



Canadian
Association of
Broadcasters

L'Association
canadienne des
radiodiffuseurs

May 17, 2004

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

Dear Ms. Rhéaume:

**Re: Broadcasting Public Notice CRTC 2004-14: Distribution of Spike TV –
Call for comments**

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 in response to Broadcasting Public Notice CRTC 2004-14 (PN 2004-14).
2. In PN 2004-14 the Commission issued a call for comments with respect to the distribution of *Spike TV*, a non-Canadian satellite service formerly known as *TNN: The Nashville Network (TNN)* that has undergone changes in ownership, branding and programming so as to become competitive with a number of licensed Canadian specialty programming services.
3. The CAB notes that it filed a comprehensive submission with the Commission on August 15, 2003, in which it outlined the clear policy rationale for the removal of *TNN* from the lists of eligible satellite services and the deletion of *Spike TV* from the channel line-ups of all broadcasting distribution undertakings (BDUs) that distribute it.
4. In that submission, the CAB described how the ownership and format changes of *TNN* have resulted in the creation of a new service, *Spike TV*, that bears no relationship to the original service *TNN* that was authorized for distribution in Canada in 1984.

5. In our August 2003 submission and in earlier correspondence to the Commission, the CAB submitted that *Spike TV* is totally competitive with *Men TV*, an English-language Category 1 specialty television service, and at least partially competitive with several other Canadian specialty services.
6. Furthermore, recent media reports indicate that *Spike TV* has started to place an increased emphasis on sports, with up to 40% of its schedule to be devoted to such programming. Accordingly, in addition to the services noted above, the CAB submits that *Spike TV* is also competitive with those Canadian specialty services that provide sports programming.
7. The Commission's policy, as stated in Public Notice CRTC 1997-96 (PN 1997-96), is that it will not authorize non-Canadian services that can be considered either totally or partially competitive with existing Canadian pay or specialty services, and that it will consider the removal of an existing non-Canadian service from the lists of eligible satellite services if it undergoes a change in format so as to become competitive with a Canadian pay or specialty service.
8. As a new non-Canadian service, *Spike TV* has never been authorized for distribution in Canada. It is clear that, based on an examination of its programming format, it does not meet the Commission's stated test for inclusion on the lists of eligible satellite services because it is competitive with a number of Canadian specialty services.
9. Even if the Commission were to treat *Spike TV* simply as the original *TNN* having undergone a change in format, the Commission's stated policy requires its removal from the lists of eligible satellite services, inasmuch as *Spike TV* is totally competitive, at a minimum, with the Canadian service *Men TV*.
10. The CAB submits that a non-Canadian service such as *TNN/Spike TV* that repeatedly changes its format in order to maximize market share in the United States and, by extension, in Canada cannot reasonably expect to retain its eligibility for carriage in Canada. This is particularly so when the Canadian services with whom the non-Canadian service competes do not have similar flexibility and must make significant additional contributions to the system. To allow this situation to continue would be to accord non-Canadian services preferential treatment in Canada in contravention of the fundamental tenets of the *Broadcasting Act*.
11. For these reasons, the CAB reiterates the position outlined in its August 2003 submission that failure by the Commission to remove *TNN* from the lists of eligible satellite services and to direct BDUs to remove *Spike TV* from their channel line-ups would compromise the integrity of the Commission's long-standing policies with respect to the authorization of non-Canadian services for distribution in Canada. It would send a clear signal to all non-Canadian services that they need not fear the consequences of radically altering their programming formats or acquiring exclusive rights for the exhibition of programs in Canada, actions that could have potentially disastrous impacts on Canadian services.

12. Moreover, as noted in the CAB's August 2003 submission, the current situation is wholly attributable to actions undertaken by the owner of *Spike TV*, actions that were undertaken in full knowledge of the potential consequences for the distribution of *TNN/Spike TV* in Canada under the Commission's policies. The format changes took place **after** the Commission approved the various Canadian services with which *Spike TV* competes. Thus, there is no validity to the suggestion that the Commission would be acting arbitrarily or unreasonably in removing *TNN* from the lists of eligible satellite services and requiring BDUs to discontinue the distribution of *Spike TV*.
13. In paragraph 10 of PN 2004-14, the Commission refers to one element of its policy on the treatment of non-Canadian satellite services, initially set out in Broadcasting Public Notice 1993-74 *Structural Public Hearing* (PN 1993-74), as follows:

(as) an additional option for dealing with non-Canadian services that undergo a change in programming format so as to become competitive with a Canadian pay or specialty service...the Commission may, on a case-by-case basis, place such a service on Section B of the Part II list, for linkage exclusively with Canadian pay television services, rather than delete it entirely from the Part II list.
14. The CAB respectfully notes, however, that the actual policy, as stated in PN 1993-74, is that "...where a non-Canadian service on the Part II list becomes **partially** competitive with a Canadian specialty or pay service, the Commission may, on a case-by-case basis, place the service on Section B of the Part II list, for linkage exclusively with Canadian pay television services, rather than delete it entirely from the Part II list." (emphasis added)
15. As the CAB noted in its August 2003 submission, the Commission's consideration of the potential remedies to address the *Spike TV* issue should be guided in the first instance by the fact that *Spike TV* is totally competitive with *Men TV*. As such, the placement of *Spike TV* on Section B of the Part II list of eligible satellite services would be inconsistent with the policy set out in PN 1993-74.
16. Moreover, as noted above and discussed in our August 2003 submission, the CAB submits that *Spike TV* should properly be treated as a new service that has never been considered for inclusion on the lists of eligible satellite services, rather than an existing service on the lists that has simply changed format. As such, the appropriate test to apply would be the policy set out in PN 1997-96 that the Commission will not authorize non-Canadian services that can be considered either totally or partially competitive with existing Canadian pay or specialty services.
17. Finally, the CAB notes that the Commission has invited comments on what actions would be appropriate should the Commission determine that *Spike TV* is wholly or partially competitive with one or more Canadian pay or specialty services, and/or that the current authorization to distribute *TNN* in Canada does not extend to *Spike TV*.
18. In this regard, the CAB expects that comments from some parties in response to PN 2004-14 will contain proposals that, if adopted, would significantly alter the Commission's policy with respect to the authorization of non-Canadian services for distribution in Canada. Such proposals could involve restrictions or conditions on the distribution and packaging of *Spike TV* in an attempt to mitigate its impact on Canadian services with which it competes.

19. The CAB submits that *Spike TV*, as a “repeat offender” that has constantly changed formats over the past three or four years in search of increased audiences, should not be granted the privilege of distribution on Canadian BDUs, no matter what restrictions or limitations might be considered. A review of *Spike TV*'s track record over the past few years suggests that there is a strong likelihood of future format changes, leading to new challenges the Commission's policies and serving to further undermine the Canadian broadcasting system.
20. Given the importance precedent-setting nature of any new proposals advocating the continued distribution of *Spike TV* in Canada under new arrangements, **the CAB strongly urges the Commission to institute a reply phase to these proceedings to allow for full consideration of the impacts of such proposals.**
21. The CAB appreciates the opportunity to submit these comments, and looks forward to participating in a follow-up phase to this proceeding with respect to any new policy proposals submitted by other parties.

Yours sincerely,



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

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