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Proceeding on the HDTV and YesTV Applications

Notice of Public Hearing CRTC 2007-17

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the Canadian Association of Broadcasters
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(Check against delivery)

GLENN O'FARRELL

Bonjour, Monsieur le Président et membres du Conseil. My name is Glenn O'Farrell, and I am the President and CEO of the Canadian Association of Broadcasters. I am here today with Jay Thomson, the CAB's Vice-President, Regulatory and Policy Affairs; Stephen Armstrong, of Armstrong Consulting; and Wayne Stacey, the CAB's Engineering Advisor. We appreciate the opportunity to appear at this proceeding on behalf of all of the CAB's members, large and small, from across the country.

Mr. Chair and Commissioners, the CAB is strongly opposed to both of these applications. Put simply, we believe these are the wrong applications, for the wrong licences, at the wrong time.

And why do we say the wrong time? Because profitability is at its lowest level ever – well below the 22% PBIT level that has typically characterized markets where new services have been licensed in the past.

The applications themselves have serious deficiencies: HDTV, for example, wants to create a national network that will feed programming from its base in Vancouver to seven other markets across the country, but it hasn't applied for a network licence. It wants priority carriage in eight local markets, but it hasn't proposed any local programming. And it wants national distribution for its over-the-air service, a request that calls into question whether what is being proposed is really an OTA service or a national specialty network.

The YESTVapplication suffers from other serious deficiencies. It has little funding and offers almost no ownership information, and its programming proposal appears to be more appropriate for a community-based undertaking than an OTA licence.

But in addition to the problems with the applications in and of themselves, there are compelling public policy reasons to deny licensing any new conventional services, particularly HD services, at this time:

- First, it's premature in light of the significant regulatory changes underway in the sector. Until the framework has stabilized, it doesn't make sense to add new competitors to the mix.

- Second, the OTA sector is in a perilous financial state. Advertising revenues have been flat since 2003 and profitability has never been lower. This is simply not a sector that can support new entry at this time.

- Third, neither applicant has met the Commission's tests of competitive entry, nor proven demand.

- And finally, these applications won't jumpstart the transition to digital, or bring HD programming into the system any faster than will existing licensees. All they'll do is further fragment audiences and advertising revenues – in a sector that's already in decline.

I'd like to speak now about each of these factors in a little more detail.

<u>It is Premature to Licence any New OTA Services</u>

The CAB believes it is premature to licence any new OTA services given the sweeping changes taking place in the regulatory environment:

- In the Television Policy Decision, the Commission made changes to the advertising limits for OTA broadcasters that will not be fully implemented until September 2009.

- It also decided that analog OTA signals should be shut down in 2011, to speed the transition to digital.

- The Commission is about to embark on a hearing to consider the entire regulatory framework for BDUs and discretionary services, including sweeping changes to the *Broadcasting Distribution Regulations*. These changes will potentially re-define the regulatory position of OTA services within the Canadian broadcasting system.

Each of these issues will potentially have a significant impact on the conventional sector. The CAB strongly believes that private conventional broadcasters must have the time to absorb all of these changes before the Commission considers licensing any new OTA entrants.

<u>The Perilous Financial Condition of the OTA Sector</u>

As the Commission has recognized, these are difficult times for conventional broadcasters. In its Television Policy Decision last May, the Commission noted the challenges of audience fragmentation, technological change, declining viewership, changes in the advertising market, and costs related to the digital transition.[1] Canadian OTA broadcasters aren't alone in this respect: the crisis in conventional television is a world-wide phenomenon. The same challenges exist in Australia, in the United Kingdom, and even in the U.S. But the impact of these factors in Canada really comes home to roost when we look at the numbers.

In the CAB's October submission to Broadcasting Notice of Public Hearing 2007-10 (the BDU Framework Proceeding), we attached a report by Armstrong Consulting, and I'm going to ask Steve Armstrong to talk about some of his findings in that report.

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[1] Broadcasting Decision CRTC 2007-53, *Determinations regarding certain aspects of the regulatory framework for over-the-air television,* 17 May 2007 at para. 12.

STEPHEN ARMSTRONG

Thanks, Glenn.

The CAB Report looked at the financial performance of the conventional sector from 2002 to 2006. Profits before interest and taxes – PBIT – sank from 9.4 percent in 2002, to just over 4 percent in 2006.

The PBIT levels of French-language stations dropped from about 11 to 7 percent. English-language OTA stations declined from 9 to 3.4 percent. And the small market conventional television broadcasters were hardest hit of all. Small market OTA stations faced increasing expenses and decreasing revenues over the period, resulting in an even more precipitous drop in profitability – from 10.6 percent in 2002, to -3.6% in 2006.

Profitability is forecast to decrease even further between now and 2011. The Report projects that PBIT margins for the private conventional OTA sector overall will fall to -6.2% in 2011. Again, the small market stations will fare worst, with PBIT decreasing to -13.2% in 2011.

GLENN O'FARRELL

Thanks Steve. Mr. Chairman, Commissioners, despite HDTV's attempt to camouflage these numbers by presenting a rosy forecast for the broadcasting industry as a whole, the scenario for conventional television is plainly grim.

As a result, we believe that adding two new licensees that would drive up prices for HD programming, further fragment viewership, and compete for the same advertising revenues as existing stations, would have a significant and detrimental impact on the health of the conventional OTA sector.

Jay Thomson will now speak to the test for market entry.

JAY THOMSON

Thanks Glenn.

<u>Neither Applicant Meets the Tests for Competitive Entry or Market Demand</u>

The CAB believes that neither applicant has met – or indeed, even tried to meet – the Commission's traditional test for market entry.

One of the key considerations that the Commission takes into account when considering whether to licence a new OTA station is the impact a new station would have on existing services. [2] The Commission looks at the health and profitability of the market itself, and

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[2] See, for example, Broadcasting Decision CRTC 2004-98, *Competing applications proposing the introduction of new, over-the-air television services at Edmonton and Calgary*, 26 February 2004 at para. 32.

whether the new service is likely to draw audiences and revenues away from existing stations in that market.

In previous situations where the Commission has considered a new OTA application, the market has generally had a PBIT level of almost 22%. But not one of the markets that these applicants propose to serve reaches anywhere near that PBIT level today. In fact, as you'll see from the chart attached to this oral presentation, every market HDTV proposes to serve had single-digit PBIT levels in 2006, except for Edmonton. We don't say that with any particular pride, by the way. We aren't trying to be anti-competitive – just realistic. The system is clearly broken, and adding new competitors at this point isn't going to fix it.

HDTV has stated that it doesn't plan to solicit local advertising revenues and thus will pose no threat to local broadcasters. But we note that HDTV hasn't committed to not <u>accepting</u> local advertising, just to not <u>soliciting</u> it. There's an enormous difference between the two. Moreover, although local advertising is obviously essential to local broadcasters, the majority of the revenues of local OTA broadcasters comes from national advertisers – precisely the market that HDTV wishes to target. Accordingly, we take no comfort whatsoever from HDTV's claim that it will not solicite local advertising.

As to YesTV, it's proposing to operate as a stand-alone entity in the most competitive media market in the country. But this market cannot withstand another new entrant – it hasn't yet absorbed the last one. SUN TV has experienced financial difficulties since it was launched in 2003 as Toronto One. The CAB believes it is not appropriate to licence a new OTA station in the Toronto market when SUN TV is still struggling to find its feet.

Finally, neither HDTV nor YesTV has demonstrated any demand for its proposed service, despite the Commission's requirement that applicants "provide evidence giving clear indication that there is a demand and a market for the station and the proposed service." [3]

WAYNE STACEY

<u>Neither Applicant will "Jumpstart" the Transition to Digital</u>

Both of these applicants say that approval of their applications will jumpstart the transition of the Canadian broadcasting system from analog to digital. But this is disingenuous, for two reasons. First, despite applying for HD licenses, neither applicant appears to be proposing a 100 % true high-definition service. Both applicants have indicated that they would up-convert standard definition programming, during an unspecified portion of their schedule, which in our view doesn't add any new incremental HD programming to the market. Moreover, HDTV, is requesting analog distribution on cable systems, SD digital distribution on cable and DTH systems, as well as HD distribution on both cable and DTH. For its

[3] Broadcasting Public Notice CRTC 2007-62, *Call for Applications for a Broadcasting Licence to Carry on an Over-The-Air Digital / High Definition (HD) Television Programming Undertaking to Serve Locations Across Canada*, 11 June 2007, p. 1.

part, YesTV expects that either its HD or standard definition signals would be distributed on BDUs.

Second, due to supply constraints, these applicants would have no more access to 100% true HD programming than do existing Canadian broadcasters. Our members are aggressively working toward the digital transition date of 2011 and are providing more and more HD content every year. So consumers aren't deprived from receiving HD programming now – and they're getting more every day. Thus, the provision of HD, in and of itself, is not a reason to licence new applicants – especially these ones.

GLENN O'FARRELL

Mr. Chairman, Commissioners, as I said at the outset, these are the wrong applications for the wrong licenses at the wrong time. The OTA sector is in crisis worldwide and Canada is no exception. PBITs are at their lowest levels ever recorded and forecasts for the future are bleak. We are in the midst of sweeping regulatory changes and a mandated transition to digital which, while necessary, is very expensive. All of these factors support our submission that no licenses should be issued at this time, as to do so would only exert further downward pressure on a sector that is already in decline.

We would be pleased to answer any questions you may have.

Figure 1: Profitability of Private Conventional Television Broadcasters by Market, when successful applications for new local television stations were filed and when the HDTV and YES-TV applications were filed

Year	Market	Entrant	Market PBIT
1995	Calgary/Edmonton	Craig	23.2%
1999	Vancouver/Victoria	CHUM	18.3%
2000	Toronto/Hamilton	Craig and Rogers	23.5%
2001	Vancouver/Victoria	Channel M	20.8%
		Average	21.5%
2006	Vancouver/Victoria	HDTV	1.1%
	Calgary	HDTV	9.1%
	Edmonton	HDTV	11.5%
	Winnipeg	HDTV	-2.8%
	Toronto	HDTV/YESTV	4.9%
	Montreal	HDTV	1.1%
	Halifax	HDTV	n.a.

Source: CRTC