



**Canadian
Association of
Broadcasters**

**L'Association
canadienne des
radiodiffuseurs**

August 9, 2004

VIA EMAIL

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

Dear Ms. Rhéaume:

Re: Broadcasting Public Notice CRTC 2004-45: Call for comments on proposals for the addition of Fox News and NFL Network to the lists of satellite services eligible for distribution on a digital basis

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 concerning the issues raised in Broadcasting Public Notice CRTC 2004-45 (PN 2004-45).
2. In PN 2004-45 the Commission calls for comments on proposals from the Canadian Cable Television Association (CCTA) to add two non-Canadian services, Fox News and NFL Network, to the lists of services eligible for digital distribution.
3. The Commission has stated that it intends to assess these requests in the context of its general policy precluding the addition of non-Canadian satellite services that can be considered either totally or partially competitive with Canadian specialty or pay television services. The Commission has also confirmed that, in applying this policy, it will take into account the services of all specialty and pay television services approved by the Commission, including all launched and unlaunched Category 1 and Category 2 specialty and pay television services.

4. The CAB strongly supports this approach, which is fundamental to ensuring the continued integrity of the Commission's licensing policies for Canadian television programming services and the success of the Canadian broadcasting system.
5. Where appropriate, CAB members who operate specialty and/or pay television services will file individual responses to PN 2004-45, commenting on the extent to which one or both of the proposed services may be considered competitive with a licensed Canadian specialty or pay service.
6. In this submission, the CAB wishes to comment on certain other matters directly related to the Commission's determination as to whether these services should be authorized for distribution in Canada.
7. First, the CAB notes that in Decision CRTC 2000-565 the Commission approved an application by Global Television for a Category 2 specialty service to be known as Fox News Canada. Subsequently, Fox News stated in a letter dated March 31, 2004 that it does not intend to proceed with the implementation of that service.
8. The CAB is concerned that approval of the current request by the CCTA for the addition of Fox News would create a precedent that encourages non-Canadian broadcasters to forgo partnerships with Canadian broadcasters, in favour of direct market entry by way of inclusion on the lists of eligible satellite services.
9. The CAB maintains that the best way of bringing increased choice of foreign programming to the Canadian system is to encourage partnerships between non-Canadian services and Canadian broadcasters, to ensure that such services make the greatest possible contribution to the system.
10. To that end, the CAB submits that the Commission should not reward a non-Canadian programming service that has forgone its joint-venture with a Canadian broadcaster, in favour of pursuing a direct market entry approach in which it would carry no Canadian content and provide no tangible benefits to the system.
11. Second, the CAB notes that the NFL Network is positioned as a lifestyle and entertainment service, as opposed to a live sports service. In this regard, the CAB notes the CCTA's statement in paragraph 2 of its submission that "NFL Network will not be carrying live NFL games other than some exhibition games and NFL Europe League games not currently offered by existing Canadian broadcasters."
12. The CAB considers this to be an important commitment on the part of the proposed service, considering that numerous Canadian broadcasters hold the Canadian rights to broadcast NFL games. Any departure from this commitment would render the proposed service competitive with Canadian broadcasters, including specialty and pay services, that hold the rights to broadcast NFL games in Canada.

13. Moreover, the CAB submits that the NFL Network's commitment not to carry NFL games should be extended to also include any football games originating in Canada (e.g. CFL games), since this would also render the NFL Network competitive with Canadian broadcasters who hold such rights.
14. Accordingly, should the Commission authorize the distribution of the NFL Network, it should impose one of the following explicit conditions of authorization in respect of the NFL Network's continuing eligibility for distribution in Canada:
 - (i) if the NFL Network broadcasts undergoes a change in format that involves the broadcast of NFL regular season or playoff games or football games originating in Canada, its authorization for distribution in Canada would be discontinued, consistent with existing Commission policy set out in Public Notice CRTC 1997-96¹, or,
 - (ii) the authority for broadcasting distribution undertakings to distribute the service does not include NFL regular season or playoff games or football games originating in Canada and, therefore, any such programming must be deleted from the service before it is distributed in Canada.
15. Furthermore, the continuing eligibility of the NFL Network for distribution in Canada should also be subject to it adhering to the undertaking provided in the CCTA's submission that it does not hold, will not obtain, nor will it exercise, preferential or exclusive programming rights in relation to the distribution of programming in Canada.
16. Finally, the CAB notes that the Commission has recently issued Broadcasting Public Notice 2004-47, a call for comments on a proposal by the CCTA to amend the policy regarding the use of local availabilities. The potential impact of the local availabilities proposal depends in large part on the total inventory of local availabilities on all non-Canadian programming services distributed in Canada, and a realistic assessment of that impact is compromised by concurrent proposals that would have the effect of increasing the total inventory of local availabilities.
17. Accordingly, the CAB submits that is premature to consider the inclusion of non-Canadian services on the lists of eligible satellite services at a time when the policy respecting the use of local availabilities on such services is under review.

¹ In Public Notice CRTC 1997-96, paragraph 30, the Commission stated that it will consider the removal of existing non-Canadian services from the lists if they undergo a change in format so as to become competitive with a Canadian pay or specialty service.

18. The CAB appreciates the opportunity to participate in this proceeding.

Yours sincerely,

A handwritten signature in cursive script that reads "Wayne Charman".

Wayne Charman
Senior Vice-President
Television, Specialty & Pay Services and New Technologies

cc: CCTA (via fax: 613-232-2137)

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