



**Canadian
Association of
Broadcasters**

**L'Association
canadienne des
radiodiffuseurs**

September 12, 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: Broadcasting Public Notice CRTC 2005-82 – Call for comments
on a regulatory framework for mobile broadcasting services**

Introduction

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 in response to the above-noted Public Notice.
2. The provision of video and audio programming to mobile devices is clearly a form of “broadcasting,” as defined in the *Broadcasting Act*. The CAB notes that none of the companies offering such services have disputed this conclusion in their correspondence with the Commission. Accordingly, the CAB believes that the distribution of programming to mobile devices must be subject to an appropriate form of regulation under the *Broadcasting Act*.
3. In considering the appropriate form of regulation in respect of mobile broadcasting distribution services, the fundamental principles of the *Broadcasting Act* that have resulted in a strong Canadian broadcasting system should be preserved. New broadcast technologies should enhance the objectives of the *Broadcasting Act*, not compromise them.

4. The CAB recognizes that mobile broadcast distribution services are emerging services, making use of new delivery platforms for the reception of programming services on mobile devices that are rapidly becoming ubiquitous. The CAB also recognizes that mobile broadcasting distribution services may take on different forms, making use of rapidly evolving technologies. As such, the CAB considers that mobile broadcasting distribution services have the potential to both complement and compete with existing broadcasting services.
5. The CAB submits, however, that at this early stage of development it is impossible to forecast with any degree of certainty exactly how these services will evolve, the degree to which consumers will take up and use these services, or the ultimate impact they will have on existing players in the Canadian broadcasting system.
6. Accordingly, the CAB submits that it would be inappropriate at this time to adopt a regulatory framework that would allow mobile broadcasting distribution services to operate without any conditions or requirements.
7. At the same time, the CAB does not wish to stifle or unduly constrain the development of new service concepts that have the potential to make tangible contributions to the achievement of the goals of the *Broadcasting Act*.
8. The CAB therefore favours a balanced and flexible approach to regulation of mobile broadcasting distribution services, one that maintains the fundamental principles of the *Broadcasting Act*, supports the development of new technologies and services, and provides an early opportunity for review and adjustment as required.
9. The CAB notes that Rogers, Bell and TELUS are of the view that these new mobile broadcasting distribution undertakings fall under the terms of the New Media Exemption Order (NMEO). LOOK is proposing a mobile broadcasting service that allegedly would fall under the terms and conditions of its existing BDU licence. Accordingly, the CAB will address, separately, the Rogers, Bell and TELUS mobile broadcasting distribution services on one hand, and LOOK's service on the other.

Rogers, Bell, TELUS

1. Do these services fall within the scope of the New Media Exemption Order?

10. The CAB submits that these services do not fall within the scope of the NMEO as they do not meet any reasonable definition of broadcasting over the Internet.

11. These services would make use of the Internet simply to push programming signals from one back-end provider to another (much as cable and DTH services currently make use of satellite and/or fiber), but subscribers will not use the Internet to access these signals.
12. The Commission did not explicitly define the Internet when it issued the NMEQ. It did, however, append a glossary that provided the following description:

The Internet is a distribution system that is capable of handling a wide variety of data (text, pictures and sound) in any number of formats. ... The Internet is a distributed, inter-operable, packet-switched network

A distributed network has no one central repository of information or control, but is comprised of an interconnected web of "host" computers, each of which can be accessed from virtually any point on the network

An interoperable network uses "open protocols" ..., and allows multiple services to be provided to different users over the same network.

13. The CAB notes that this description of the Internet does not specifically preclude the use of mobile telephones as a point of contact to the Internet, but submits that the key question is the openness of the specific network with respect to the broadcasting services available to its users, i.e. that any computer server – and hence any source of broadcasting content – that is available on the Internet should also be available to users of the mobile phone service.
14. In other words, if a wireless operator offers only a limited subset of video or audio signals, then the user/subscriber is not actually accessing the Internet. Nor is the operator then acting as an ISP – a transparent carrier of content. Rather, it is acting as a BDU, i.e. as a gatekeeper and value-added reseller of broadcast signals.
15. Based on the descriptions provided by Rogers, Bell and TELUS, it is clear that these services do not operate on an open network. They would employ a system with a closed, proprietary architecture at either end.
16. The CAB submits that this is not at all what was intended by the NMEQ, which exempts from regulation those broadcasting services “accessed and delivered over the Internet,” not accessed and delivered over the types of closed networks operated by Rogers, Bell and TELUS – networks that may make use of the internet at a particular interval in the distribution chain, but that do not constitute broadcasting “delivered and accessed over the Internet” under any reasonable definition of “delivered” or “accessed.”

17. The CAB remains of the view that, for the reasons stated in the Introduction to this submission, the Commission should take the measures necessary to ensure that mobile broadcasting distribution services are subject to an appropriate form of regulation, not simply exempted from any and all requirements and obligations.
18. The CAB strongly submits that the most effective method of achieving this is through the issuing of a two-year exemption order for experimental mobile broadcast distribution services, as described in greater detail below.
19. However, even if the Commission should determine that these mobile broadcasting distribution services might, under certain circumstances, meet the criteria for broadcasting “accessed and delivered over the Internet,” it should not conclude that they should therefore be exempt from regulation of any kind under the NMEO.
20. Rather, the Commission should implement a new two-year exemption order, as described below, and make appropriate amendments to the NMEO to clearly exclude mobile broadcasting distribution services from the definition of a ‘new media undertaking.’

2. If the proposed services do not fall within the scope of the NMEO, should a new exemption order be issued covering these services?

3. If a new exemption order is used, what should be its scope?

21. The CAB recommends an approach to the regulation of mobile broadcasting distribution services similar to that taken in the case of experimental VOD services in 1994, i.e. the issuance of an exemption order that would allow experimental mobile broadcasting distribution services to be developed, while maintaining fundamental policy principles consistent with the objectives of the *Broadcasting Act*.
22. As in the case of experimental VOD services, this exemption order would be temporary, to be followed after a reasonable period of time by the introduction of a new class of ‘mobile broadcasting’ distribution licence. The CAB submits that such a two-phase approach is appropriate given the limited quality of these services at this time, compared to conventional and specialty television (in terms of frame-rate, etc.).
23. The CAB proposes an experimental exemption order that would exempt mobile broadcasting distribution services from the requirement to hold a broadcasting licence, provided that they adhere to the following conditions:

- a) The company offering the mobile broadcasting service must be owned and effectively controlled by Canadians.
 - b) The service received by each subscriber shall consist of a preponderance of Canadian signals.
 - c) The company must source its content only from licensed Canadian programming services, or from non-Canadian services previously authorized for distribution in Canada. That content must be related to content carried on the programming service in question.
 - d) The company must contribute 5% of its gross annual revenues derived from its mobile broadcasting service, including transmission or airtime charges for reception of the service, to an appropriate Canadian talent development fund.
24. The CAB submits that the exemption order should expire after a two-year period, at which time the Commission and interested parties would be in a position to assess the impact of mobile broadcasting distribution services and their ability to contribute to the objectives of the *Broadcasting Act*.
25. Prior to the expiry of the exemption order the Commission should initiate a public policy process to determine the appropriate scope of a new class of 'mobile broadcasting distribution' licence, and a separate, subsequent process to hear applications from potential licensees.
26. The CAB notes that there is already a regulatory framework in place to govern the licensing and operation of subscription radio services – a framework that contemplated the distribution of signals to mobile devices from the outset. Therefore, under this proposed exemption order, services that deliver paid/subscription audio to mobile devices would not be considered 'experimental', as a licensing regime already exists for subscription radio delivered to mobile devices. Accordingly, such services would require a Subscription Radio licence for their audio component, and would not be covered under the proposed exemption order for experimental mobile broadcasting services.

LOOK Communications Inc.

27. The CAB notes that LOOK is proposing to offer a broadcasting distribution service using mobile devices, under the terms and conditions of its existing BDU licence.
28. The CAB recognizes that in proposing to operate a mobile broadcasting distribution service under the existing regulatory framework, LOOK's proposed service would generally reflect and respect existing principles of the *Broadcasting Act* and related regulations. However, the CAB further notes that under the current *Broadcasting Distribution Regulations*, a "subscriber" is

limited to “a household of one or more persons . . .,” but does not include mobile devices. (emphasis added)

29. LOOK is proposing a mobile broadcasting distribution service through which the programming services it currently distributes “will be obtained and distributed in the same fashion to LOOK’s customers regardless of whether they are employing a mobile or stationary receiving apparatus.”¹
30. Therefore, the CAB notes that – unlike Rogers, Bell and TELUS who propose a new and untested type of service to deliver new types of mobile broadcasting content – the service proposed by LOOK appears to be a direct substitute for its existing broadband transmission BDU service, in terms of its ability to carry all of its programming services with high technical quality, with the difference being the introduction of mobile receivers.
31. The CAB notes, however, that LOOK’s current BDU licence does not permit it to distribute programming services to mobile devices, so additional authorization would be required.
32. There is at least one grey area in their description, however, which is the carriage of data services. It is not clear what these services are, or whether any of them might constitute ‘broadcasting’, and therefore, whether regulatory approval of their distribution would be required.
33. The CAB generally supports LOOK’s approach, which would respect the terms and conditions of its existing BDU licence, inasmuch as it would ensure that LOOK’s service is generally consistent with the core principles of the *Broadcasting Act*. At the same time, the CAB submits that LOOK needs to apply for an appropriate licence amendment, or possibly a new licence, to authorize it to proceed with its mobile broadcasting service, as proposed.
34. A proceeding to deal with the amendments required would permit open public discussion of the nature of the services proposed and their relationship to other licensees – for example, terrestrial subscription radio services, whose functionality could be duplicated by this service.

¹ See LOOK’s correspondence with CRTC, May 25, 2005.

The role of MobiTV in the proposed mobile broadcasting distribution services

35. The CAB notes that the mobile broadcasting distribution services proposed by Rogers Bell and TELUS would make use of a non-Canadian company, MobiTV, to receive and deliver the programming signals to the wireless service provider.
36. In other words, the mobile broadcasting distribution services described by Rogers, Bell and TELUS all rely on a third party undertaking to provide and/or aggregate their signals, then to convert and deliver those signals, in an encrypted format, for a fee, to wireless service providers acting as broadcasting distribution undertakings.
37. The CAB notes that these functions appear to be similar to the functions carried out by Relay Distribution Undertakings (RDUs). As an RDU, an undertaking that provided these types of functions would be subject to either licensing by the Commission, or to exemption under a relevant exemption order.
38. The CAB submits that there is not enough information currently on the public file to make a determination as to whether the service provided by MobiTV would actually constitute an RDU service. Accordingly, the CAB urges the Commission to further explore the role of MobiTV, to determine whether further regulation—either by licensing or exemption order—would be appropriate.

Conclusion

39. In conclusion, the provision of video and audio programming to mobile devices is clearly a form of “broadcasting,” as defined in the *Broadcasting Act*. As noted, none of the companies offering such services have disputed this conclusion in their correspondence. Accordingly, the CAB believes that the distribution of programming to mobile devices must be subject to an appropriate form of regulation under the *Broadcasting Act*.
40. The CAB reiterates that the Rogers, Bell and TELUS mobile broadcasting distribution services do not constitute broadcasting “delivered and accessed over the Internet.” Rather, they constitute broadcasting that may make use of the Internet at one stage of the distribution chain, but that are delivered and accessed via closed, proprietary networks. As such, these services clearly do not fall under the scope of the NMEO.

41. The CAB recognizes the potential for these new distribution services to make a valuable contribution to the achievement of the objectives of the *Broadcasting Act*. Accordingly, the CAB does not wish to propose any course of action that would unduly impede the development of these services.
42. The CAB therefore recommends that the Commission should issue an exemption order that would set the terms under which experimental mobile broadcasting distribution services could operate, subject to certain conditions that reflect fundamental principles consistent with the objectives of the *Broadcasting Act*.
43. Following a period of two years, the Commission should re-evaluate the impact of these experimental mobile broadcasting distribution services in the context of a policy hearing, enabling it to determine the appropriate terms and conditions for the subsequent licensing of mobile broadcasting distribution services. The Commission should then conduct a separate, subsequent, 'mobile broadcasting distribution' licensing hearing
44. With respect to the service proposed by LOOK, the CAB notes that it proposes to offer a service indistinguishable in nature and quality from its existing BDU service, and that its current licence and the *Broadcasting Distribution Regulations* limit LOOK to the delivery of programming services to "households" only. Accordingly, LOOK should apply for an appropriate amendment to its existing licence, or for a new licence, prior to offering such a mobile broadcast distribution service.
45. Finally, inasmuch as the Rogers, Bell and TELUS services would make use of third-parties in the aggregation and re-distribution of programming signals to mobile devices, the Commission should explore whether these third-parties would be functioning as RDUs, and if so, whether further regulation—either by way of licensing or exemption order—is required.
46. The CAB appreciates the opportunity to participate in this proceeding.

Sincerely,



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cc: CAB Board of Directors

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