



Canadian
Association of
Broadcasters

L'Association
canadienne des
radiodiffuseurs

80
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April 18, 2006

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

Sent via Email

Dear Ms. Rhéaume:

Re: Broadcasting Public Notice CRTC 2006-41 re the marketing and billing practice known as “account stacking” (PN 2006-41)

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, and specialty, pay and pay-per-view services – is pleased to submit these comments in response to PN 2006-41 concerning the practice of “account stacking”.
2. Account stacking is a marketing and billing practice by which a broadcasting distribution undertaking treats the provision of service to two separate residences owned by the same person as a single subscription. The issue has been raised in the context of a complaint filed by Vidéotron Ltd. against Star Choice Communications Inc.
3. As noted by the Commission in PN 2006-41, the CAB previously submitted comments concerning the practice of account stacking in a February 3, 2006 letter to the Commission. To ensure that the CAB’s previous comments are included in the public record for the current proceeding, a copy of our February 3 letter is included with this submission.
4. In the attached letter, the CAB elaborates on the following reasons why the practice of account stacking should not be permitted by the Commission:

- it is inconsistent with the *Broadcasting Distribution Regulations* and the definition of “subscriber”;
 - it is not contemplated and is not authorized in affiliation agreements between programmers and Star Choice, or generally in affiliation agreements entered into with other distributors;
 - the argument that the provision of a single subscription to two separate dwellings owned by one person should be permitted because such dwellings would not be simultaneously occupied is flawed and founded on faulty logic;
 - account stacking is contrary to the marketing and billing practices of all BDUs other than Star Choice;
 - to allow account stacking would set a precedent with significant potential impact on specialty and pay services; and
 - contrary to the rationale advanced by Star Choice, account stacking does not help licensed broadcasting distribution undertakings compete with black market signal theft activities.
5. For all of these reasons, the CAB urges the Commission to confirm that the practice of providing service to two or more separate residences and counting those residences as a single subscription is inconsistent with the *Broadcasting Distribution Regulations* and is therefore not permitted.

Yours sincerely,



Wayne Charman
Vice-President
Television and Specialty & Pay Services

Enclosure

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February 3, 2006

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

Sent via Email

Dear Ms. Rhéaume:

**Re: Complaint by Vidéotron ltée against Star Choice
Communications Inc.**

1. The Canadian Association of Broadcasters (CAB) is the national voice of Canada's private broadcasters, representing the vast majority of Canadian programming services, including private television and radio stations, and specialty, pay and pay-per-view services.
2. The CAB recently became aware of a complaint dated December 2, 2005 made by Vidéotron ltée (Vidéotron) against Star Choice Communications Inc. (Star Choice), alleging a breach of section 9 of the Broadcasting Distribution Regulations (Regulations) concerning the conferring of an undue preference or disadvantage.
3. The CAB has had an opportunity to review the public file created for this matter, consisting of Vidéotron's December 2, 2005 letter of complaint, Star Choice's response dated December 20, 2005 and Vidéotron's reply comments dated December 22, 2005.
4. In the CAB's view, the Commission's determination in this matter could have a direct material impact on the specialty and pay members of the CAB who receive subscription revenue calculated on a per subscriber basis. Accordingly, the CAB requests that the Commission consider the comments contained in this letter, prior to making a final determination on the Vidéotron complaint.

5. In submitting these comments, the CAB expresses no view on Vidéotron's position that Star Choice has conferred an undue preference on itself and an undue disadvantage on Vidéotron. The CAB does, however, take issue with the underlying matter that has led to this complaint, namely Star Choice's marketing and billing practice of treating the provision of service to two separate residences owned by the same person as a single subscription. In its complaint, Vidéotron refers to this practice as "account stacking".
6. The CAB submits that such a marketing and billing practice is inappropriate and should not be allowed to continue, for several reasons.

Inconsistent with the Regulations and the definition of "subscriber"

7. In the CAB's view, account stacking is inconsistent with the Commission's established regulatory framework for cable and DTH broadcasting distribution undertakings (BDUs). The Regulations define a "subscriber", in a residential context, as follows:

...a household of one or more persons, whether occupying a single-unit dwelling or a unit in a multiple-unit dwelling, to which service is provided directly or indirectly by a licensee...

8. The term "household" used in this definition is commonly understood to consist of a social unit of persons living in the same dwelling. The French-language definition of "abonné", as pointed out by Vidéotron in its submissions, is clear on this point in its reference to "*ménage qui est composé d'une ou de plusieurs personnes occupant un logement unifamilial*".
9. The CAB submits that the Commission's definition of "subscriber" reflects the fundamental criterion that each separate dwelling to which a BDU provides service denotes a unique subscriber, irrespective of the ownership of the dwelling. To permit Star Choice to treat the provision of service to two or more separate dwellings as a single subscription cannot be reconciled with the definition of "subscriber", which is premised on each individual dwelling to which service is provided by a BDU.

No agreement with programmers

10. The interest of the CAB's specialty and pay members in this matter is clear. Where account stacking allows Star Choice to pay a single fee to programming suppliers for what otherwise should be treated as two or more separate and distinct subscriptions, specialty and pay services are deprived of legitimate affiliation payments for those subscribers. This practice was not contemplated and is not authorized in affiliation agreements between programmers and Star Choice, or generally in affiliation agreements entered into with other distributors. In situations where a subscription-based programming service that depends on a monthly wholesale fee does not have a formal affiliation agreement, or where the affiliation agreement does not include specific provisions to the contrary, the term "subscriber" should be defined pursuant to the Regulations.

Founded on faulty logic

11. Star Choice argues that the provision of a single subscription to two separate dwellings owned by one person should be permitted because such dwellings would not be simultaneously occupied. While this may sometimes be the case, the CAB submits that it is impossible for Star Choice to assure programming services or the Commission that unauthorized service is not being provided in all such cases.
12. For example, a person who owns a second residential dwelling could rent it out to tenants, or a cottage-owner could rent or lend it out for blocks of time during the summer. In situations where the second residence is used only by members of the family who own the primary residence, it is possible that both residences could be occupied at the same time by various members of that family. Indeed, it is possible that extended family members beyond one's immediate family would be occupying the second residence, thereby reinforcing the need for this additional residence to be treated as a separate account. Star Choice has no mechanism to control or address such situations.
13. In short, the CAB submits that Star Choice's marketing practice is founded on faulty logic and cannot be justified by relying on the limited set of circumstances argued by Star Choice. Furthermore, the CAB submits that the very fact that Star Choice actively promotes "account stacking" effectively invites abuse by making unauthorized service available in circumstances that cannot be monitored and that clearly should not qualify for such service.

Contrary to marketing and billing practices of all other BDUs

14. The marketing and billing practices of Star Choice in respect of account stacking appear to be contrary to the practices of other satellite and cable distributors throughout North America. Based on contacts with Bell ExpressVu, Direct TV and Echostar, as well as with the National Cable Television Association's Office of Cable Signal Theft, the CAB believes that Star Choice is the only distributor to engage in this unauthorized marketing practice.

A precedent with significant potential impact on specialty and pay services

15. The extent to which Star Choice is engaging in account stacking and the consequent impact on programmers is difficult to assess at this time. To date, Star Choice has made it very difficult if not impossible for the CAB's specialty and pay members to conduct an audit of its books, notwithstanding the audit guidelines outlined by the Commission in Broadcasting Public Notice CRTC 2005-34 *Auditing of distributor subscriber information by programming services*.
16. The CAB is concerned, however, that continuance of this practice has the potential to have a very substantial impact on specialty and pay services. We note, for example, Vidéotron's statement in paragraph 8 of its December 22 reply comments that it would

move to reduce its affiliation payments to programmers if the Commission accepts Star Choice's marketing and billing practices.

17. The CAB submits that legitimizing the account stacking practice, a practice that is inconsistent with the Regulations, in the context of the Vidéotron complaint against Star Choice would set a precedent that would effectively invite other BDUs to adopt similar marketing techniques in the interests of maintaining competitive equity. In this context, it is clear that the resultant cumulative impact on licensed specialty and pay services could become significant.

Does not address black market signal theft

18. Finally, the CAB submits that Star Choice's rationale that it needs this flexibility to compete with unauthorized distributors in fact threatens to undermine the extensive efforts by programmers and other BDUs to curb theft of service. Star Choice cannot legitimize an unauthorized account stacking practice by arguing that it helps it compete with black market dish activity. Theft is theft, and the CAB submits that the way to compete with "free" unauthorized services is not by depriving Canadian specialty and pay services of revenues related to secondary residences.
19. Moreover the Commission has already accorded Star Choice considerable regulatory flexibility in order to foster competition with incumbent cable distributors. There is no basis to accord them this additional unauthorized flexibility.
20. For all of these reasons, the CAB urges the Commission, in making a determination on Vidéotron's complaint against Star Choice, to confirm that **the practice of providing service to two or more separate residences and counting those residences as a single subscriber is inconsistent with the Regulations and is therefore not permitted.**
21. That CAB appreciates the opportunity to submit these comments in this proceeding.

Yours sincerely



David Keeble
Senior Vice-President
Policy and Regulatory Affairs

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