



Canadian
Association of
Broadcasters

L'Association
canadienne des
radiodiffuseurs

October 24, 2007

Via E-pass

Mr. Robert A. Morin
Secretary General
CRTC
Ottawa, ON
K1A 0N2

Dear Mr. Morin:

RE: Broadcasting Public Notice CRTC 2007-114: *Call for comments on a proposed Practice Direction on the Provision of Confidential Access to Confidential Information*

1. The Canadian Association of Broadcasters (CAB) is the national voice of Canada's private broadcasters, representing the vast majority of Canadian programming services, including private radio and television stations, networks, specialty, pay and pay-per-view services. The goal of the CAB is to represent and advance the interests of Canada's private broadcasters in the social, cultural and economic fabric of the country.
2. The CAB submits the following comments in response to *Call for comments on a proposed Practice Direction on the Provision of Confidential Access to Confidential Information*, Broadcasting Public Notice CRTC 2007-114 (BPN 2007-114).

Shortness of Timeframe

3. The Commission issued BPN 2007-114 on October 12 and required that parties file comments by October 24. Parties therefore were given only nine working days to review the draft Practice Direction and Declaration and Undertakings forms, undertake a detailed analysis of their contents, consult where necessary with legal counsel, and draft a submission for the Commission.

4. The CAB respectfully submits that given the potentially far-reaching implications of the proposed Practice Direction for its members and other affected parties, the October 24th deadline for comments imposed by the Commission was inadequate. By issuing such a short deadline for parties to provide their comments on the above-noted Public Notice, the Commission undermines the principle of meaningful stakeholder participation in its regulatory process – a principle that the Commission has consistently espoused.
5. In this regard, the CAB also notes that during the short time period granted to them to review and comment on BPN 2007-114, both the CAB and many of its member companies were devoting considerable time and resources to other major Commission proceedings, notably including *Review of the regulatory frameworks for broadcasting distribution undertakings and discretionary programming services*, Broadcasting Notice of Public Hearing CRTC 2007-10.
6. The CAB notes that meaningful consultation with potentially affected parties would have been better achieved had the deadline for submitting comments regarding the proposed Practice Direction been November 12. This would have provided a full 30-day reply phase, which is what parties have come to expect as the timeframe within which the Commission ordinarily accepts comments on a Public Notice.
7. As a result, while the CAB has made every effort to ensure that the comments which follow are helpful to the Commission, we remain of the view that the narrow timeframe for submitting comments on the proposed Practice Direction has precluded the kind of detailed and meaningful analysis that is warranted in the circumstances.
8. The CAB further notes that the comments which follow are largely with respect to broadcasting public proceedings.

Absence of Clear Rationale for Direction

9. In BPN 2007-114, the Commission states its view that “there may be instances where, in order for a party to be able to participate meaningfully in a proceeding, it must receive some access to confidential information.” However, the Commission does not identify in what circumstances such a need may arise, nor does it explain why its current rules of procedure and practice are no longer adequate in ensuring meaningful public participation in its broadcasting public proceedings. BPN 2007-114 also makes no allusion to any formal complaints that may have been made by a party or parties with respect to the Commission’s current practice regarding the treatment of confidential information in a broadcasting public proceeding. Consequently, it is unclear to the CAB what harm the Commission seeks to remedy through its adoption of the proposed Practice Direction.
10. It is the CAB’s respectful submission that the lack of a clearly identifiable rationale in BPN 2007-114 for the Commission’s proposed change to its treatment of confidential information in a broadcasting public proceeding is another factor which hampers a meaningful review of the Practice Direction. Had such a rationale been clearly identified, the CAB and other parties would have been better able to weigh the benefits

the Commission hopes to achieve through its adoption of the Practice Direction against the very significant risk of harm that the proposed Practice Direction poses as currently worded. It would also have enabled the CAB and other parties to propose alternative approaches that may have been equally effective in achieving the Commission's goals, and less potentially harmful to parties who submit confidential information to the Commission in a broadcasting public proceeding.

11. Given the circumstances outlined above, and in light of the CAB's analysis discussed below, it is the CAB's view that the proposed Practice Direction should not be adopted.

The Starting Point: Section 20 of the *CRTC Rules of Procedure*

12. Under section 20 of the *CRTC Rules of Procedure* (Broadcasting Rules), the Commission may, at the request of a party, treat as confidential certain material or information "if in the opinion of the Commission the public interest will be served by so doing, [and] if such material or information can be separated from the application and is marked 'Confidential'. Section 20 further identifies the kind of information that may be treated as confidential, namely:
 - Financial statements of an applicant who holds a licence;
 - Evidence of the financial capacity of any person participating in the application; and
 - The names of prospective employees of an applicant.
13. Any disclosure of information in these categories could have drastic consequences for a licensee or licence applicant. The categories of information for which confidentiality may be claimed are key indicators of a licensee's (or licence applicant's) financial status and future business plans. Disclosure of such information to a licensee's competitors, whether inadvertently or otherwise, could be enormously damaging to its competitive position, including negatively impacting its ability to raise capital, hire personnel and fulfill its regulatory obligations and commitments under the *Broadcasting Act*. Disclosure of such information could even affect the very financial viability of a licensee or licence applicant in certain cases. For licensees or licence applicants that are public companies, a breach could raise further particularly serious concerns, given their disclosure obligations under securities laws.
14. In the CAB's view, it is because of the potentially serious consequences that would result from the disclosure of such information that section 20 of the Broadcasting Rules provides that only the Commission, and not other parties to a proceeding, may have access to the information for which a request for confidentiality has been granted. Restricting access to this information to only the Commission and Commission Staff considerably reduces the risk of direct or inadvertent disclosure to parties who would gain an undue competitive advantage in obtaining the information. This, in turn, provides some assurance to licensees that they can provide full disclosure to the Commission without unduly risking their competitive position, and helps ensure that the Commission can make its decisions on a fully informed basis.

15. At the same time, the CAB notes that section 20 does not automatically grant licensees confidential treatment of information upon request. Rather, section 20 requires that such treatment only be granted if, in the Commission's view, it is in the public interest to do so.
16. The Commission applies this public interest test rigorously. In Circular No. 429, dated August 19, 1998, the Commission outlined the practice it would follow with respect to requests for confidentiality that were made by applicants pursuant to section 20, and indicated in paragraph 14 that "[t]he public interest is best served by maintaining an open and transparent application process. Therefore, treating information filed in broadcasting applications as confidential will continue to be the exception rather than the rule." This approach to deciding requests for confidential treatment of information that was adopted by the Commission in Circular No. 429 created, in effect, a presumption that to accord such treatment was not in the public interest. Rebutting this presumption has required compelling arguments on the part of applicants.
17. The CAB further notes that the Confidentiality Guidelines (Guidelines) contained in Appendix A of Circular No. 429 have provided a highly useful tool for both the Commission and applicants in determining whether a particular type of information should be granted confidential treatment. The Guidelines clearly set out what kinds of information will or will not be granted confidential treatment in ordinary circumstances, based on the reasons set out by the Commission in Circular No. 429. As a result, the Guidelines have provided a measure of predictability for applicants and have greatly reduced the number of requests for confidentiality that may otherwise have been filed in the absence of the Guidelines.
18. Circular No. 429 and the Guidelines continue to be the framework that both the Commission and licensees follow with respect to the treatment of requests for confidentiality. In the CAB's view, this framework has provided predictability and fairness to licensees, while minimizing the amount of information that has been accorded confidential treatment.
19. The CAB therefore submits that the Commission's current practice regarding the treatment of confidential information, as provided in section 20 of the Broadcasting Rules, Circular No. 429 and the Guidelines, strikes the necessary balance between mitigating the risk of harmful disclosure on the one hand and ensuring meaningful participation by all parties in a broadcasting public proceeding on the other, and should be maintained.

Differences between Broadcasting and Telecommunications Proceedings

20. The CAB notes that the Commission applies different rules of procedure for broadcasting and telecommunications public proceedings. Each set of procedural rules is designed to further the objectives of its governing statute, regulate the powers exercised by the Commission thereunder, and address the unique needs and realities of the broadcasting and telecommunications regulatory environments. While the CAB is unsure about the desirability of the proposed Practice Direction for telecommunications

public proceedings, it would simply observe that changes or additions to one set of rules may not be necessary or appropriate for the other.

Proposed Practice Direction

21. The CAB is profoundly concerned about several elements of the proposed Practice Direction. For the purposes of its analysis, it has grouped its concerns into the following categories: absence of clear standards, disclosure risks, unclear and inadequate remedies, lack of procedural safeguards, and inflexible proposed public hearings procedure. Each is addressed in turn.

Absence of Clear Standards

22. The CAB submits that the proposed Practice Direction fails to set out any, let alone any clear, standards on which the Commission would base a decision to grant access to confidential information. While paragraph 5 indicates what should be included in a request for access, paragraph 10 simply contemplates that the Commission will rule on a request, without specifying the standards or criteria that the Commission will apply. The proposed Practice Direction thus purports to give the Commission a broad, unlimited discretion to grant access to confidential information.
23. An unconstrained discretion of this kind fails to provide to licensees and licence applicants the necessary assurance that their confidential information will be adequately protected. It is therefore the CAB's submission that the proposed Practice Direction must delineate a clear standard that the party requesting such information (Requesting Party) must meet in order to be granted access to the confidential information it is seeking.
24. In the CAB's view, in light of the risks and potential harm of inappropriate disclosure (discussed below), the standard set by the Commission must be a high one. At a minimum, the Requesting Party should be required to rebut a presumption that disclosure of the requested information would be contrary to the public interest. The CAB submits that adopting a presumption against disclosure is appropriate, given that the Commission would only have granted confidential treatment to the requested information in the first place after having determined that it was in the public interest to do so.
25. Adopting a presumption against disclosure would make the proposed Practice Direction less susceptible to abuse, by reducing the number of requests filed with the Commission for purposes unrelated to meaningful participation in the proceeding. Reducing the number of so-called "fishing expedition" requests would also provide the party supplying the information (Supplying Party) with greater protection from the risk of inappropriate disclosure to third parties.
26. The CAB further submits that in order to successfully rebut the presumption against disclosure, the Requesting Party must convincingly demonstrate (among other things) that the information sought is regarding a matter that is directly at issue in the public proceeding, and that it is seeking the minimum amount of confidential information

necessary for it to meaningfully participate in the proceeding. Once it has made a decision granting the Requesting Party's request, the Commission should retain for itself the discretion to impose additional limits on the amount of confidential information disclosed to the Requesting Party, should it deem it in the public interest to do so.

Disclosure Risks

27. Several elements of the proposed Practice Direction considerably heighten the risk of disclosure, whether inadvertent or otherwise, of confidential information in a manner that would be damaging to the Supplying Party and contrary to the public interest.

(a) The Proposed Practice Direction Allows Disclosure To Too Many Parties

28. While the proposed Practice Direction would allow disclosure of confidential information to the Requesting Party's external counsel, experts and their respective staffs, it is the CAB's view that, should it be deemed to be in the public interest, disclosure should be restricted to external counsel only. The CAB adopts this position for two principal reasons.

29. First and most obviously, the larger the range of individuals who have access to confidential information, the greater the risk that the information will be disclosed, whether inadvertently or otherwise, to third parties.

30. More fundamentally, experts and their staff, as well as staff of external counsel, may not in the majority of cases be bound by comparable rules of professional conduct to which legal counsel are ordinarily subject, including rules governing the disclosure of confidential information and the giving of undertakings.

31. In addition, and for reasons described further below, the proposed sanctions for breaching the proposed declaration and undertaking are unclear, and likely inadequate.

32. At a minimum, the CAB respectfully submits that the definition of "Expert" as provided in paragraph 3 of the proposed Practice Direction should be amended to further stipulate that the Expert is not retained by another party or an intervener (currently, the proposed Practice Direction only requires that the Expert not be a director or employee of a party or an intervener). The definition should further stipulate that an Expert is not a director or employee, or retained by, a direct competitor to a party or intervener. The CAB notes that the Competition Tribunal imposes both of these requirements on the Requesting Party in its proceedings.

33. Should the Commission decide to permit access to staff members of counsel and experts, the CAB further recommends that the Commission adopt the Competition Tribunal's requirement that access to confidential information be granted to staff members on a need-to-know basis only, and that a maximum of three staff members be permitted access to the information.

(b) The Proposed Practice Direction Allows Access Before the Signing of a Declaration and Undertaking

34. Paragraph 6 of the proposed Practice Direction stipulates that where a Requesting Party adds or removes counsel or an expert, or counsel or an expert adds or removes a Staff Member to whom the Commission has granted confidential access to confidential information, counsel for the receiving party must file, within seven days of the addition or removal, a request for confidential access to confidential information and a Declaration and Undertaking as stipulated under paragraph 5.
35. The practical effect of this provision would be that in cases where a Requesting Party adds counsel, an expert, or a staff member of counsel or an expert, that individual would be allowed access to confidential information before having to file with the Commission a request for access to that information and before signing a Declaration and Undertaking committing that individual to take the necessary steps to ensure that the confidential information is not disclosed.
36. In the CAB's view, paragraph 6 must be amended to require that no additional party be allowed access to the confidential information in question until the terms of paragraph 5 have been fully complied with and the Supplier Party has been granted a reasonable opportunity to object to the additional party being granted access to the information.

(c) Commission Summaries Risk Inadvertent Disclosure of Confidential Information

37. Paragraph 19 of the proposed Practice Direction states that "[s]ummaries of *in camera* proceedings prepared by Commission Staff will be placed on the public record." While the CAB is confident that Commission Staff would make every effort to ensure that summaries of *in camera* proceedings did not inadvertently disclose confidential information, it is nevertheless of the view that the risk of inadvertent disclosure would be greatly reduced if the proposed Practice Direction required Commission Staff to provide the Supplying Party with a copy of any summary of confidential information that they intended to place on the public record.
38. The Practice Direction should further include provisions that would afford the Supplying Party a meaningful opportunity to offer alternative ways of presenting the information, or, if necessary, to file a formal objection to the disclosure of the summary as written. The CAB notes that a similar requirement to consult with the Supplying Party is included in the Copyright Board's standard order respecting the confidential treatment of information.¹

¹ See, for example, the Copyright Board's *Order Dealing with Information Requested During the Interrogatory Exchange Process for Which Confidential Treatment May be Claimed* (re: Public Performance of Musical Works, 1996-2006 – SOCAN Tariff 22 – Communication of Musical Works via the Internet) (June 28, 2006). It should be noted, however, that this obligation is imposed on the Requesting Party as part of the interrogatories process.

(d) Parties Given Too Much Time to Destroy Documents Following Conclusion of Proceeding

39. Paragraph 23 of the proposed Practice Direction requires that within ten business days after the close of the record of a proceeding, all confidential information obtained pursuant to a request for confidential access to confidential information be destroyed or returned to the Supplying Party.
40. In the CAB's view, the ten day timeframe proposed by the Commission is too long and needlessly increases the risk of disclosure, whether accidental or otherwise. The CAB accordingly recommends that parties be required to destroy or return confidential information immediately, as is required by the Competition Tribunal in its proceedings. Should the Commission conclude that greater specificity is required with respect to the time parties have to meet the requirements of paragraph 23, the CAB further recommends that parties be granted five business days.

(e) Confidential Information Regarding Other Parties May Be Inadvertently Disclosed

41. The CAB notes that where the Commission treats certain financial information as confidential, it will also often aggregate this information on an industry, sector, language and/or geographic market basis for inclusion in Commission publications, such as its annual Broadcast Policy Monitoring Report. The CAB submits that this Commission practice may enable counsel or experts of a Requesting Party to acquire, by inference or deduction, confidential information regarding parties other than the Supplying Party, particularly where there are few licensees in a given market. In such a scenario, counsel or experts of the Requesting Party would effectively have confidential information regarding the Supplying Party, the Requesting Party, as well as other - perhaps all - licensees in a market. In the CAB's view, this outcome would run entirely counter to the purpose of the proposed Practice Direction and would needlessly expose parties other than the Supplying Party to the serious consequences resulting from disclosure of information discussed above.

Unclear and Inadequate Remedies

42. In paragraph 25 of the proposed Practice Direction, the Commission outlines the sanctions that it would seek to enforce against a party that breaches either its Confidentiality Undertakings or a Commission ruling regarding the disclosure of confidential information. These sanctions are essentially twofold: the making of a complaint with the appropriate law society or other professional association, and/or the initiation of contempt proceedings in the Federal Court of Canada or superior court of a province.
43. For the reasons outlined below, it is the CAB's view that the Commission's proposed sanctions are unlikely to prevent breaches, and in any event, cannot adequately compensate the harm that may be caused to the Supplying Party through the disclosure, inadvertent or otherwise, of information for which the Commission had granted confidential treatment.

(a) Evidentiary Obstacles

44. The CAB notes that the imposition of legal consequences against a breaching party requires that there be evidence of a breach in the first place. In the CAB's view, such evidence is unlikely to be brought to the Commission's attention in many, if not most, instances of a breach of its confidentiality rules.
45. The CAB submits that many breaches would go completely undetected by the Commission, given the impossibility for the Commission (or, for that matter, the Supplying Party) of tracking the use of the information following its disclosure pursuant to the proposed Practice Direction. Consequently, it would only be in the most glaring cases that the Commission would even be aware that a breach had occurred, let alone have sufficient evidence to justify taking enforcement action.
46. So as to at least somewhat mitigate these evidentiary obstacles, the CAB recommends that a party granted access to confidential information be required to maintain and file a copy of a confidential information log. Among other things, the log would set out how the information has been maintained, who has been granted access to the information, and when access to the information was granted.

(b) Commission's Ability to Take Enforcement Action

47. Although under both the *Telecommunications Act* and the *Broadcasting Act*, the Commission has the power to seek contempt proceedings in the courts for violations of its orders and rulings, in practice it has rarely done so. Apart from the evidentiary obstacles referenced above, seeking enforcement action through the courts is both cumbersome and costly. In any case, the CAB questions whether the Commission would be able to dedicate the necessary resources to investigate and take enforcement action against breaches of its confidentiality rules.

(c) Lack of Formal Process in Event of Breach

48. The Commission's proposed Practice Direction does not contemplate any formal process to deal with apparent or alleged breaches of its confidentiality rules. In the CAB's view, such a formal process is necessary, and should address such as issues as notice, investigative procedure, rights of affected parties to make submissions (including rules governing the form, content and timing of any such submissions), the right to appeal a Commission ruling, and remedies available to the Supplying Party in the event of a finding of breach.

(d) Inadequate Sanctions and Irreparable Harm

49. The CAB notes that irrespective of the sanctions that might be pursued by the Commission where there has been a breach of its confidentiality rules, the fact remains that once confidential information has been disclosed, whether inadvertently or otherwise, there is little that can be done to remedy the resulting harm. Once disclosed, information cannot

- readily be put back in the proverbial bottle – a party cannot “undisclose” information that it has disclosed to another party. Even if remedial steps were taken to destroy the documents containing the leaked information and/or erasing the information from the media on which it was stored, there is no means of erasing human memory.
50. The impossibility of repairing the harm caused by a breach of the Commission’s confidentiality rules is perhaps best illustrated by the fact that neither sanction proposed by the Commission would be a legal remedy for the Supplying Party. In fact, neither sanction contemplates the direct involvement of the Supplying Party at all. Moreover, depending on who the breaching party is, the Commission may not be able to avail itself of the proposed sanctions. This would notably be the case where the breaching party was not a member of a professional association with which the Commission could file a formal complaint.
51. In addition, while a law society would likely treat a complaint filed by the Commission seriously, given the importance that the bar places on respecting confidentiality rules and fulfilling undertakings, it is questionable whether other professional associations would consider a complaint of this nature to be of sufficient gravity as to warrant serious disciplinary action against the breaching party. The CAB accordingly recommends that the Commission, in the event of its finding of a breach, would bar the breaching party (whether counsel, expert(s) or their staff members) from practicing or participating in a Commission proceeding for a specified period of time (such as, for example, five years).
52. Just as importantly, the CAB submits that the private legal remedies available to a Supplying Party in response to a breach of the Commission’s confidentiality rules are both inadequate and unclear. For example, were the Supplying Party to obtain an injunction against the breaching party, this might, at best, prevent the further dissemination of the information at issue, but for the reasons outlined above, would do little to redress the harm already caused. The CAB further notes that it is unclear whether the Commission’s proposed declaration and undertaking would have the effect of imposing any legal obligations, whether contractual or extra-contractual, on the signatory vis-à-vis the Supplying Party.
53. Regardless of any private recourse that may be available to the Supplying Party, it is the CAB’s view that any such recourse would be costly to pursue, with no guarantee of receiving a judgment in its favour.

Lack of Procedural Safeguards

54. In the CAB’s view, the proposed Practice Direction does not go far enough in providing the Supplying Party with adequate procedural safeguards to ensure that it is not unduly compromised by the release of confidential information to a Requesting Party.
55. While the proposed Practice Direction provides the opportunity for the Supplying Party to object to a request for access to confidential information by a Requesting Party, it is provided only two business days to do so. The CAB recommends that the Supplying

Party be accorded at least three business days to object to a request for access to confidential information filed in the context of a paper proceeding. A similar timeframe is provided in paragraph 6 of the Copyright Board's above-referenced Confidentiality Order.

56. The CAB further submits that the proposed Practice Direction should, consistent with paragraph 17 of Circular No. 429, require the Commission to inform the Supplying Party that it has received a request by another party for access to confidential information. It should also provide the Supplying Party with an opportunity to withdraw confidential information that was not required to be filed with the Commission, rather than having it subject to disclosure to a Requesting Party.
57. In addition, the CAB notes that the proposed Practice Direction does not provide the procedure to be followed with respect to the referencing of confidential information in submissions filed with the Commission prior to the commencement of the hearing. In the event that the Commission intends to allow such submissions, the CAB submits that it should impose the same filing requirements as provided in paragraphs 21 and 22 of the proposed Practice Direction.
58. Finally, the CAB notes that the proposed Practice Direction does not specify whether, when ruling on a request for access to confidential information, the Commission will provide written reasons to the Supplying Party and to the Requesting Party explaining its decision. The CAB submits that procedural fairness requires the Commission to provide reasons, and that the proposed Practice Direction should specify that written reasons will be provided.

Inflexible Proposed Public Hearings Procedure

59. The CAB submits that the proposed Practice Direction would, if adopted, create an awkward and rigid procedural framework that may prove unworkable in practice, particularly in the context of a public hearing.
60. For example, paragraphs 13-16 contemplate a process whereby the Supplying Party or the counsel for the Requesting Party may request that portions of an oral hearing not be open to the public on the basis that they relate to information for which confidentiality had been granted. Paragraph 14 requires that any such request be filed with the Commission at least ten business days prior to the start of the hearing.
61. As both the Commission and parties that regularly participate in Commission public hearings are all too aware, such hearings are rarely static or predictable affairs. In the CAB's view, requiring parties to provide their request for an *in camera* hearing ten days in advance of the hearing would deny the flexibility that both the Commission and parties need to respond to unanticipated issues and developments that inevitably arise as the hearing unfolds.

62. At the same time, however, and for the same reasons, impromptu *in camera* hearings would pose particular challenges with respect to ensuring that confidential information would not be disclosed, inadvertently or otherwise, to third parties. Such closed-door sessions would also run counter to the Commission's avowed commitment to the principles of openness and transparency in its public proceedings. In the CAB's view, these principles assume an even greater importance, both real and symbolic, at a public hearing.
63. The CAB accordingly recommends that should the Commission decide to adopt the proposed Practice Direction, it should apply the Practice Direction only to paper proceedings, and not to public hearings.
64. However, should the Commission decide to apply the proposed Practice Direction to public hearings, the CAB further recommends that a formal procedure be established to enable the Commission and the parties to address unanticipated developments during the hearing itself. At a minimum, this should include according the Supplying Party a meaningful opportunity to object to the *in camera* hearing, such as, for example, adjourning the hearing for a fixed period of time to allow the Supplying Party to prepare its objection. The proposed Practice Direction should also expressly stipulate that no confidential information may be presented, discussed or referred to by the Requesting Party unless permission for an *in camera* session has been granted by the Commission.

Increasing the Regulatory and Administrative Burden

65. The CAB submits that regardless of the final form that the proposed Practice Direction might take, its implementation will create an unwieldy process that will impose needless additional regulatory and administrative burdens on both the Commission and on parties who attempt to avail themselves, or find themselves obliged to comply with, its terms.
66. In the CAB's view, such an outcome would appear to run contrary to what Commission Chair Konrad von Finckenstein has described as the Commission's "new approach" of "smarter and lighter regulation"², as well to the aim of the most recent CRTC 3-Year Work Plan to "review all regulations and policies with a view to reducing, amending or removing those that are no longer relevant in today's society."³

Application of Practice Direction to Current Proceedings

67. Should the Commission decide to adopt the proposed Practice Direction in either its current or a modified form, it is the CAB's respectful submission that procedural fairness demands that its provisions should only come into force after having accorded all parties a reasonable notice period.

² Speech of CRTC Chair Konrad von Finckenstein to the 2007 Broadcasting Invitational Summit, Jackson's Point, Ontario, June 26, 2007.

³ CRTC 3-Year Work Plan, 2007-2010, 24 April 2007 at page 4,

68. Parties that have chosen to participate in broadcasting public proceedings currently underway have done so on the understanding that they would be subject to the current procedural rules, including section 20 of the Rules. To unilaterally apply the proposed Practice Direction to current proceedings would take these parties by surprise and would, in certain cases, add significant and unanticipated costs to their participation.
69. The CAB accordingly recommends that the proposed Practice Direction should only apply to proceedings initiated after its adoption by the Commission, or, in the alternative, no earlier than January 1, 2008.

Conclusion

70. The CAB fully supports Commission initiatives that promote meaningful participation in its proceedings and that further the public interest. However, in the CAB's view, the proposed Practice Direction achieves neither of these objectives.
71. While the CAB has not had sufficient time to undertake the kind of in-depth analysis that a matter of such importance requires, it nevertheless appears that the proposed Practice Direction would create an unwieldy and unworkable access regime, with the risk of deliberate, inadvertent or accidental disclosure of confidential information to third parties at every stage of the process.
72. The CAB submits that section 20 of the Rules, coupled with Circular No. 429 and the Confidentiality Guidelines, achieve the necessary balance between minimizing the amount of information that is granted confidential treatment by the Commission, while at the same time not unduly jeopardizing the financial or competitive position of applicants, and should be maintained.
73. The CAB is therefore of the view that the proposed Practice Direction attempts to correct a non-existent problem, and that the implementation of the proposed Practice Direction may significantly undermine the ability of licensees to meet their regulatory obligations and commitments under the *Broadcasting Act*.
74. Accordingly, and for the reasons outlined above, the CAB opposes the adoption of the proposed Practice Direction.

Sincerely,

Original signed by Glenn O'Farrell

Glenn O'Farrell
President and CEO

END OF DOCUMENT