



March 29, 2005

****Via E-Mail****

**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 2005-17: Call for comments on a proposed new approach to the consideration of applications for Canadian third-language ethnic Category 2 pay and specialty services.

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 2005-17 (PN 2005-17).
2. In light of the revised approach to non-Canadian third-language services set out in Broadcasting Public Notice 2004-96 (PN 2004-96), the Commission is seeking comment on whether it may also be appropriate to modify its approach to the consideration of new applications for new Canadian third-language ethnic Category 2 pay and specialty services.
3. Specifically, the Commission is proposing a new approach under which it would no longer assess the potential competitiveness of a proposed third-language Category 2 service with existing services. Under this revised approach, the Commission could approve an application for a new third-language Category 2 service, even though that service would be directly competitive with an existing third-language service that was originally licensed for distribution on an analog basis.

4. The CAB recognizes that the Commission, in proposing this new approach, is seeking to ensure regulatory consistency and equitable treatment between proposed new Canadian and non-Canadian services. The CAB generally is of the view that public policy should not favour foreign business over Canadian business. At the same time, the CAB wishes to register its concern that the proposed new approach represents a move away from the Commission's long-standing policy of not licensing new specialty or pay services that are competitive with existing licensed Canadian services. Accordingly, for the reasons outlined in this submission, the CAB strongly recommends that the Commission not change its current licensing policy, i.e., that it continue to assess the competitiveness of a proposed Category 2 third-language service with an existing Canadian "analog" third-language service, on a case-by-case basis.
5. In light of the circumstances surrounding the Commission's decision to review its licensing criteria for new Category 2 third-language services, the CAB calls on the Commission to confirm that its analysis and determinations with respect to the assessment of requests for new third-language services will not serve as a precedent for future changes to its existing policy of assessing requests for new English or French-language services.

"Analog" third-language services are operating as digital services on most BDUs

6. The CAB notes that the Commission continues to refer to existing Canadian third-language services such as Fairchild Television, Telelatino, Talentvision and Asian Television Network as "analog services."
7. While these services were originally licensed for distribution on an analog basis, the CAB notes that, at present, these services are distributed on a digital basis by most BDUs. Accordingly, any benefits or advantages that these services might have enjoyed in an analog environment (such as increased penetration rates), should not be assumed in light of their current status as *de facto* digital services.
8. The CAB further notes that despite the loss of the benefits associated with analog distribution, these services continue to carry obligations that were designed with the benefits of analog distribution in mind – obligations far greater than those of other Canadian third-language services distributed on a digital basis (i.e. Category 2 third-language services).
9. Moreover, the CAB submits that these "analog" services – which were licensed, and upon which obligations were imposed, on the assumption that they would not be faced with a directly competitive service in their language of operation – already face increased competition from non-Canadian services in the same language, as a result of the Commission's revised approach to non-Canadian third-language services set out in PN 2004-96.
10. It is with this actual environment in mind that the CAB submits its comments with respect to the Commission's proposal to approve new Category 2 third-language

services, even where they might be directly competitive with existing Canadian “analog” third-language services.

The impact of Canadian-based competition is greater than the impact of foreign-based competition

11. In revising its policy for the authorization of general-interest non-Canadian third-language services in PN 2004-96, the Commission imposed certain measures to mitigate the impact of competitive general-interest non-Canadian third-language services, namely the ‘buy-through’ and ‘distributor must-offer’ requirements.
12. Furthermore, non-Canadian third-language services are not authorized to seek advertising revenues in Canada, further limiting their impact on Canadian third-language services, which rely heavily on advertising revenues to meet their Canadian content obligations.
13. The CAB is concerned that if new Category 2 third-language services were licensed without regard to their potential competition with existing Canadian “analog” third-language services, they would be directly competitive for subscription revenues and, unlike non-Canadian services, for advertising revenues as well. Moreover, competitive Canadian services could also compete for programming to be broadcast by their respective services, driving up program acquisition costs.
14. Thus, competitive Category 2 third-language services would have a significantly greater impact on existing Canadian “analog” third-language services than non-Canadian third-language services.
15. The CAB submits that it would be grossly unfair to existing Canadian “analog” third-language services (which were licensed, and upon which obligations were imposed, under a certain set of regulatory guarantees) if the Commission were to approve new Category 2 services that would compete with the existing services in terms of subscription revenues, program supply and advertising revenues, while at the same time being subject to dramatically lower obligations.

The current policy should not be changed

16. Accordingly, **the CAB strongly recommends that the Commission not change its current licensing policy, i.e. that the Commission continue to assess the competitiveness of a proposed Category 2 third-language service with an existing Canadian “analog” third-language service, on a case-by-case basis.**
17. Given that new competitive Category 2 third-language services would have significantly reduced obligations compared to the “analog” third-language services with which they would compete, the CAB submits that the Commission would be putting the integrity of its licensing policy for Canadian third-language services at risk were it to further relax its Category 2 licensing criteria.

18. **The CAB therefore calls on the Commission to reaffirm its support for its ‘one-per-genre’ policy with respect to the licensing of new Category 2 third-language services.**
19. The CAB remains concerned, however, that notwithstanding the potential negative impact of licensing new Category 2 third-language services that compete with the existing services, the Commission may nevertheless determine that it is appropriate to establish a new approach to the licensing of new Category 2 third-language services in the interests of furthering consumer choice. In such a case, the CAB submits that the Commission should impose certain distribution requirements with respect to existing third-language services, to ensure that these existing services are not unduly compromised by the new approach.
20. Specifically, the CAB recommends the following requirements:
 - i. **Buy-through of existing services:** A subscriber to a new, competitive Category 2 third-language service would be required to also subscribe to any Canadian “analog” service operating in the same language as the new, competitive Category 2 third-language service;
 - ii. **Carriage of existing Category 2 service:** A BDU distributing a new, affiliated competitive Category 2 service would be required to also distribute at least one approved/launched unaffiliated Category 2 service operating in the same principal language as the new, competitive Category 2 service. The subscriber would not have to subscribe to the existing Category 2 service in order to receive the new Category 2 service.
21. Furthermore, given that the existing “analog” third-language services would now be distributed on the same basis as digital third-language services, but would continue to carry far heavier Canadian content obligations than digital third-language services, the CAB submits that the Canadian content obligations of a new competitive Category 2 third-language service should generally match those of the “analog” service with which it would compete.
22. In the alternative, the Commission should state its willingness to consider applications from any “analog” third-language service impacted by the entry of a new competitive Category 2 third-language service to make appropriate adjustments to its own Canadian content obligations.
23. The CAB submits that if the Commission places a sufficiently high premium on consumer choice in third-language services that it is willing to contemplate the licensing of new competitive Category 2 services, then it should also be prepared to implement these further measures proposed by the CAB in order to ensure equitable treatment of all Canadian third-language services.

Advertising Issues

24. At present, the Commission generally permits third-language “analog” and Category 2 services to broadcast up to six minutes per hour of local advertising, upon application and approval by the Commission.
25. In PN 2005-17, the Commission seeks comment on the advisability of establishing a general rule that would permit new third-language Category 2 services to broadcast up to six minutes per hour of local advertising.
26. The CAB submits that where the Commission has approved the sale of six minutes per hour of local advertising in the past, it has been in consideration of specific market conditions, and that those conditions may not be present in each and every case. Accordingly, the Commission should continue to require applications for local advertising by third-language services on a case-by-case basis.
27. The CAB appreciates the opportunity to provide its comments in this important proceeding.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Keeble', with a stylized flourish at the end.

David Keeble
Senior Vice-President
Policy and Regulatory Affairs

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