



Canadian  
Association of  
Broadcasters

L'Association  
canadienne des  
radiodiffuseurs

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June 23, 2006

*Sent via email*

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

Dear Ms. Rhéaume:

**Re: Broadcasting Public Notice CRTC 2006-63, Item 10 - Application No. 2006-0497-7, by Novus Entertainment Inc. to amend the licence of its cable distribution undertaking serving Vancouver.**

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 this intervention concerning the above-noted application.
2. The CAB has reviewed the public file pertaining to this application, including: (i) the March 24, 2006 complaint by Shaw Communications Inc. (Shaw) against Novus Entertainment Inc (Novus), (ii) the April 19, 2006 response to that complaint by Novus, (iii) the April 26, 2006 reply from Shaw and (iv) Novus’s April 26, 2006 application to amend the licence of its Class 1 cable distribution undertaking, in relation to the above-noted correspondence.

**Novus’s basic service is currently in violation of several key provisions of the Broadcasting Distribution Regulations**

3. Based on the record of this proceeding, the CAB agrees with Shaw that, by offering non-Canadian services from the list of Part 2 eligible satellite services as part of its basic service, Novus is currently in violation of paragraph 7 of the Distribution and Linkage rules for Class 1 Class 2

licensees<sup>1</sup>, incorporated by reference into section 20(1) of the Broadcasting Distribution Regulations (BD Regulations).

4. The CAB notes that Novus has confirmed that it is currently in violation of this section of the BD Regulations, and that in its application, Novus is requesting a licence amendment to authorize the distribution of certain non-Canadian services from the list of Part 2 eligible satellite services, as an exception to the normal requirements of the Distribution and Linkage Rules.

**Novus has provided no compelling reason why exceptions to the BD Regulations should be granted with respect to the offering of Part 2 eligible satellite services on its basic service**

5. In its application, Novus submits that bringing its basic service into compliance with the BD Regulations would be detrimental to its subscribers. Novus also notes that its affiliation agreement with CNBC requires it to carry CNBC as part of the basic service. The CAB submits that these are not compelling reasons to approve Novus's request.
6. First, the CAB submits that Novus's subscribers would in fact benefit from having the choice of a smaller, more affordable basic service that complies with the BD Regulations, and a discretionary 'extended basic' package that may include Part 2 eligible satellite services. By offering its subscribers the option of subscribing to the non-Canadian services in question, Novus would be enhancing consumer choice, not harming it. Conversely, by requiring its subscribers to pay for these services as part of their basic offering, Novus restricts the ability of its consumers to choose a combination of programming services better suited to their needs.
7. Second, the CAB submits that it is incumbent on all stakeholders in the broadcasting system to ensure that any and all commercial agreements are made in full compliance with the existing legislative and regulatory framework. Accordingly, the CAB submits that Novus's agreement to distribute CNBC as part of the basic service should not be a factor in the Commission's consideration of Novus's request for exceptions to the BD Regulations. Indeed, it is Novus's responsibility, as the licensee of a broadcasting distribution undertaking, to ensure that its commercial agreements are in compliance with the regulatory framework. No stakeholder should reasonably expect the Commission to grant special treatment to accommodate commercial agreements that contravene the existing regulatory framework.
8. Accordingly, the CAB submits that the Commission should **deny** Novus's request for authority to distribute, as part of the basic service, non-Canadian services from the list of Part 2 eligible satellite services.

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<sup>1</sup> Most recently set out in Public Notice CRTC 2005-119, December 14, 2005.

**The distribution of distant Canadian signals and a 2<sup>nd</sup> set of US 4+1 signals**

9. Finally, the CAB also notes that Novus has requested authority to distribute, on a discretionary basis and as part of its digital service offering, a second set of US 4+1 signals, and distant Canadian signals from the list of Part 3 eligible satellite services. The CAB has no objection to this request, provided that the distribution of these signals is subject to the non-simultaneous program deletion requirements set out in section 43 of the BD Regulations.
10. The CAB appreciates the opportunity to participate in this proceeding.

Sincerely,



David Keeble  
Senior Vice-President  
Policy and Regulatory Affairs

- c.c. Donna L. Robertson, Co-President and Chief Legal Officer, Novus Entertainment Inc.  
CAB Television Board of Directors  
CAB Specialty and Pay Board of Directors  
CAB BDU Policy Committee  
CAB Specialty and Pay Regulatory Committee

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