



Canadian
Association of
Broadcasters

L'Association
canadienne des
radiodiffuseurs

February 2, 2004

VIA E-MAIL and FAX

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

Dear Ms. Rhéaume:

Re: Broadcasting Public Notice CRTC 2003-67: Call for comments on proposals for the addition of non-Canadian satellite services to the list of services eligible for digital distribution

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 this intervention concerning Broadcasting Public Notice CRTC 2003-67 (PN 2003-67).
2. In PN 2003-67 the Commission calls for comments on proposals to add two non-Canadian services, Bloomberg Television and MSNBC, to the list of services eligible for digital distribution. Bloomberg Television has been proposed by Shaw Communications Inc. (Shaw) as an alternative to its authorized Category 2 service Bloomberg Television Canada, which it does not intend to launch. Similarly, Rogers Cable Inc.¹ (Rogers) and Shaw have proposed the addition of MSNBC to the list of services eligible for digital distribution as a replacement for the licensed Category 2 service MSNBC Canada, whose operation would be discontinued.

¹ Although PN 2003-67 refers to Rogers Broadcasting Limited, the documentation on the public file indicates that Rogers Cable Inc. is the co-sponsor of MSNBC.

3. The CAB **opposes** these requests based on two fundamental concerns. First, the proposed non-Canadian satellite services would be totally or partially competitive with existing Canadian specialty services. Second, approval of these applications would create a precedent that could be exploited in the future to circumvent the Commission's policies regarding the addition of non-Canadian services to the lists of eligible satellite services.

These services would compete with existing Canadian specialty services

4. As stated in PN 2003-67, the Commission intends to assess these requests in the context of its general policy precluding the addition of non-Canadian services that can be considered either totally or partially competitive with Canadian specialty or pay television services.
5. The Commission has consistently maintained and enforced this policy for 20 years, ensuring that only those non-Canadian services that contribute to the diversity of the Canadian broadcasting system without adversely affecting the development of Canadian specialty and pay services are permitted to be added to the lists of eligible satellite services.
6. The CAB strongly endorses the Commission's stated intention to assess the current requests in the context of its established policies pertaining to the authorization of non-Canadian services for distribution in Canada.
7. It is important to note that the test for the addition of non-Canadian services is a much more stringent one than the test for determining whether a proposed Category 2 service is competitive with existing specialty or pay services. As set out in the licensing framework for digital services, a Category 2 service must not be **directly** competitive with an **analog specialty or pay service or a Category 1 service**. Non-Canadian services, on the other hand, must not be either **totally or partially** competitive with any Canadian specialty or pay service approved by the Commission, **including all Category 1 or Category 2 services** approved by the Commission.
8. Accordingly, the fact that the Commission may have previously approved a Category 2 service in a particular genre cannot be used as a precedent for the authorization of a non-Canadian service in that genre, even where the licence for the Category 2 service is surrendered. Each non-Canadian service must be assessed on its particular facts, based on the more stringent policy applicable to such services.
9. In this regard, the CAB submits that the proposed services should not be approved for addition to the lists of services eligible for digital distribution as they would be, at a minimum, partially competitive with a number of existing Canadian specialty services. These include ROB TV in the case of Bloomberg Television, and CTV Newsnet in the case of MSNBC. Approval of these requests would be contrary to the objectives of the Canadian broadcasting system, to the detriment of licensed broadcasters and to the system itself. The result could be a lessening of Canadian voices and perspectives in the coverage of news and financial matters, given the fragile economics associated with these genres.

10. The CAB understands that the licensees of Canadian specialty services with which Bloomberg and/or MSNBC are totally or partially competitive will make individual submissions regarding the addition of the proposed non-Canadian services.
11. On these grounds alone, the CAB submits that the requests to add Bloomberg Television and MSNBC should be denied.

Approval of these requests would create a precedent for circumvention of the Commission's normal approval process with respect to the addition of non-Canadian services to the lists of eligible satellite services.

12. These requests are predicated on the notion that Bloomberg Television and MSNBC should be authorized to effectively and "seamlessly" replace genre-equivalent Category 2 digital specialty services that have been deemed unviable by their respective owners.
13. The CAB submits that approval of these requests on this basis would create an environment in which any licensee of a Category 2 digital specialty service could effectively circumvent the Commission's normal approval process for the addition of non-Canadian services to the lists of eligible satellite services by alleging that the continued operation of its Category 2 service could no longer be sustained, and that the only alternative would be to import a foreign service in an equivalent format to ensure continuity of service.
14. Such an outcome could encourage applications for Category 2 digital services in specific genres that are motivated more by the desire to "book mark" those genres in order to preempt future opposition to the addition of non-Canadian services operating in those same genres. The CAB submits that the potential for abuse of such an approach, particularly in view of the Commission's policy permitting broadcasting distribution undertakings (BDUs) to hold specialty licences, is further justification for the denial of the current requests to add Bloomberg Television and MSNBC.
15. In view of the very serious concerns raised by the current applications, the Commission must continue to maintain and rigorously enforce its existing policy framework for the authorization of non-Canadian services.
16. Furthermore, to address the issues raised by these types of applications, the CAB recommends that the Commission strengthen its existing approach by adopting a new practice when considering any request for the authorization of a non-Canadian service that operates in the same genre as a Category 2 service whose licence has been surrendered to the Commission. Specifically, once a Category 2 service has ceased operation or an existing authorization has been terminated, other Canadian parties would have a period of one year to develop and submit applications for a new Canadian service that would operate within the surrendered genre.

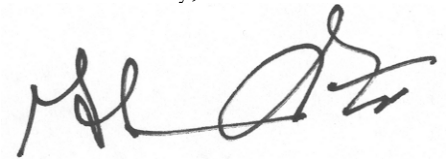
Other considerations

17. Finally, in addition to the concerns discussed above pertaining to the proposals to add Bloomberg Television and MSNBC to the lists of services eligible for digital distribution, the CAB submits that there are further considerations generally applicable in cases where a BDU

elects to discontinue the operation of a Category 2 service it owns. In such cases, the CAB submits that the Commission should ensure, as a general principle, that the spectrum previously allocated to the discontinued Category 2 service should continue to be made available for the distribution of licensed Canadian services as a priority over non-Canadian services.

18. The CAB appreciates the opportunity to provide comments with respect to these applications.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Glenn O'Farrell". The signature is fluid and cursive, with a large loop for the letter 'O'.

Glenn O'Farrell
President & CEO

c.c. Shaw Communications Inc.
Rogers Cable Inc.

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