



**Canadian  
Association of  
Broadcasters**

**L'Association  
canadienne des  
radiodiffuseurs**

July 18, 2005

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

Dear Ms. Rhéaume:

**Re: Carriage of Canadian HD channels on StarChoice/Cancom**

1. The Canadian Association of Broadcasters (CAB) is 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.
2. The CAB is filing this letter with respect to (i) the complete absence of Canadian conventional high definition (HD) services on StarChoice/Cancom, and (ii) with respect to persistent delays in the delivery of Canadian HD specialty and pay services by Star Choice/Cancom.
3. On May 12, 2005 the Commission issued Broadcasting Decision CRTC 2005-195 (Decision 2005-195) in which it allowed a complaint by CTV against StarChoice. Specifically, the Commission found that in selectively excerpting HD programming drawn from various licensed programming services, without the prior consent of those services, StarChoice was in fact altering and deleting programming services in contravention of section 7 of the *Broadcasting Distribution Regulations*.
4. The Commission further denied a related application by StarChoice/Cancom to amend the licences of their respective DTH and SRDU undertakings to permit the distribution of these so-called 'omnibus' channels. In denying this application, the Commission expressed concern that the applicants had "not adequately addressed the priority to be given to Canadian programming" and

noted that “in order to be accessible to Canadians as well as financially viable, Canadian programming must receive widespread distribution.”<sup>1</sup> The Commission also noted that StarChoice/Cancom would be able to distribute at least nine HD channels, in full, on the channels that had previously been used to distribute omnibus channels.

5. On June 1, 2005 StarChoice/Cancom issued an “urgent notice” of its HD channel changes (see Appendix A). The notice states that “[t]o comply with Broadcasting Decision CRTC 2005-195, denying the application of StarChoice/Cancom to distribute omnibus (compilation) HD channels, the following changes to our HD line-up will take effect on June 9, 2005 at 1:00 p.m. ET.”
6. As a result of these changes, StarChoice has now increased its HD channel offering from nine to eleven services, of which only three are Canadian. Moreover, no Canadian conventional HD services are currently made available by StarChoice to its subscribers.
7. The CAB submits that StarChoice’s actions in filling its available HD capacity with multiple US HD services, including split East and West feeds of CBS, NBC, ABC and Fox, at the expense of Canadian conventional HD services, contradicts the spirit and intent of the Commission’s interim policy for DTH carriage of digital services as outlined in paragraph 115 of Broadcasting Public Notice CRTC 2003-61 (PN 2003-61) and its determinations as set out in Decision 2005-195.
8. Moreover, the complete lack of Canadian conventional HD services on StarChoice is inconsistent with both the Commission’s expectations respecting the distribution priority to be accorded to Canadian services generally, and with the spirit of the ‘preponderance’ rule requiring distributors to ensure that the majority of channels received by a subscriber are Canadian.<sup>2</sup>
9. With respect to delays by StarChoice/Cancom in the carriage of Canadian HD specialty services, the June 1, 2005 notice issued by StarChoice/Cancom states that “Cancom cannot authorize the Specialty HD channels for cable until Cancom executes uplink distribution agreements with the programmer.” The CAB notes that this is an entirely new requirement, unrelated to Decision 2005-195, amounting to a unilaterally imposed obstacle that will further delay the distribution of Canadian HD specialty services on StarChoice/Cancom.

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<sup>1</sup> Broadcasting Decision CRTC 2005-195, paragraph 55.

<sup>2</sup> Both of which are clearly enunciated in Broadcasting Public Notice CRTC 2003-61.

10. This new obstacle is particularly troubling in light of the position taken by StarChoice in the recent proceeding on a proposed framework for HD pay and specialty services (Broadcasting Public Notice CRTC 2004-58). In essence, StarChoice argued in that proceeding that there are sufficient economic and commercial safeguards to ensure that Canadian programming services will not be unduly harmed within a completely market-driven framework.
11. To the contrary, however, StarChoice/Cancom's recent actions underscore the CAB's ongoing concern that, in the absence of a clear regulatory framework, this distributor will continue to abuse its gatekeeping power at the expense of Canadian programming services, Canadian consumers and the objectives of the *Broadcasting Act*.
12. For example, Star Choice/Cancom's refusal to distribute any Canadian conventional HD services, in the absence of a final regulatory framework for the DTH carriage of such services, means that those Canadian conventional television broadcasters who have launched HD versions of their respective services are unable to achieve widespread distribution of Canadian HD programming. Further investment in capital infrastructure and in the production and acquisition of Canadian HD programming becomes all the more uncertain in the absence of such distribution, thereby hampering the Canadian digital (HD) transition.
13. Moreover, those services that have made the above investments are unable to exercise their entitlement to simultaneous substitution on Star Choice's service vis-à-vis identical programming provided on the HD versions of the commercial US networks that are distributed. This deprives Canadian broadcasters of a fundamental tool to protect the value of their program rights.
14. The CAB submits that StarChoice/Cancom's recent actions (i.e. their decision not to distribute any Canadian HD conventional services and to continue to throw up roadblocks to the distribution of Canadian HD specialty and pay services) clearly demonstrate that, in the absence of a regulatory framework for the distribution of Canadian HD services by DTH, those services will be unable to receive equitable carriage from StarChoice/Cancom, and may in fact receive no carriage at all.
15. In PN 2003-61, issued over 20 months ago, the Commission noted that it would launch "a separate proceeding to examine the regulatory framework governing the obligations of DTH undertakings with respect to the carriage of HD services." Given the importance of achieving DTH distribution of Canadian HD services in support of the HD transition in Canada, **the CAB urges the Commission initiate this proceeding as soon as possible.** The CAB further submits that, **pending the establishment of this framework,**

**StarChoice/Cancom should be expected to take immediate measures to distribute available Canadian HD services on their respective undertakings.** Only by doing so can StarChoice/Cancom comply with the Commission's expectation, expressed in PN 2005-125, that "in order to be accessible to Canadians as well as financially viable, Canadian programming must receive widespread distribution."<sup>3</sup>

16. The CAB reiterates that a regulatory framework providing clear guidelines as to the roles and responsibilities of all players in the system is essential to ensure that Canadian HD services have fair and equitable access to distribution and are not disadvantaged vis-à-vis non-Canadian HD services.

Sincerely,



David Keeble  
Senior Vice-President,  
Policy & Regulatory Affairs

Enclosure (1) – Appendix A

c.c. CAB Television Board of Directors  
CAB Specialty and Pay Board of Directors  
Cynthia Rathwell, Vice-President, Regulatory Affairs, StarChoice  
Communications Inc

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<sup>3</sup> Broadcasting Decision CRTC 2005-195, paragraph 55.

APPENDIX A

06/01/05 09:58 FAX 905 403 2022

CANCOM STAR CHOICE

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# CANCOM BROADCAST

## URGENT NOTICE

June 1, 2005

### HIGH DEFINITION (HD) CHANNEL CHANGES

To comply with Broadcasting Decision CRTC 2005-195, denying the application of Star Choice/Cancom to distribute omnibus (compilation) HD channels, the following changes to our HD line-up will take effect on June 9, 2005 at 1:00 p.m. ET.

**TO ACCOMMODATE THE ADDITIONAL HD CHANNELS, THE PPV SERVICES ON ANIK F2, TRANSPONDER 16 (VCC 27-42), WILL BE TEMPORARILY SUSPENDED.**

We are planning to reinstate the above PPV transponder in the fall without reducing the number of HD channels. Details will follow during the summer.

**NOTE:** As indicated below, Cancom cannot authorize the Specialty HD channels for cable until Cancom executes uplink distribution agreements with the programmer. Anyone previously receiving old HDTV4 (new Sportsnet HD) and old HDTV5 (new TMN HD) will be automatically de-authorized.

PBS VCN	CATV VCN	Dir. Program	News Program	IRIS ID	MPEG Group ID	VCS	Polarization	Satellite Transponder	Band	Available to Cable
282	610	HDTV5	TMN HD	TMNHD	1	1	Vertical	F2 - T11	1269.75	NO
291	611	HDTV6	FOX Seattle HD	FOXWHD	2	1	Vertical	F2 - T11	1269.75	YES
286	314	HDTV2	CBS Detroit HD	CBSEHD	5	1	Vertical	F2 - T12	1300.25	YES
281	315	HDTV4	Sportsnet HD	SNETHD	6	1	Vertical	F2 - T12	1300.25	NO
288	880	HDTV7	PBS Detroit HD	PBSEHD	1	1	Vertical	F2 - T15	1391.75	YES
284	881	HDTV8	NBC Detroit HD	NBCEHD	2	1	Vertical	F2 - T15	1391.75	YES
290	800	-	CBS Seattle HD	CBSWHD	1	1	Vertical	F2 - T16	1422.25	YES
289	801	-	NBC Seattle HD	NBCWHD	2	1	Vertical	F2 - T16	1422.25	YES
285	620	HDTV9	ABC Detroit HD	ABCEHD	1	1	Horizontal	F2 - T27	1282.75	YES
287	603	HDTV1	FOX Detroit HD	FOXEH	4	1	Horizontal	F2 - T32	1435.25	YES
283	601	MCHD	Movie Central HD	MCHD	2	1	Horizontal	F2 - T32	1435.25	YES (with consent)

Note: all of the above have national coverage with 3/4 FEC, Symbol Rate of 19.51 and VCT of 517

**HITS QT** - Changes will appear on standard HITS QT channel maps on June 9, 2005 at 1:00 p.m. ET. Cable operators that do not want the change to appear on their IPG must contact Motorola to have their channel map modified. Cable operators who have created Custom channel maps must contact Motorola for changes to their channel map.

For more information, please contact:

Karen Baglione (Ontario & West) - Phone (905) 403-2021 [karen.baglione@cancom.ca](mailto:karen.baglione@cancom.ca)  
 Gaston Dufour (Quebec & Atlantic) - Phone (514) 904-5601 [gaston.dufour@cancom.ca](mailto:gaston.dufour@cancom.ca)  
 For technical assistance/trouble-shooting please call: 1-800-268-2943