



**Canadian
Association of
Broadcasters**

**L'Association
canadienne des
radiodiffuseurs**

May 30, 2005

SENT BY EMAIL

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

Dear Ms. Rhéaume:

Re: Small Market Local Programming Fund

The Canadian Association of Broadcasters (the CAB) wishes to express its strong objection to a letter sent to the Commission on May 11, 2005, signed by representatives of the Bell Broadcast and New Media Fund, the Shaw Rocket Fund, the Canadian Independent Film and Video Fund and the Harold Greenberg Fund (the Funds). In this letter, the Funds have asked the Commission to reduce the amount of the financial contribution that the DTH licensees are required to make to the Small Market Local Programming Fund (the small market fund).

Bell ExpressVu and Star Choice are required by condition of licence to contribute 0.4% of their gross revenues derived from broadcasting activities to the small market fund, an independently administered fund approved by the Commission for the purpose of assisting small market, independently owned television licensees in meeting their commitments to local programming. This requirement represents one of a series of measures that the DTH licensees are required to undertake in lieu of program deletion, measures that are in place until August 12, 2006.

The CAB's objection to the Funds' request to review the contribution formula for the small market fund is based on both procedural and substantive grounds.

From a procedural point of view, the Commission is well aware that any proposal to amend a condition of licence during the first five years of a licence term, which is what this request represents, can be considered only in response

to a licence amendment application filed by the licensee itself. There is no mechanism by which a third party can apply to amend a broadcasting licence held by another licensee.

For this reason alone, the Funds' request should immediately be rejected by the Commission as being procedurally defective and impossible to consider.

Equally importantly, however, the CAB takes great exception to the implicit assumption in the Funds' letter that the four independent funds participating in this request are somehow more worthy recipients of funding than is the provision of local programming in a number of smaller markets across the country.

In Public Notice CRTC 2003-37 (PN 2003-37), the Commission made the following statement: "...recognizing that the distribution of out-of-market stations by DTH BDUs has contributed to the significant decline in the advertising base of small market, independently owned television stations, ...there is merit in having DTH BDUs provide financial assistance to [such] stations... to ensure that they are able to provide local programming to their respective communities."

Furthermore, the Government has recently reaffirmed its support for the provision of local and regional programming. In *Reinforcing Our Cultural Sovereignty – Setting Priorities for the Canadian Broadcasting System*, the Government's second response to the report of the Standing Committee on Canadian heritage respecting the Canadian broadcasting system, the Government stated that it would direct the Commission "...to ensure that Canadians from communities of various sizes have access to an appropriate level of local and regional news and public affairs programming from a variety of sources." The CAB submits that the local programming provided by small market independently owned television stations forms an important element in achieving this objective, and the Commission should therefore continue to implement measures that support the provision of such programming.

In the view of the CAB, therefore, any suggestion that support for the provision of local programming should be decreased, rather than enhanced, is seriously misguided and inconsistent with priorities identified by the Commission and by the Government of Canada.

The CAB recognizes that the position advanced by the Funds is attributable, in part, to the fact that the amount of money flowing to the small market fund in its first full year of operation was somewhat greater than the amount estimated by the Commission in PN 2003-37. This is hardly surprising or unexpected, given that the Commission chose to specify that contributions to the small market fund should be calculated as a percentage of the gross revenues of ExpressVu and Star Choice rather than a fixed amount.

Clearly, the Commission understood and intended that, as the DTH subscriber base and corresponding revenues continued to grow, the funding available to finance the small market fund would also grow in lockstep. This approach addresses the fact that, as DTH penetration increases, the negative impact on local television broadcasters due to the importation of distant signals also increases. In such circumstances, corresponding growth in the support for the provision of local programming is clearly appropriate.

On this point the CAB notes that, while the underlying rationale may be different, the contributions that Bell ExpressVu and Star Choice make to the CTF and to the Funds also benefit from the same linkage of contributions to percentage of gross DTH revenues.

Finally, the CAB cannot overstate the importance of the small market fund to the television broadcasters who benefit from it. In some markets it has allowed television stations to maintain a level of local programming that otherwise could not be justified; in other markets it has given the television broadcaster the means to improve the quality of its locally produced programming; in still others it has provided the broadcaster with the resources to extend its local presence. In all cases, local viewers have directly benefited.

The CAB submits that, at such time as the Commission is properly in a position to consider the renewal or extension of the package of measures adopted in PN 2003-37 beyond August 12, 2006, it will be appropriate to consider an enhancement, not a dilution, of those measures designed to support local television broadcasters. The CAB looks forward to having an opportunity to participate in that process at the appropriate time.

Yours sincerely,



Wayne Charman
Senior Vice-President
Television, Specialty & Pay Services
& New Technologies

cc. The Funds (c/o Bell Broadcast and New Media Fund)
Andrée Wylie, Vice Chairperson, Broadcasting, CRTC
Marc O'Sullivan, Executive Director, Broadcasting, CRTC
Jacques Langlois, Director General, Broadcasting Policy, CRTC
Nick Ketchum, Director, English-language Radio and Television policy, CRTC
Marc Séguin, CFTPA
Chris Frank, Bell ExpressVu
Cynthia Rathwell, Star Choice

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