



**Canadian
Association of
Broadcasters**

**L'Association
canadienne des
radiodiffuseurs**

September 8, 2005

Via e-mail: procedure@crtc.gc.ca

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

Dear Ms. Rhéaume:

**Re: Notice of Public Hearing CRTC 2005-6, Items 1 to 4:
*Applications for broadcasting licenses to carry on national
general interest pay television undertakings – Application nos.
2004-0991-3 (Spotlight Television Limited), 2005-0452-3 (Romen
Podzyhun and C.J. Millar, OBCI), 2005-0454-9 (Allarco
Entertainment Inc.) and 2005-0451-5/2005-0755-1 (Archambault
Group Inc.)***

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, which represent the majority view of its Specialty and Pay members, in response to the above-noted applications for broadcasting licenses to carry on national, general interest pay television undertakings.
2. In Notice of Public Hearing CRTC 2005-6 the Commission invites comments on whether it should grant exceptions to its existing policy of not licensing new services that are directly competitive with existing pay and specialty services. The CAB neither supports nor opposes the applications gazetted in Notice of Public Hearing 2005-6 (NPH 2005-6), but will address the Commission's call for comments with respect to the general policy issues raised by these applications.

Policy changes and exceptions should be addressed prior to licensing

3. The CAB believes that, in general, before considering applications that entail significant exceptions to existing policies – exceptions that, if approved, would effectively constitute amendments to those policies – the Commission should conduct a separate policy proceeding to establish appropriate criteria for the granting of such exceptions.
4. Similarly, some applications create the need for new policies. These too should not be considered for licensing before processes are conducted that put those new policies in place.
5. In the CAB's view, it is important to canvas all parties, including the broadcasting industry as a whole, on appropriate conditions and criteria, including potential impacts on existing licensees, before specific applications involving changes to existing policy are considered. Once the Commission decides to entertain specific applications, competitive interests are engaged that make it much more difficult to assess the potential impact of de facto policy changes on the industry as a whole.
6. For these reasons, the CAB strongly urges the Commission in the future to consider the need for appropriate policy proceedings in advance of the consideration of specific applications that require changes or exceptions to existing broadcasting policies.

Policy exceptions should be based on clear and unequivocal benefits

7. The CAB supports the Commission's current licensing policy, as it provides a measure of stability to the industry and has supported its ability to make significant contributions to the achievement of the objectives of the *Broadcasting Act*. Without commenting on the merits of any of the pay television applications currently before the Commission, the CAB is of the view that exceptions to this policy should be considered only where the Commission is satisfied that approving such exceptions will yield clear and unequivocal benefits to the Canadian broadcasting system. Any assessment of such benefits would necessarily take into account various factors including programming diversity, impact on consumers and implications for existing services, and impact on the competitive environment.
8. Competition is an important feature of the broadcasting system, although it is important to remember that the *Broadcasting Act* does not specifically reference competition as one of its objectives. At a time in which the broadcasting system has never been more competitive, and in which audiences have never been more fragmented, existing pay services must compete for audiences and revenues with a vast array of options available to

viewers. Accordingly, before the Commission departs from its fundamental policy of not licensing services that compete directly with existing services, it must be satisfied that to do so will produce clear and unequivocal benefits to the broadcasting system.

9. The CAB further assumes that any exceptions that the Commission might choose to approve vis-à-vis its policy of not licensing directly competitive pay services do not stand as a precedent for any future application. Moreover, the CAB reiterates, in the strongest possible terms, that any future licensing hearing that could result an exception to existing policy must properly be preceded by a policy hearing.

The policy implications of new revenue models must be carefully examined

10. The CAB notes that one of the questions that has arisen out of this proceeding is whether a new service should have its revenues linked directly to the revenues of other existing services. This represents a fundamental shift in the traditional revenue model for pay television services and, as such, has enormous implications not just for pay television services but for all specialty and pay television services.
11. The CAB submits that the policy implications and impacts of this revenue model in particular need full consideration in a separate policy proceeding, prior to the consideration of any licensing action.

The impact of guaranteed access rights on capacity should be considered

12. Finally, the CAB notes that in Public Notice CRTC 2000-171 *Introductory Statement to the Licensing of New Digital Pay and Specialty Services*, the Commission stated that it would grant guaranteed access rights to only “a limited number of services that make a strong contribution to the development, diversity and distribution of Canadian programming.” In light of this statement, the CAB submits that the Commission needs to carefully assess the impact that new pay television services with guaranteed access rights would have on the ability of broadcasting distribution undertakings (BDUs) to provide sufficient capacity to accommodate the carriage of unlaunched Category 2 services, as well as the digital and/or high definition (HD) versions of existing services.

13. As the CAB outlined in its submission to the recent digital migration and HD proceedings, between two and four additional satellites will be required to meet the Commission's expectation that all existing pay and specialty services will eventually be distributed in a HD format.
14. New general interest pay services with guaranteed access rights could impose heavy capacity demands on BDUs given the large amounts of bandwidth required to accommodate proposed multiplexed and/or HD offerings. This significant demand on limited capacity would be happening at a time when some BDUs are expected to face significant challenges in accommodating the carriage requirements of existing services as they transition to HD.
15. The CAB appreciates the opportunity to participate in this proceeding.

Sincerely,



David Keeble
Senior Vice-President
Policy and Regulatory Affairs

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