



Canadian
Association of
Broadcasters

L'Association
canadienne des
radiodiffuseurs

80
YEARS • ANS
1926 • 2006

March 17, 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 2006-17 – Application No. 2005-1585-1 by Bragg Communications Incorporated (Bragg) to amend its condition of licence relating to the use of the local availabilities

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 by Bragg Communications Incorporated, on behalf of its wholly owned cable subsidiaries carrying on business as Eastlink, to amend the condition of licence relating to the use of the local availabilities of non-Canadian programming services (the “local avails”).
2. The proposed amendment would allow Eastlink to promote non-programming services, including its telephone and Internet services, and bundles that include these non-programming services, within the 25% portion of the local avails currently used to promote discretionary programming services and packages, customer service information, channel realignments, cable FM service and additional cable outlets.
3. The CAB notes that this application is similar to applications by Rogers Cable Communications Inc. (Rogers) and by Shaw Communications Inc. (Shaw) respecting the use of the local avails, for which the Commission invited comment in Broadcasting Public Notice CRTC 2005-102.

4. As noted in its intervention dated December 21, 2005 concerning the Rogers and Shaw applications, the CAB does not oppose, in principle, providing a reasonable degree of flexibility to broadcasting distribution undertakings (BDUs) to promote their Internet and telephony services. The CAB believes, however, that such flexibility should not detract from the willingness and the ability of those BDUs to meet their ongoing obligations respecting the promotion of Canadian programming services within the local avails.
5. Accordingly, the CAB is prepared to offer **qualified support** for the Eastlink application, provided that the following matters are satisfactorily addressed.

(i) Authorize only Eastlink's Internet and telephony services

6. The CAB submits that the language of the condition of licence authorizing the use of local avails should be crafted so as to authorize Eastlink to promote only its own Internet and telephony non-programming services, not non-programming services in general and not non-programming services provided by affiliated companies or by other BDUs.
7. This would ensure that the scope of any advertising of non-programming services in the local avails of non-Canadian programming services is limited only to the specific Internet and telephony services provided by Eastlink, consistent with the intent of the application.

(ii) Ensure reasonable opportunities for the continued promotion of discretionary programming services and packages

8. The CAB believes that the Commission should ensure that reasonable opportunities continue to be available for the promotion of discretionary programming services and packages within the 25% portion of the local avails. Specifically, the CAB suggests that an equal split in the time devoted to the promotion of Eastlink's Internet and telephony services on the one hand, and its programming related services on the other hand, would represent an appropriate balance within the 25% portion of the local avails used for that purpose.
9. In practice, this would permit Eastlink to insert up to five thirty-second advertisements for Internet and telephony service in the local avails in any given hour, assuming that ten non-Canadian services are used for this purpose. At the same time, equal time for the promotion of programming services and packages and other programming related services provided by Eastlink would also be available within the 25% portion of the local avails.

10. The CAB further suggests that the Commission promote equitable scheduling of promotional messages for programming related and non-programming services in all time periods throughout the broadcast day. This is particularly important with respect to digital programming packages and would be of benefit to subscribers, to Eastlink itself and to the Canadian programming services offered in those packages.
11. The principle of equitable scheduling is also important with respect to promotional messages in the 75% portion of the local avails, so that BDUs do not reserve preferred prime time slots solely for promotion of their own services. Accordingly, the CAB urges the Commission to affirm the principle of equitable scheduling throughout the broadcast day with respect to **all** promotional messages in the local avails.

(iii) Clarify policy permitting recovery of direct costs for the use of the local avails

12. In its 1999 TV Policy¹, the Commission stated that "...BDUs may not charge Canadian programming services an amount in excess of **their share of the direct costs** associated with the insertion of promotional material in the local availabilities of foreign satellite services" (emphasis added). This approach was confirmed most recently in the proceeding respecting the promotion of section 9(1)(h) services².
13. The CAB submits that granting flexibility for Eastlink to advertise its Internet and telephony services within the 25% portion of the local avails provides an appropriate opportunity for the Commission to clarify this policy, so that conditions pertaining to the use of the local avails are reasonable and consistent with its intentions.
14. Accordingly, for the reasons outlined in more detail in the CAB's intervention concerning the Rogers and Shaw applications, the CAB requests that the Commission clarify its policy relating to charges for the use of the local avails by confirming that:
 - charges for the use of local avails should be based only on each user's share of the direct costs associated with inserting promotional material and should not include any mark-up, overhead or other charge over and above those direct costs; and
 - programming services should have the right to access the local avails with a minimum purchase of no more than six complete broadcast weeks.

¹ Public Notice CRTC 1999-97 *Building on Success – A Policy Framework for Canadian Television*, paragraph 104.

² Broadcasting Public Notice CRTC 2005-89 *Tools to promote and improve the visibility of services whose national distribution is required pursuant to section 9(1)(b) of the Broadcasting Act*, paragraph 53.

15. Finally, the CAB understands that some BDUs charge a premium for the insertion of promotional material in the local avails during prime time. Consistent with the policy permitting a BDU to charge a programming service no more than its share of the direct costs associated with the insertion of promotional material, the CAB requests that the Commission further confirm that a BDU's rate card for the use of the local avails should be uniform throughout all day parts, with no premium for prime time insertion.
16. Similarly, the CAB submits that a BDU's rate card should also be uniform across the local avails of all non-Canadian programming services in which the BDU inserts promotional material, as the cost of doing the insertions should not vary from service to service.
17. The CAB appreciates the opportunity to submit these comments.

Yours sincerely,

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

Wayne Charman
Vice-President
Television and Specialty & Pay Services

c.c. Bragg Communications Incorporated (By Fax: 902-431-9561)

***** End of document *****