



March 29, 2005

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

**Canadian
Association of
Broadcasters**

**L'Association
canadienne des
radiodiffuseurs**

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

Dear Ms. Rhéaume:

Re: Broadcasting Public Notice CRTC 2005-16: Call for comments on applying new distribution and linkage rules to non-Canadian third-language services already on the lists of eligible satellite services

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 2005-16 (PN 2005-16).
2. The Commission is seeking comment on whether to extend the revised distribution and linkage rules set out in Broadcasting Public Notice 2004-96 (PN 2004-96) to non-Canadian services that were already on the lists as if 16 December 2004, the date on which PN 2004-96 was issued.
3. Specifically, in PN 2004-96 the Commission introduced a ‘buy-through’ requirement in respect of existing Canadian third-language services originally licensed for analog distribution, and a ‘distributor must-offer’ requirement in respect of licensed, third-language, general interest ethnic Category 2 services.
4. The Commission’s stated objective in applying the same approach to both new additions to the lists of eligible satellite services and to non-Canadian services already on the lists is to “ensure regulatory consistency and equitable treatment for all such services.” The CAB agrees with this objective and accordingly supports the Commission’s proposal to extend the revised distribution and linkage rules to all non-Canadian third-language services on the lists of eligible satellite services.

5. In supporting this proposal, however, the CAB wishes to draw the Commission's attention to the possibility that the new distribution and linkage requirements may be leading to actions by BDUs that raise concerns with respect to their treatment of Canadian third-language services.
6. For example, the CAB understands that some BDUs have allowed affiliation agreements with some Canadian third-language services to lapse, and then have arbitrarily repackaged those services to meet the new buy-through requirement introduced in PN 2004-96. This repackaging has occurred outside of any negotiated process, and in the absence of any advance notification to the affected programming services.
7. The CAB submits that BDUs should not be using the requirement to adhere to new distribution and linkage rules respecting non-Canadian third-language services as a rationale for unilateral repackaging of Canadian third-language services, without notification and negotiation of appropriate terms of distribution.
8. To address these concerns, the CAB reiterates the following positions, originally addressed in its October 6, 2004 submission in response to Public Notice CRTC 2004-64:
 - (i) the Commission should introduce a 90-day advance notification period before any channel realignment, repackaging, or other significant change to existing terms of carriage can occur, applicable to all BDUs;
 - (ii) the Commission should amend the *Broadcasting Distribution Regulations* to stipulate that, upon the expiry of an affiliation agreement, existing terms of that agreement will continue to be binding until a new agreement is reached.
9. The CAB appreciates the opportunity to make its views known with respect to this important proceeding.

Sincerely,



David Keeble
Senior Vice-President
Policy and Regulatory Affairs

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