



June 9, 2004

**Canadian  
Association of  
Broadcasters**

**L'Association  
canadienne des  
radiodiffuseurs**

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

Dear Ms. Rhéaume:

**Re: Broadcasting Public Notice CRTC 2004-31: Application No. 2003-1772-8 by Vidéotron Ltée, CF Câble TV Inc. and Vidéotron (Régional) Ltée**

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 above-noted application by Vidéotron Ltée, CF Câble TV Inc. and Vidéotron (Régional) Ltée (Vidéotron).
2. In this application, Vidéotron has requested Commission authorization to operate and distribute a high-definition (HD) programming service. Vidéotron would create the proposed service by selecting individual HD programs broadcast by various Canadian conventional television stations that are licensed elsewhere in Canada and compiling them on a single HD channel that it would distribute to its subscribers.
3. This application has been filed at a time when the Canadian broadcasting system is still in the early stages of its transition from analog to digital transmission and distribution. In this regard, the CAB applauds the Commission’s initiatives to date in developing a licensing policy and a BDU distribution framework in support of the transition of conventional television stations to digital transmission and the provision of programming in HD format.

4. Having this framework in place has provided certainty and has permitted Canadian conventional broadcasters to begin the transition to digital broadcasting. In the past year, the Commission has approved applications by several broadcasters to operate transitional digital television undertakings, including CHUM Limited in Toronto, CTV Television Inc. in Toronto and Vancouver, TQS inc. in Montréal, Craig Media Inc. in Toronto and Hamilton, Crossroads Television System in Hamilton, the Canadian Broadcasting Corporation (CBC) for its English- and French-language television stations in Toronto and, earlier today, Global Communications Limited in Toronto.
5. Of these stations, CHUM Limited's CITY-TV is broadcasting HD programming over-the-air and CTV Television Inc. is providing HD feeds associated with its stations in Toronto and Vancouver directly to BDUs.
6. Furthermore, Commission decisions are pending with respect to applications for transitional digital television undertakings by Rogers Broadcasting Limited, associated with its television stations in Toronto. The CAB also understands that the CBC has filed applications for transitional digital television undertakings associated with its French-language television station in Montréal and its English-language television stations in Montréal and Vancouver.
7. In addition to the activities undertaken by conventional over-the-air broadcasters, a number of specialty and pay television services have also started to provide HD programming. These include The Movie Network, Viewer's Choice, TSN, Discovery Channel and Sportsnet. The CAB encourages all BDUs to work with these services to ensure that HD programming is made available to their subscribers, further supporting the deployment of digital distribution technology by cable BDUs.
8. The CAB strongly supports the development of a regulatory framework for the provision of HD programming by specialty and pay services so that the transition to digital/HD transmissions for such services can proceed in a more certain environment, as is the case for conventional broadcasters. In this regard we note that the Commission has announced its intention to develop a licensing and BDU distribution policy for the deployment of HD programming by Canadian specialty and pay services, and the CAB looks forward to the launch of this proceeding.
9. Within this broader context, the CAB endorses Vidéotron's goal of making more HD programming from Canadian licensees available to its subscribers. The CAB submits, however, that the current proposal for a BDU-created HD programming service raises a number of fundamental issues that, if not addressed, would in fact harm the ability of Canadian television services to continue their progress towards digital transmission and the provision of HD programming.
10. Accordingly, for the reasons explained in more detail below, the CAB **opposes** this application by Vidéotron.

#### **Use of a broadcaster's programming without consent and compensation**

11. Vidéotron intends to make use of a television station's signal when it broadcasts an HD program, without obtaining the consent of the broadcaster for such use. In effect, Vidéotron

would be expropriating for its own commercial use, without any compensation, HD content for which the originating broadcaster has acquired exclusive broadcast rights.

12. The CAB submits that such “cherry picking” of selected programs from a broadcaster’s over-the-air signal for the purpose of creating an entirely new programming service is clearly inappropriate. The Commission’s original DTH licensing framework of 1995 recognized that, even when considering the distribution of the complete unaltered broadcast signal of a distant television station, there had to at least be “no objection” on the part of the originating station. Vidéotron’s proposal goes much further inasmuch as it entails the selection and rebroadcast of individual programs from the schedules of several different stations, but it makes no provision for obtaining the consent of the originating broadcasters for the use of specific portions of their broadcast schedules.
13. The CAB submits that such an approach is fundamentally inequitable and inconsistent with exiting Commission policy. Moreover, a broadcaster’s lack of control over the use of portions of its programming schedule by Vidéotron could have serious implications with respect to program rights, as discussed below.

#### **Infringement of program supply contracts**

14. When two separate HD programs are available from different Canadian television stations during the same time period, Vidéotron proposes to record one of the programs and rebroadcast it at a later time on its HD service. Such a practice is inconsistent with program supply contracts.
15. Typically, such agreements restrict the number of times a given program may be broadcast. Distribution of an HD program by Vidéotron at a later time than broadcast by the originating station would constitute a separate broadcast of that program, potentially putting the broadcaster in breach of its program supply contract.

#### **Future availability of HD program rights**

16. Furthermore, the delayed rebroadcast by Vidéotron of HD programming from Canadian conventional television stations could jeopardize the future availability of programming rights for acquired HD content broadcast by those stations. Rights holders may refuse to sell such rights to television stations who have no control over the rebroadcast of certain programs by Vidéotron.
17. Thus, Vidéotron’s proposed HD service, rather than furthering the development of HD broadcasting in Canada, could in practice act as a deterrent to the detriment of broadcasters, distributors and consumers.

#### **Application is premature**

18. In addition to the issues outlined above, the CAB submits that this application by Vidéotron is premature given that the Commission has not completed the development of HD policy

guidelines for all licensed Canadian programming services. As noted above, the Commission has not yet held a proceeding to consider the licensing and distribution framework for HD programming provided by specialty and pay services.

19. Without a degree of certainty as to the regulatory framework for these services (e.g. access rules) it is impossible to assess the appropriateness of a proposed competing HD service, which the Vidéotron proposal would represent, and its potential impact on the HD services of licensed programming undertakings.
20. The CAB submits that the Commission should complete the development of its licensing and BDU distribution framework for specialty and pay services, before considering any application by a BDU to operate its own HD service.

### Conclusion

21. For the reasons outlined above, the CAB **opposes** the application by Vidéotron to operate and distribute an HD programming service as proposed. Authorizing Vidéotron to cherry pick HD programming without the consent of the originating broadcasters would create a precedent that could negatively affect the acquisition of HD program rights by Canadian television programming undertakings.
22. The CAB submits that Vidéotron could ensure that its subscribers are able to benefit from the HD experience by seeking Commission authorization to distribute all Canadian HD programming services that are or will become available, in their entirety on separate dedicated channels, as part of Vidéotron's digital service offering. This is the approach adopted by other BDUs, including those who compete directly with Vidéotron. In the CAB's view, it is the best means to promote the continued transition to digital/HD transmissions and is the approach that best serves the interests of all elements of the Canadian broadcasting system.
23. The CAB appreciates the opportunity to provide its comments with respect to this matter.

Yours sincerely,



Wayne Charman  
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