



Canadian
Association of
Broadcasters

L'Association
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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 2006-41-1 re “account stacking” (PN 2006-41-1) – Reply comments of the Canadian Association of Broadcasters (CAB)

1. The CAB is pleased to provide the following reply comments to the submissions filed by other parties concerning the marketing and billing practice known as “account stacking”. In these comments, the CAB addresses a number of points raised by Star Choice Television Network Incorporated (Star Choice), Bell ExpressVu Limited Partnership (ExpressVu), Rogers Cable Communications Inc. (Rogers), Vidéotron ltée (Vidéotron) and the National Broadcast Reading Service Inc. (NBRS).
2. Aside from various procedural concerns raised by Star Choice, which the CAB submits have been appropriately addressed by the Commission in providing for this round of reply comments, Star Choice argues that the practice of account stacking is not precluded by the provisions of the *Broadcasting Distribution Regulations* (Regulations). Star Choice specifically refers to the definition of “subscriber” and concludes that the Regulations permit subscribers to utilize their subscription at two residences owned by the same household.
3. The CAB continues to disagree with such an interpretation. As set out in its previous submission, the CAB maintains that account stacking is inconsistent with the requirements of the Regulations and that the definition of “subscriber” reflects the fundamental criterion that each separate dwelling to which a broadcasting distribution undertaking (BDU) provides service denotes a separate subscriber, irrespective of ownership of the dwelling. The CAB’s interpretation is shared by other parties to this proceeding, including Vidéotron and NBRS.

4. At the same time, the CAB recognizes that the Commission's determination in this proceeding may not turn solely on a narrow interpretation of the definition of "subscriber". There are a number of significant policy considerations as discussed in the CAB's previous submission that argue strongly against the practice of "account stacking". In the CAB's view, many of the comments filed by other parties reinforce the significance of those policy concerns.
5. First, as noted in the CAB's previous submission, the record of this proceeding indicates that the practice of account stacking is contrary to the marketing and billing practices of BDUs other than Star Choice. Vidéotron, Rogers and ExpressVu have all confirmed that they do not engage in such a practice.
6. More importantly, however, the primary concern expressed by the CAB in its previous submission was that legitimizing this practice in the case of Star Choice would set a dangerous precedent that would invite other BDUs to adopt similar marketing techniques in the interests of maintaining competitive equity. The inevitable result would be a reduction in the subscription revenues payable to licensed specialty and pay services, with a potentially significant cumulative impact.
7. This validity of this concern is confirmed in the comments filed by Vidéotron and Rogers.
8. If Star Choice is permitted to continue its account stacking practice, Vidéotron states that it may choose to adopt the same practice and stop remitting affiliation payments to programming services in relation to the secondary subscriptions:

...si le Conseil vient à la conclusion que la pratique commerciale en cause est bel et bien conforme au Règlement, Vidéotron pourrait alors choisir d'offrir ce genre de promotion à sa clientèle future et/ou existante et de ce fait arrêter de payer le second abonnement aux services de programmation le cas échéant. De cette façon, les distributeurs seraient tous sur un pied d'égalité quant à la concurrence.

9. Rogers adopts a similar position:

The only way for Rogers and other BDUs to match SCI in this case would be by reducing the wholesale fees that we pay to programming services, to a level that is equivalent to SCI's effective wholesale fee for each service...

The Commission should seek to put an end to the practice of account stacking by select BDUs, such as SCI, or permit all BDUs to reduce their wholesale fees accordingly.

10. For its part, ExpressVu states that, while it does not currently engage in the practice of account stacking, it or any other BDU should not be prohibited from adopting this practice in the future. ExpressVu does acknowledge, however, that if it were to consider adopting the account stacking practice, it would need to obtain prior contractual permission from Canadian specialty and pay services.

11. The CAB does not agree with ExpressVu's underlying position that the Commission should accept account stacking as a proper marketing and billing practice. The practice is not contemplated and is not authorized in affiliation agreements between programmers and BDUs, and there are some situations where a subscription-based programming service that depends on a monthly wholesale fee does not have a formal affiliation agreement at all. In cases where there is no affiliation agreement, or where an existing agreement does not include specific provisions to the contrary, subscription-based services may be deprived of legitimate affiliation payments with no recourse to the Commission. A clear statement from the Commission prohibiting account stacking is needed to adequately address such situations.
12. Were the Commission ultimately to permit the practice, notwithstanding the opposition of the CAB and several other parties, it would be critical to ensure that, as suggested by ExpressVu, any BDU engaging in such a practice have the prior written consent of all licensed subscription-based programming services that it distributes, whether or not they have formal affiliation agreements.
13. Finally, Star Choice argues that the practice of account stacking, or what it refers to as "second address service", does not harm programmers and that therefore there are no grounds to prohibit the practice. In support of this position, Star Choice argues that "[t]he provision of Star Choice service to two residences owned by one subscriber is premised on the notion that such subscribers do not occupy two residences at once."
14. In practical terms, however, the way in which Star Choice implements second address service does not reflect the underlying premise outlined above. As stated by Star Choice:

The essence of the service is that Star Choice will permit an existing subscriber who presents clear evidence of ownership of a second residence to obtain Star Choice service at that second residence as part of the same subscription.
15. Thus, the only criterion for eligibility for second address service is that the subscriber be able to demonstrate ownership of a second residence, not that such a residence necessarily be the family's vacation property, or even that it be a residence occupied by other members of the same family. This eligibility criterion would, for example, permit an individual who has purchased multiple properties for the purpose of generating rental income to provide all such rental properties with "second address service" on a single subscription, clearly an abuse of the stated intent of the policy. Even where the second residence is a legitimate vacation property, it is entirely possible that it could be rented out to third parties for lengthy periods of time, again contradicting Star Choice's own premise for authorizing the practice.

16. All of this reinforces the point made in the CAB's original submission that Star Choice has no mechanism to control or address such situations. The CAB notes that Rogers raises a similar concern with respect to Star Choice's ability to monitor even the requirement that a single subscriber must own both residences receiving service:

Rogers is concerned about the ability of SCI to accurately confirm that a subscriber is the legitimate owner of both residences. We believe that the potential exists for someone to buy two satellite decoder and antennas and split their monthly fees with a family member, friend or neighbour.

17. In summary, the CAB submits that the account stacking approach practiced by Star Choice is premised on faulty logic, can be subject to abuse, cannot be properly monitored or enforced and, if authorized by the Commission, would set a precedent that would inevitably result in licensed specialty and pay services being deprived of legitimate subscription revenues.
18. For all these reasons, and for the reasons further elaborated in the CAB's original submission, the CAB urges the Commission to confirm that account stacking is not a legitimate marketing and billing practice and must therefore be discontinued.

Yours sincerely,



Wayne Charman
Vice-President
Television and Specialty & Pay Services

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