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Canadian Association of Broadcasters

L'Association canadienne des radiodiffuseurs

February 21, 2005 **SENT 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 2004-47-1: *Call for responses to submissions on the Canadian Cable Telecommunications Association's proposal to amend the policy regarding the use of local availabilities*

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, and specialty, pay and pay-per-view television services – is pleased to provide its comments with respect to the above noted matter.

2. As discussed in its October 7, 2004 (Phase I) submission, the CAB strongly opposes the CCTA and Vidéotron proposals since they violate fundamental Commission policies respecting the use of local avails. Specifically, approval of these proposals would represent an abrupt reversal of the long-standing Commission policy that limits the sale of advertising in local markets to programming undertakings licensed in a competitive process to provide local content of relevance to those markets.

3. Moreover, approval of the CCTA's local avails proposal would cause irreparable harm to the Canadian broadcasting system. The CAB's Phase I submission provided a detailed economic impact analysis demonstrating that the CCTA's proposal, if approved, would take \$60 to \$70 million out of the Canadian advertising marketplace. While this impact would be felt across all sectors of the broadcasting industry, including radio, the primary impact would be on conventional television stations and Canadian specialty services.

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4. Accordingly, the CAB's Phase I submission called for the Commission to reject the CCTA and Vidéotron proposals or, at a minimum, to conduct an oral public hearing to allow a full assessment of the negative impact that approval would have on the Canadian broadcasting system.

5. In this response the CAB will address three issues stemming from the Phase I submissions filed by other interested parties:

   a. the severe and negative economic impact that the CCTA's proposal would have on licensed Canadian programming services;

   b. the net loss in investment in Canadian programming that would follow approval of the CCTA's proposal;

   c. the CCTA's flawed justification for a new revenue stream for distributors;

The CCTA proposal would have a severe and negative material impact on licensed Canadian programming services

6. In its Phase I submission, the CCTA claims that approval of its proposal "will not materially impact broadcasters." Star Choice, in its Phase I submission, states that it is "unlikely that the introduction of additional advertising availabilities into the system will devalue existing inventories."

7. The CAB considers that there is no basis in fact for either of these statements.

8. Star Choice acknowledges that the CCTA's proposal will result in the introduction of additional advertising inventory and that advertising supply will exceed demand. Star Choice assumes that the advertising market will simply grow of its own accord, to the point that the effects of that oversupply are mitigated across the system. The CAB disagrees with that reasoning, and notes that Star Choice has provided no empirical data to back up its position.

9. As shown by the economic impact analysis provided by the CAB in its Phase I submission, based on the CCTA's and Vidéotron's own methodology, the CCTA proposal would have yielded over $60 million in advertising revenue from local avails in 2003.

10. Further, as noted in the CAB's Phase I submission, other methodologies could also be used to estimate the likely revenue that would be realized by the CCTA proposal. In that context, the estimate of an annual impact of more than $60 million might well be conservative.

11. CTV, for example, provided a "bottom up" analysis in its Phase I submission that focused on the potential impact on conventional broadcasters. The CTV approach yielded an estimated annual impact ranging from $66 million to as much as $97 million, and this at a time when, according to the 2004 financial results recently released by the Commission, the private conventional television sector is in a period of stagnant advertising revenues and declining profitability.

12. Even if one assumes the most conservative estimate of a $60 million impact, this is still at least 50% larger than the estimate provided by the CCTA in its submission.

13. As significant as this impact is, it represents only the thin edge of the wedge. Approval of the CCTA plan to sell two minutes of per hour of advertising in the local avails of U.S. services would establish a precedent that could open the door to the eventual sale of 12 or 14 minutes per hour of Canadian advertising in dozens of foreign services distributed in Canada, by DTH and cable BDUs alike.

14. This clearly demonstrates the significant harm that would be done to licensed Canadian broadcasters, including specialty services, conventional television broadcasters and radio stations, if the CCTA's proposal were approved.

15. Moreover, contrary to the claim made by the Association of Canadian Advertisers' (ACA) in its Phase I submission that "Canada's advertisers have had to cope over the years with increasingly restricted access to Canadian audiences," the CAB notes that over 60 new digital specialty services have launched since 2001, representing substantially increased access for Canadian advertisers to Canadian audiences.

16. Because the increased advertising inventory represented by these digital specialty services has yet to be completely absorbed by Canadian advertisers, the CAB submits that these services would be particularly vulnerable in the face of an additional $60 million or more in attractive American advertising inventory.

17. Moreover, the CAB is concerned that approval of the CCTA's proposal could have further unintended consequences, such as creating a precedent for the sale of Canadian advertising on foreign third-language services. Given the Commission's newly revised policy with respect to the criteria for the entry of foreign third language services into the Canadian market, this would have a significant impact on Canadian third-language specialty services, many of which are focused on market segments that could not absorb the introduction of substantial amounts of new advertising inventory.

18. The CAB also notes that the ACA's support for the CCTA's proposal is predicated on the ability of its members to access a substantial amount of increased advertising inventory – new inventory that, by increasing supply while demand remains constant, would serve to depress the value of existing advertising inventory in Canada.

19. Indeed, Vidéotron's submission highlights their plan to offer pricing in the range of $30 for a 30 second spot, far below current market values for local advertising on television, or for that matter, on radio as well. Clearly the sale of local avails by cable BDUs would have negative ramifications on the ability of both local television *and local radio* broadcasters to generate local advertising sales.

20. In this sense, it is worth noting that Canadian advertisers themselves, in lending their support to this application, effectively disprove the contention of the CCTA and Star Choice that approval of the CCTA's proposal will not have a material impact on the value of advertising in Canada.

The CCTA proposal would result in <u>less</u> funding for the production of Canadian television programming

21. Although the CCTA promises to contribute 25% of new advertising revenues to the CTF, there would in fact be a net reduction in spending on Canadian programming at both the local and national level.

22. As the CAB clearly demonstrated in its Phase I submission, to the extent that local avails revenues are taken from Canadian specialty services, for every dollar added to the CTF as a result of the CCTA's proposal, there could be a loss of $1.70 in spending on Canadian content by specialty services.

23. For example, in 2003, Canadian specialty services spent 42% of their revenues on Canadian programming. Accordingly, if $60 million had been taken from Canadian specialty services in 2003, their total spending on Canadian content would have been reduced by $25.5 million. At the same time, only 25%, or $15 million, would have gone to the CTF under the CCTA's proposal, <u>resulting in a $10.5 million net loss in investment in Canadian programming</u>.

24. Moreover, the introduction of over $60 million annually in new inventory to the Canadian broadcasting system would seriously undermine the Commission's recently announced advertising-based Canadian drama incentives.

25. Broadcasters who are considering whether to access these incentives are operating under a particular set of assumptions with respect to the value of those additional minutes of advertising. Any change to long-standing Commission policy that would have the effect of deflating the value of <u>all</u> broadcast advertising in Canada would of course deflate the value of those incentives and make them less attractive, undermining the Commission's objectives in creating the incentive-based program in the first place.

26. The CAB submits that the record of this proceeding clearly demonstrates that the CCTA's proposed 25% 'benefit' is purely illusory at best, and under no circumstances justifies the harm that would extend to Canadian programmers and producers if this proposal were to be approved by the Commission.

There is no justification for a new revenue stream for cable BDUs

27. Apart from the illusory 'benefit' of a contribution of 25% of revenues to the CTF – which would in fact result in a net loss in investment in Canadian programming – the CCTA has provided no compelling justification for the approval of its proposal.

28. In its Phase I submission, the CCTA alleges that "the requested policy change would allow distributors to take immediate action to counter the growing harm to the broadcasting system caused by black market activity and to promote service bundles in an increasingly competitive environment."

29. First, it is obvious that the presence of Canadian commercials on A&E or CNN would not have any impact on the black market.

30. Moreover, as demonstrated in the CAB's Phase I submission and reiterated above, the CCTA proposal would cause lower investment in Canadian programming. A proposal that results in a reduction in the quality and/or quantity of Canadian content on Canadian BDUs might in fact contribute to *increased* black market activity.

31. The CAB further submits that cable should already be taking "immediate action" to counter black market activity, and that its responsibilities in this regard should not be contingent on Commission approval of a new and questionable revenue stream for BDUs.

32. Second, despite the CCTA's claim that cable operators need an extra revenue stream to weather the effects of increased competition by DTH distributors, every key measure of cable's financial performance clearly indicates that cable's financial position has steadily improved since 2001.

33. The CAB reiterates that the nowhere in its original proposal, in its revised proposal, or in its Phase I submission, has the CCTA provided any valid justification for a fundamental change in longstanding broadcast policy that would yield no net benefits to the Canadian broadcasting system.

Conclusion

34. The right to derive revenue from the Canadian broadcasting system has historically been firmly linked to an obligation to make a tangible and measurable contribution to the Canadian broadcasting system.

35. Any new applicant for a program licence in Canada must demonstrate not only that it will do no harm to the system by the launch of the new service, but also that the new service will make a significant contribution to the system by creating new programming and by investing dedicated resources to program expenditures.

36. The CCTA's proposal offers no new programming whatsoever. It can not reasonably demonstrate that it would do no harm to the ability of existing, licensed, Canadian programmers to produce, acquire and broadcast Canadian content.

37. The sole effect of the CCTA's proposal would be to siphon revenue away from Canadian program providers and the independent producers with whom they work, transferring one quarter of it to the CTF, and three quarters of it straight to the bottom line of cable providers.

38. The CAB reiterates its strong opposition to the CCTA proposal, which would allow cable systems, simply by virtue of the fact that they own the wires on which American signals are carried, to siphon revenue away from programmers while undertaking no obligation whatsoever to improve the Canadian broadcasting system.

39. Accordingly, the CAB urges the Commission to reject this proposal, given its complete lack of policy rationale, its purely illusory benefits, the fact that it would place broadcasters and distributors in direct, unfair, competition with each other for advertising dollars, and the harm that it would cause to the Canadian broadcasting system.

40. If the Commission is nevertheless of the view that a possible change of its existing policy prohibiting the use of local avails for commercial advertising is worthy of consideration, the CAB reiterates its request that the CCTA and Vidéotron proposals be **scheduled for an oral public hearing** to consider the profound implications of any policy or regulatory change involving the sale of advertising by BDUs.

41. In the absence of an oral public hearing, the CAB respectfully requests the right to respond to any new information that might be filed by the applicants in support of their respective proposals as part of this phase of the proceeding.

Yours sincerely,

David Keeble
Senior Vice-President
Policy and Regulatory Affairs

c.c. Michael Hennessy, President, CCTA

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