



Canadian
Association of
Broadcasters

L'Association
canadienne des
radiodiffuseurs

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1926 • 2006

June 23, 2006

Sent via Email

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

Dear Ms. Rhéaume:

Re: Broadcasting Public Notice CRTC 2006-48: Call for comments on a proposed exemption order for mobile television broadcasting undertakings (PN 2006-48) – Reply comments of the Canadian Association of Broadcasters (CAB)

1. The CAB is pleased to provide these reply comments in response to PN 2006-48 concerning the Commission's proposed exemption order for mobile television broadcasting undertakings.
2. In its previous submission, filed on June 9, 2006, the CAB had supported an exemption order that would exempt telephony-based mobile television broadcasting services from the requirement to hold a licence, even where their signals do not pass over the Internet. The CAB submitted that such undertakings should be exempt provided that they meet certain criteria to ensure that:
 - they use transmission technology through which: (i) the video and related audio share capacity with the telephone voice signals offered to the subscriber, (ii) the majority of the spectrum capacity is used for telephony, and (iii) each receiver requires the use of a separate stream of broadcast video and audio, i.e. "unicasting";
 - they are subject to the same Canadian ownership and control requirements that generally apply to all Canadian broadcasting undertakings;
 - they provide a majority of Canadian services in the television services accessed by each subscriber;

- where full programming services (rather than specialized content created specifically for the mobile platform) is distributed, they source such services only from licensed Canadian programming undertakings and non-Canadian services authorized for distribution in Canada; and,
 - they obtain the prior consent of a broadcaster for the retransmission of its signal.
3. With regard to the more advanced broadcast-based mobile television services that are now being rolled out and licensed in other countries, the CAB urged the Commission to defer any decision on a broad exemption order that would cover such services until more is known about their introduction and potential impact.
 4. The CAB has had an opportunity to review the submissions filed by other parties in response to the Commission's proposed exemption order. In these reply comments, the CAB wishes to comment on three specific areas in response to the other submissions.

Mobile TV services using broadcast-based technologies are likely to have a significant impact on existing licensees

5. In its previous submission, the CAB argued that it is too early to determine the appropriate regulatory framework, whether licensing or exemption, for broadcast-based mobile television services. Specifically, the CAB submitted that it was premature to conclude that licensing would not contribute materially to the success of Canadian content and services on these new platforms, and that it was equally premature to conclude that broad exemption order proposed by the Commission would not negatively impact the ability of existing licensees to make their contributions to the goals of the *Broadcasting Act*.
6. Several parties provided comments consistent with that view:

...it is not only conceivable, but probable that the technical challenges now associated with wireless technology will be overcome, resulting in the delivery of superior-quality signal, image and audio quality. This, combined with the ability of Mobile Distributors to carry unauthorized foreign services, and what CTV foresees will be a growing trend toward using mobile phones as de facto television set-top boxes..., could make mobile television services ready substitutes for conventional broadcasting services. [CTV Television Inc.]

The nature and extent of mobile phone use in other developed countries suggests that mobile television will have an impact on conventional broadcasting in Canada...Screen resolution, battery life, screen size, image and audio quality, all cited by the Commission as reasons that this technology is not a threat to

conventional television, are all improving radically and swiftly. [Directors Guild of Canada/Writers Guild of Canada/ACTRA]

We are concerned that, without precise definitional parameters, the Commission's intention to exempt from regulation the mobile television broadcasting applications presently in existence could potentially undermine a substantial portion of the Canadian broadcasting system. [CFTPA]

7. The CAB's position is further supported by a recent report on mobile television broadcasting in Europe, which describes recent trials confirming strong consumer interest in mobile TV and radio, and concludes that these will soon become must-have services for mobile operators. The report further predicts that, if mobile TV and radio prove as popular as expected, 3G networks (i.e. advanced telephony-based networks) could quickly run out of capacity, requiring operators to employ broadcasting technologies such as DVB-H, etc.¹
8. A recent speech by Darren Entwistle, President & CEO of TELUS, indicates that Canadian wireless service providers also intend to move aggressively into the provision of broadcast-based mobile television services². As stated by Mr. Entwistle:

Obviously, traditional broadcasters still possess the largest and most established audience. But the question now is, for how long? As a broadband company, TELUS intends to lead in the distribution of content for any platform, be it high-speed Internet, IPTV or wireless...

...we should set a firm date for the transition to HDTV in order to free up valuable spectrum that can be reallocated to broadband wireless services...

Right now, Canada is lagging behind key trading partners like the US and the UK, because it has no plan for reallocating this spectrum. That is something we can and we must correct quickly.

9. The CAB notes that, in the US, the deadline for discontinuing analog television transmission, thereby freeing up spectrum for other uses, is less than three years away. It is clear that Canadian wireless providers also want access to additional spectrum for the provision of broadcast-based mobile television services.

¹ *Evaluating the Options for Mobile TV and Radio Broadcasting in Western Europe*, Research and Markets Ltd., May 2006.

² *Staying Ahead*, Keynote address by Darren Entwistle, President & CEO of TELUS, to the 2006 Canadian Telecom Summit, Toronto, June 13, 2006.

10. For these and similar reasons, the CAB had urged that Commission to limit the scope of the proposed exemption order to exclude broadcast-based mobile television services, which are likely to have a significant impact on Canadian licensees.
11. The CAB notes that it was the Commission's stated intention to exempt only those services "of the type or similar to those that were the subject" of exemption pursuant to the New Media Exemption Order, as determined in Broadcasting Public Notice CRTC 2007-47. Accordingly, the new exemption order should apply only to telephony-based mobile television services that do not cross the Internet, consistent with the Commission's intention.

The requirement that an exempt mobile television undertaking obtain the prior consent of a broadcaster for the retransmission of its signal is an essential regulatory safeguard that furthers the objectives of the *Broadcasting Act*

12. Several parties have addressed the Commission's proposed requirement that an exempt mobile television undertaking must obtain the prior consent of a broadcaster for the retransmission of its signal.
13. The Canadian Wireless Telecommunications Association (CWTA), for example, suggests that this proposed criterion amounts to the creation of a new right for over-the-air broadcasters, contrary to Canadian copyright law, and should therefore not be included in the mobile television exemption order. This position is shared by MTS Allstream and Shaw Communications Inc.
14. The CAB fundamentally disagrees with the CWTA's characterization of the Commission's proposed prior consent provision as the granting of a new right to over-the-air television broadcasters. In the CAB's view, this proposed requirement does not establish a signal right or any other right, but rather represents a reasonable regulatory measure that furthers broadcasting policy objectives and provides the licensees of all television programming undertakings, conventional television as well as specialty and pay services, with an opportunity to negotiate the terms of carriage of their signals on mobile television platforms.
15. Such a measure is within the Commission's jurisdiction and, furthermore, is consistent with a number of precedents that have previously been established by the Commission.
16. In Broadcasting Decision CRTC 2005-457, for example, the Commission made Bell ExpressVu's authorization to distribute local and regional programming on partial or omnibus channels subject to a condition of

licence requiring the prior written consent of the television station originating the programming.

17. Similarly, in authorizing Videotron to distribute the signals of CTV's and Global's transitional digital TV stations from Toronto (Broadcasting Decision CRTC 2005-109), the Commission took note of the fact that both CTV and Global had given their consent to the distribution of their signals in Quebec, consistent with the 1993 distant signals policy.
18. The CAB therefore strongly endorses the inclusion of a requirement that an exempt mobile television service provider obtain the prior consent of the broadcaster for the distribution of its signal.
19. The CAB further notes that certain other parties (CFTPA, FWS Joint Sports Claimants) have proposed that there be an additional prior consent requirement in respect of the owner of the copyright in the individual programs contained in the broadcaster's schedule.
20. The CAB submits that this additional requirement is unnecessary. Matters relating to the underlying rights are most appropriately left to negotiations between the broadcaster and the relevant rights holders. Nevertheless, this concern validates the importance of requiring the prior consent of the broadcaster.
21. This approach is explicitly endorsed by the APFTQ, which supports the fundamental requirement that any exempt mobile television services must obtain the prior consent of the broadcaster for the retransmission of its signals, while recognizing that mobile broadcasting rights must be negotiated with the rights holders of acquired programming before such consent can be given.

The scope of the proposed exemption order must be limited to telephony-based mobile television services only

22. Finally, the CAB wishes to address the position of the CWTA that the proposed exemption order should apply to all broadcasting services that are delivered and accessed through mobile services, not just television services.
23. If adopted, a broadening of the scope of the exemption order as proposed by the CWTA would apparently have the unintended consequence of exempting all radio services, including commercial radio and subscription radio services.
24. The CAB therefore opposes the CWTA's suggestion. As noted in the CAB's previous submission, the provision of radio services to mobile

devices must only be authorized under one of the existing licensing frameworks for radio, including commercial and subscription radio frameworks, not under an exemption order for mobile broadcasting services.

25. The CAB appreciates the opportunity to submit these reply comments.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'D. Keeble'.

David Keeble
Senior Vice-President
Policy and Regulatory Affairs

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