



Canadian
Association of
Broadcasters

L'Association
canadienne des
radiodiffuseurs

October 7, 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 2004-46 – Channel placement of certain services whose national distribution has been required pursuant to section 9(1)(h) of the *Broadcasting Act* - Call for comments on tools to promote and improve the visibility of these services

Introduction

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 services – is pleased to provide these comments in response to Broadcasting Public Notice CRTC 2004-46 *Channel placement of certain services whose national distribution has been required pursuant to section 9(1)(h) of the Broadcasting Act – call for comments on tools to promote and improve the visibility of these services* (PN 2004-46).
2. The CAB has recently filed a number of submissions that deal with the commercial arrangements between broadcasting distribution undertakings (BDUs) and programming services. These include comments with respect to Broadcasting Public Notice CRTC 2004-64 *Call for comments on possible requirements for the provision of notice to programming services by distributors of their plans to change packages* (PN 2004-64) and Broadcasting Public Notice CRTC 2004-47 *Proposal by the Canadian Cable Television Association to amend the policy regarding the use of local availabilities – Call for comments* (PN 2004-47).

3. In its response to PN 2004-64, the CAB has proposed measures to address the imbalance in the relative negotiating positions of BDUs and programmers. In its response to PN 2004-47, the CAB has opposed the CCTA's request to allow cable BDUs to use the local availabilities in U.S. satellite services to sell commercial advertising.
4. With respect to those services whose national distribution has been required pursuant to section 9(1)(h) of the *Broadcasting Act* (the 9(1)(h) services), the CAB agrees that it is important to identify measures that would improve the visibility of such services. In particular, the CAB submits that there is a need for BDUs to make additional efforts to ensure that these services are able to play the important roles reflected in the Commission's decisions to accord them mandatory carriage by BDUs.

Background

5. The 1991 *Broadcasting Act* (the Act) introduced an explicit new power for the Commission as outlined in section 9(1)(h): “[the] Commission may, in furtherance of its objectives... require any licensee who is authorized to carry on a distribution undertaking to carry on such terms and conditions as the Commission deems appropriate, programming services specified by the Commission.”
6. To date the Commission has issued distribution orders requiring the carriage of four 9(1)(h) services: the Aboriginal People's Television Network (APTN), the Cable Public Affairs Channel (CPAC), TVA and Voiceprint. In each case, the Decision that accompanied the distribution order outlined the public policy rationale that led the Commission to require the national distribution of each service, based on section 3 of the Act, *Broadcasting Policy for Canada*.
7. In Broadcasting Public Notice CRTC 2002-49 *Call for comments on the channel placement of services whose distribution has been required pursuant to section 9(1)(h) of the Broadcasting Act* (PN 2002-49), the Commission called for comments as to whether it should establish rules for the analog channel placement of 9(1)(h) services.
8. In its response to PN 2002-49, the CAB recommended that the Commission should not establish new regulations respecting the specific channel placement of the services in question, but rather that it should continue to address specific concerns with regard to the distribution of any licensed Canadian programming service on a case-by-case basis.
9. The CAB further suggested that, rather than create channel placement rules for 9(1)(h) services, a more appropriate approach would be to ensure that cable subscribers are aware of the availability of these services and where they are located on the dial. At the same time, the CAB noted that the Commission should expect distributors to act in a manner consistent with not only the provisions of detailed regulations, but also consistent with the general spirit and intent of the policy objectives of the Act.

10. In PN 2004-46, the Commission concluded that it was not prepared to adopt specific requirements for analog channel placement. Instead, it decided that the objectives of the Act could more appropriately be achieved by increasing the visibility of the services through improved promotion, by both the services and by distributors.

The CAB's Approach

11. The CAB believes that BDUs must take greater responsibility for the promotion and marketing of all programming services, particularly in the context of their increasing profitability. The 2003 statistical and financial data published by the Commission for the cable industry (all services) clearly indicate the industry's increasing profitability over the past few years:
 - Total revenue – \$4.2 billion, up 16% from 2001
 - Operating income – \$1.7 billion, up 23% from 2001
 - PBIT – \$695 million, up 24% from 2001
 - Pre-tax profit – \$225 million, up from a loss of \$107 million in 2001
 - Operating margin – 41%, up from 38.7% in 2001
 - PBIT margin – 16.7%, up from 15.6% in 2001
 - Pre-tax margin – 5.4%, up from -3% in 2001
 - Return on average net fixed assets – 13.1%, up from 11.8% in 2001.
12. In its comments respecting PN 2004-47, the CAB is strongly urging the Commission to continue to require BDUs to set aside 75% of the local availabilities in non-Canadian satellite services for the promotion and marketing of Canadian programming services. The CAB submits that a further, more targeted and direct use of local availabilities would help ensure that 9(1)(h) services receive the visibility necessary for them to meet the special roles that they are mandated to provide. Specifically, the CAB suggests that a further 5% of the local availabilities be set aside for the promotion of 9(1)(h) services, in addition to the 75% that is currently reserved for the promotion of Canadian programming services under existing Commission policy.
13. As an additional tool, the CAB submits that a very effective means of ensuring greater visibility of the mandatory services is the development and coordination of marketing plans to build upon the use of the local availabilities. The CAB notes that it is often the practice of BDUs when negotiating carriage to require programming services to contribute to marketing of their services. In some cases, this is accomplished by a cash contribution to the BDU's marketing efforts. In a number of other cases, services are requested to provide an outline of their marketing efforts, including the budget attached to these efforts.
14. The CAB considers that similar coordination of effort with respect to the marketing of 9(1)(h) services would achieve higher visibility for those services. A truly coordinated effort that combines the distributor's knowledge of its customer base and its traditional marketing techniques with the programmer's detailed knowledge of its service and the audience it serves would prove an effective and cost-efficient means of raising visibility.

15. Therefore, the CAB recommends that each BDU should be required to develop a marketing plan for the 9(1)(h) services. This plan would address the use of the local availabilities for promoting the 9(1)(h) services, provide commitments with regard to the use of channel listing services/EPGs, bill stuffers and barker and community channels, and describe other targeted marketing and communication vehicles to inform and attract key audiences. Each 9(1)(h) service would be expected to assist in the execution of the plan.
16. The CAB further suggests that each BDU file its 9(1)(h) marketing plan with the Commission on an annual basis, such that the aggregated commitments of BDUs with respect to the promotion of 9(1)(h) services could be reported in the Commission's annual Broadcast Policy Monitoring Report.
17. In the event that a BDU and a 9(1)(h) programming service could not agree on the details and their relative responsibilities under the marketing plan, they could request the Commission's assistance in resolving the dispute.

The CAB's responses to the Commission's questions in PN 2004-46

a) Should the Commission require distributors to dedicate a portion of their local availabilities to the promotion of the mandated services and, if so, should it require that such time be provided without charge to the service provider?

18. The CAB recommends that the Commission require distributors to dedicate a minimum of 5% of their local availabilities for the promotion of the 9(1)(h) services, in addition to the 75% of the local availabilities currently reserved for the promotion of Canadian programming services. The CAB further recommends that these local availabilities be provided to 9(1)(h) services at no charge.
19. The provision of local availabilities for the promotion of 9(1)(h) services would be one element of the BDU-developed, programmer-assisted, annual marketing plan to be filed with the Commission by each BDU.

b) Are there ways to provide distributors with an incentive to use local availabilities or other mechanisms for the promotion of the mandated services?

20. The CAB does not believe that there is any need to provide incentives to BDUs to provide an adequate level of promotion for mandated services. As noted in paragraph 11 of this submission, the cable industry has seen its revenues and profits grow significantly over the past three years. In fact, the profits derived from cable companies' broadcast distribution activities have enabled them to compete in non-broadcast lines of business such as high speed Internet service and to prepare to compete in the local telephone market through Voice over Internet Protocol.
21. The Commission should expect BDUs to make a greater contribution to the promotion and marketing of all Canadian services they distribute, without the need for providing additional incentives. In particular, distributors should develop comprehensive marketing plans in

cooperation with the 9(1)(h) services, as outlined above, and dedicate 5% of local avails to the promotion of 9(1)(h) services at no charge to the services.

c) Should the Commission amend its policies with respect to barker channels and/or community channels to require that a proportion of any time devoted to promotion be dedicated to the mandated services?

22. Promotion of 9(1)(h) services on barker channels and community channels would be an important component of BDUs' marketing plans to raise the visibility of these services. The CAB does not recommend that there be specific requirements for the use of these channels but rather that they be included among the various elements of a multifaceted promotional campaign undertaken by BDUs for the promotion of 9(1)(h) services.

d) Should the Commission require distributors to provide the mandated services with an opportunity to distribute billing inserts, and should these opportunities be made available for free?

23. While the use of various measures, including billing inserts, should be part of the promotional campaigns discussed above, the CAB does not recommend that there be specific requirement of BDUs in this regard.

e) How could the Commission ensure that TV listing channels and/or electronic program guides contribute to the improved visibility of the mandated services?

24. The use of TV listing channels and EPGs would also be part of the promotional campaigns outlined above; however, the CAB does not recommend that there be specific requirements of BDUs in this regard.

f) Should the tools used to promote and improve the visibility of the mandated services depend on the service in question? Specifically, should a commercial service, such as TVA, or a cable-owned service, such as CPAC, be able to access the promotional tools that are the subject of this notice?

25. The CAB believes that the various mechanisms proposed in this submission should be available to all 9(1)(h) services, subject only to the fundamental principle that all 9(1)(h) services not affiliated with a BDU must be treated at least as favourably as any 9(1)(h) service that is BDU-owned or is otherwise affiliated with the BDU.
26. For example, all non-affiliated 9(1)(h) services should have at least as much access to the local availabilities for promotional purposes as any BDU-owned or affiliated 9(1)(h) service. Another example would be a situation where a BDU chooses to place the logos of affiliated services on its channel listing service or EPG. In such cases, similar treatment should be afforded to unaffiliated 9(1)(h) services.

g) Are there any other mechanisms for ensuring the improved visibility of the mandated services?

27. The CAB believes that the most effective way of improving visibility for 9(1)(h) services is through a sustained and focused marketing effort involving both the service itself and the BDU. A combination of the BDU's resources and direct relationship with its subscribers and the 9(1)(h) service's awareness of its audience would create a powerful synergy that would lead to improved visibility of these services.

h) What is the best way to implement these new requirements? For example, should the Commission amend the relevant distribution orders?

28. The CAB recommends that the Commission implement these new requirements by amending the relevant distribution orders.
29. The CAB appreciates the opportunity to submit these comments.

Yours sincerely,

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

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

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