonWorld. Rogers will announce additional channels and channel line up details in the coming weeks.

At the time of launch, Rogers Mobile Television will be available to Rogers Wireless customers on several popular wireless phones models from Nokia, Motorola and Sony Ericsson.

"Rogers Mobile Television puts real-time television programming - including Toronto Blue Jays games - right into the hands of Rogers Wireless customers, wherever they are," said Ted Rogers, President and CEO, Rogers Communications Inc. "Rogers is proud to be the first in Canada to announce the arrival of live TV on your wireless phone- delivering a service that will satisfy sports fans, news junkies, music lovers or anyone who wants to be entertained while on the go."

"Rogers is the technology pioneer in Canada and has a long history of delivering innovative programming that matters to customers on their television sets. And, Rogers was the first to offer high speed Internet service for our customers' computers," said Philip B. Lind, Vice Chair, Rogers Communications Inc. "Today, working with MobiTV, Rogers has become the first provider in Canada to announce that it will deliver live programming on the third screen - a wireless device."

"As Canada's largest wireless provider and the country's only GSM network provider - the world standard for wireless communications - Rogers Wireless offers Canada's largest array of video-capable handsets," said Nadir Mohamed, President and CEO, Rogers Wireless Inc. "This combination of assets provides Rogers Wireless with a unique opportunity to provide customers with a truly mobile entertainment package."

"It's been just one short year since we launched MobiTV and, already, watching TV while on the move has become part of daily life for hundreds of thousands of cell phone users," said Philip Alvelda, Chairman and CEO of Idetic, Inc., the Company behind MobiTV. "Launching MobiTV on Rogers Wireless' nationwide network is tremendous validation for the global appeal of live television on the cell phone. We're excited about providing Canadian wireless users a great mobile television experience."

Rogers Mobile Television can be purchased directly from a Rogers Wireless phone using Rogers Wireless' navigate mobile Internet service. After downloading the service the first time, Rogers Mobile Television will be accessible from the wireless phone's menu.

Rogers Mobile Television will be available for a promotional period for \$9.00/month plus additional data transport costs of between approximately \$10.00-\$15.00 depending on the wireless data package that the customer chooses. This cost includes both a subscription fee and access to channels. For more information about Rogers Mobile Television, please visit www.rogers.com/mobiletv.

APPENDIX B

LOOK COMMUNICATIONS REPORTS SECOND QUARTER 2005 RESULTS

TORONTO and MONTRÉAL, April 19, 2005 – Look Communications Inc. (TSX Venture: LOK.MV and LOK.SV) today reported its financial and operating results for the second quarter and six-month period ended February 28, 2005. As previously announced, Look changed its year-end to August 31 in order to standardize financial reporting periods with its parent company UBS. This change has resulted in second quarter 2005 ending on February 28, 2005 with comparative figures for the six months ended March 31, 2004.

Revenue for the three months ended February 28, 2005 was \$9.7 million and gross margin was \$4.9 million. For the three month period ended March 31, 2004, revenue was \$11.4 million and gross margin was \$6.1 million.

Revenue for the six months ended February 28, 2005 was \$19.7 million and gross margin was \$9.6 million. For the six month period ended March 31, 2004, revenue was \$23.4 million and gross margin was \$12.6 million.

The decline in revenue was the result of a lower subscriber base in 2005

EBITDA (earnings before interest, financing charges, income taxes, depreciation and amortization) for the three months ended February 28, 2005 was a negative \$88,000. For the three-month period ended March 31, 2004, EBITDA totaled \$37,000.

The net loss for the three months of 2005 was \$2.4 million, or \$0.02 per share compared to a net loss of \$1.7 million or \$0.05 per share in the three months of 2004.

EBITDA for the six months ended February 28, 2005 was negative \$1.2 million. For the six month period ended March 31, 2004, EBITDA totaled \$172,000. The net loss for the six months ending February 28, 2005 was \$5.2 million, or \$0.05 per share, compared to a net loss of \$3.4 million or \$0.11 per share in the six months ending March 31, 2004.

As at February 28, 2005, Look had 99,900 subscribers, compared to 104,700 subscribers at the end of November 30, 2004. Of the 4,800 reduction in subscriber count, 80% related to Residential Internet Dial-Up accounts, a decline which was anticipated in light of the ongoing industry-wide migration to high-speed Internet.

Look continues to aggressively pursue its new business strategy of becoming a Mobile Broadband Multimedia Service Provider. This Mobile Multimedia network is in beta test at present. The Mobile Multimedia network will first be launched in Toronto, then Montreal and eventually will cover the population-dense corridor from Windsor to Quebec City. The Mobile Multimedia network will provide over 80 channels of live video, data carousel

broadcasting channels and over 100 channels of digital audio broadcasting. Beta sites will be completed by June 2005 and the service is expected to be launched in 2006.

“We see the transition to mobile broadband as inevitable and services like mobile TV, Internet and voice communication are now being tested in single hand held devices throughout North America and actual services are being offered in Korea and some cities in Europe” said Gerald McGoey Vice Chairman and Chief Executive Officer. “Look is ideally positioned to offer these exciting new services. We have the necessary licensed spectrum to deliver mobile multimedia services and we have a broadcasting license which allows us to provide extensive content on news, sports, finance, weather and other programming.”