



Canadian Association of Broadcasters  
Association canadienne des radiodiffuseurs

November 20, 2008

*Via Epass*

Mr. Robert A. Morin  
Secretary General  
Canadian Radio-television and  
Telecommunications Commission  
Ottawa, Ontario  
K1A 0N2

Dear Mr. Morin:

**Re: Broadcasting Notice of Public Hearing CRTC 2008-12:  
Review of English and French Language broadcasting services in English and  
French linguistic minority communities in Canada**

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.

**Introduction**

2. Broadcasting Notice of Public Hearing CRTC 2008-12 (hereinafter "Public Notice 2008-12"), invites parties to comment on the availability and quality of English and French language broadcasting services in English and French linguistic minority communities in Canada and on the deficiencies and challenges related to the provision of those services. Public Notice 2008-12 also invites interested parties to comment on the measures that should be taken to encourage and facilitate the delivery and access to the widest possible range of such services.
3. Public Notice 2008-12 was initiated pursuant to Order in Council P.C. 2008-1293 (hereinafter "OIC 2008-1293") which compels the Commission to seek public comment and report no later than 31 March 2009 on the availability and quality of English and French language broadcasting services in English and French linguistic minority communities in Canada across all platforms

and distribution systems, the deficiencies and challenges in the relevant communities and measures that can be taken to ensure the widest range of official-language broadcasting services are available to ensure diversity within minority language communities is maintained and reflected in Canadian broadcasting system.

4. In light of the objectives set out in OIC 2008-1293, and without limiting the scope of interventions, the Commission requested that parties provide their views in response to a number of specific questions set out in Broadcasting Public Notice 2008-12 relating to topics set out in OIC 2008-1293, as described above. The Commission further requested that interested parties provide their input on the impact of new technologies on the availability of radio and television services, challenges to accessing new technologies and measures that can be taken to ensure access to new technologies.

### **Significant progress made to date**

5. At the outset, the CAB congratulates the Commission on implementing many of its own recommendations set out in its report entitled *Achieving a better balance, Report on French language broadcasting services in a minority environment*, Public Notice CRTC 2001-25, (“hereinafter Public Notice 2001-25”). As evidenced in the text of Public Notice 2008-12, and in Appendix 2 to Public Notice 2008-12, the Commission has already instituted several important measures to extend official language programming into minority language communities.<sup>1</sup> Some measures include the imposition of obligations on content distributors to ensure that official language programming reaches minority language communities. The Commission further increased the official language radio presence in minority communities when it approved twelve new community radio stations in minority language communities since 2001, created the Community Radio Fund of Canada and encouraged the CBC to ensure fair representation of all francophone groups on all regional and network programs and to extend *Chaîne culturelle* into French linguistic minority communities.
6. Finally, the CAB notes that the Commission has historically treated official language television programming to minority language communities asymmetrically. For instance, the Commission recognized the importance of expanding television programming choices for francophone minorities living outside of the province of Quebec when, in 1999, it required the mandatory distribution of the TVA network programming signals on BDU class 1 distribution services operating in English markets across the country<sup>2</sup>. The CAB also notes that in its *Policy to Increase the Availability to Cable Subscribers of Specialty Services in Minority Official Language* (Public Notice CRTC 2001-26, released on 12 February 2001), the Commission stated that “[I]t considers that it would be inconsistent with the goals of its policy if cable distributors serving communities where English is the majority official language could shift, to digital channels, Canadian French-language services that they currently carry on analog channels, thereby reserving their analog capacity for other purposes. Accordingly, the Commission will require the licensees of all Class 1 and Class 2 cable distribution undertakings operating in Anglophone markets, as the term is

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<sup>1</sup> For example in Broadcasting Decision 2007-246 the Commission made RDI a mandatory 9(1)(h) service in Anglophone markets and Newsworld a mandatory 9(1)(h) service in Francophone markets. In Broadcasting Decision 2002-377 the Commission mandated that the French and English CPAC services become a 9(1)(h) service.

<sup>2</sup> Public Notice CRTC 1999-27, 12 February 1999. Implementation Order 1999-1

described in section 18 of the regulations to ensure that the number of French-language services distributed on analog channels as of 10 March 2000 (PN2000-38) is not reduced.”

7. The CAB believes that the Commission’s minority language policies mentioned above have been successful to date and that there continues to be good public policy reasons for continuing the course of asymmetrical treatment to ensure the needs of each minority language community are met using the best methods available.
8. Finally, the Brynaert et associates study entitled *Sounds and Images*, released November 7, 2008 and the subsequently released analysis of the *Sounds and Images* report<sup>3</sup> appears to illustrate the tangible benefits resulting from the Commission’s regulatory measures. Based on a preliminary analysis of the many maps and tables contained in the two *Sounds and Images* reports, it appears that the presence of radio, television, cable or broadband Internet service offerings overlap, generally speaking with most minority language communities. The CAB will review, in more detail, the findings contained in both reports prior to the Commission’s hearing scheduled to take place in January 2009 and comment further where appropriate.

### **Programming quality is guaranteed under the Act**

9. The CAB notes, with concern, the questions posed by the Commission in Public Notice 2008-12 that seek to evaluate the “suitable quality” of television and radio programming services offered by broadcasters including the CAB’s members. While the CAB recognizes that the Commission’s requirement to evaluate quality comes from the mandate set out in OIC 2008-1293, it is unclear whether the Commission seeks input relative to technical quality such as signal strength, or the suitability of content programming for minority language communities. Nor is it clear the extent to which input received from interested parties regarding service quality will inform any policies or recommendations emanating from the current review.
10. The CAB notes that licensed Canadian broadcasting services provide, by their very nature, quality programming, given that quality programming service is required and guaranteed under the *Broadcasting Act*. The threshold for quality and the yardstick by which it is measured is firmly established in section 3g) of the *Broadcasting Act*, which requires that “programming originated by broadcasting undertakings should be of a high standard.” The Commission has consistently relied on the “high standard” provision as its most effective tool to ensure that broadcasters provide quality programming.
11. The CAB further notes that the obligation to provide programming of a high standard is further embodied in the CAB’s own codes and enforced by the Canadian Broadcast Standards Council.
12. The CAB respectfully submits that any discussion that focuses too intently on questioning the quality of programming may detract unnecessarily from a discussion of ensuring access to official language services to Canadians in minority language communities. The CAB nevertheless looks forward to responding to comments received in relation to the quality of programming services offered by its members.

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<sup>3</sup> Entitled “Radio, Television and Cable Services Available in Language Minority Communities by Brynaert et Associe.e.s made available upon request on November 18, 2008.

### **New technologies offer additional choices**

13. With respect to secondary and tertiary content platforms such as the Internet, as enabled through mobile phones, cable service or terrestrial or and satellite broadband service, the CAB notes that such technologies have the potential to offer new platforms from which to access content in minority language communities. These platforms offer a window to the world of content that is available, not only from Canadian private television and radio broadcasters, but also from sources available around the world. Accordingly, these platforms serve to increase the choice of programming available to populations in minority language communities provided they have access to high speed Internet connections. Indeed, the availability of these platforms represents an opportunity for private broadcasters to have their official language content disseminated and cross-promoted to a geographically diverse population through, for example, subscription and transactional content-on-demand services. Clearly, the reach of broadband Internet services will serve to potentially extend the availability of private broadcasters' service offerings and hence represent much needed potential new revenue opportunities for Canadian private programming services.

### **The CAB's recommendations**

14. As indicated in the CAB's comments filed pursuant to Broadcasting Notice of Public Hearing CRTC 2000-74, the francophone population, outside of Quebec, is spread disparately across a vast geographic region that can be economically challenging for private broadcasters to serve. Given the questionable viability of providing service to such markets, it remains in the CAB's view that it is unrealistic in most cases to expect any change to the extension of over-the-air French-language radio or television services in markets outside of Québec. Even where there would be a critical mass of francophones, such as in Toronto, which has a French speaking population of more than 100,000, the absence of available radio frequencies in this market makes it impossible, should there be a clear demand established for it, to offer an additional French Language radio service.
15. Without limiting the significance of the forgoing, the CAB recommends the following:
  - existing Canadian services must not be removed to make room for minority language services;
  - Canadian minority language services must have priority over non-Canadian, exempt and non-programming services;
  - French-language specialty programming services should be offered in a single package on a discretionary basis, by BDUs operating in English language markets;
  - no minority language service should be subject to mandatory stand-alone distribution without its consent, but an *à-la-carte* where there is a written affiliation agreement offering could be one of the distribution options available to consumers;
  - any changes to the distribution of a Canadian programming service should be governed by clear rules regarding notification.
  - Notwithstanding the Commission's determinations in paragraph 86 of *Regulatory Frameworks for Broadcasting Distribution Undertakings and discretionary programming services*, Broadcasting Public Notice CRTC 2008-100 requiring licensed terrestrial BDUs to distribute one minority-

language Category A or B service for every ten majority language services distributed, the CAB recommends that French language services currently being distributed be granted a grandfathered status.

**Conclusion**

16. The CAB appreciates the opportunity to provide its comments and is willing to provide further input at the public hearing taking place in Gatineau in January, 2009, should the Commission so require.

Sincerely,

*Original signed by:*

Pierre-Louis Smith  
Vice-President, Policy and Chief Regulatory Officer

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