



**Canadian  
Association of  
Broadcasters**

**L'Association  
canadienne des  
radiodiffuseurs**

February 28, 2008

*Via Epass*

Mr. Robert A. Morin  
Secretary General  
Canadian Radio-television and  
Telecommunications Commission  
1 Promenade du Portage  
Gatineau, QC K1A 0N2

Dear Mr. Morin:

**Re: Notice of Public Hearing CRTC 2007-17-3:  
Additional information added to the public file re licence  
application by HDTV Networks Incorporated**

1. The Canadian Association of Broadcasters (“CAB”) is pleased to have this opportunity to provide comments regarding the new information which HDTV Networks Incorporated (“HDTV Networks”) added to the public file during the applicant’s Reply comments at the conclusion of the February 12 to 13, 2008 public hearing and on February 19, 2008.

#### **Local Programming**

2. During its Reply comments at the hearing, HDTV Networks offered to amend its application by agreeing to broadcast 2 hours per week of local programming on each of its eight proposed stations, for a total of 16 hours of local programming per week across all its proposed stations.
3. As a number of interveners as well as the Commission highlighted prior to HDTV Networks’ Reply, the applicant was seeking almost all the regulatory benefits of a local over-the-air TV (“OTA”) station in each of its proposed markets without committing to the fundamental regulatory obligation imposed on all such stations, namely local programming. As the CAB and other interveners emphasized, the Commission should consider HDTV Networks’ initial refusal to offer local programming as one of a number of fundamental flaws in its application: it would be contrary to long-standing Commission policy as well as unfair for the Commission to license

HDTV Networks to compete against broadcasters which provide significant local program content and other community services in the markets in which they operate.

4. HDTV Networks' last-minute offer to undertake a small amount of local programming was obviously an attempt to respond to the interveners' and Commission's clear concerns in this respect - concerns we note it was unwilling to address during its initial appearance. The CAB submits, however, that this token gesture does not in any way rehabilitate this flawed aspect of HDTV Networks' application. HDTV Networks' new local programming proposal still pales in comparison to the number of hours of local programming which its competitors are obliged to provide in the major markets the applicant proposes to serve.
5. Moreover, based on the figures HDTV Networks provided in its February 19 letter, its proposed budget for local programming would clearly be insufficient to produce meaningful and appealing programming that would contribute to program diversity in local markets.<sup>1</sup>
6. Accordingly, HDTV Networks' new willingness to undertake a small amount of local programming does not address in any way the local programming concerns which the CAB and others expressed in their interventions.

### **Advertising**

7. Although the CAB's written intervention and oral remarks highlighted our concern that HDTV Networks' commitment not to "solicit" local advertising did not equate to a commitment not to *accept* local advertising, the applicant conspicuously failed to acknowledge or address this concern during its Reply. Accordingly, the CAB remains concerned about the applicant's real local advertising plans and their likely impact on other local broadcasters.
8. In its February 19 letter, HDTV Networks again suggested that its national advertising plans will have no effect on local broadcasters. As the CAB and other interveners emphasized at the hearing, the majority of the revenues of local OTA broadcasters comes from national advertisers.<sup>2</sup> The Commission should not accept HDTV Networks' continued willful blindness on this matter. The applicant's national

---

<sup>1</sup> In paragraph 3 of its February 19 letter, HDTV Networks suggested that it would spend \$1 million/market/year on local programming if required to provide 15 hours of such programming/market/week, which works out to less than \$1300/hour. Assuming this is the same amount it plans to spend per hour in respect of its new 2 hours/market/week offer, it represents an amount that would be insufficient to produce meaningful or appealing local programming.

<sup>2</sup> As Canwest stated in its January 24, 2008 written intervention: "Most importantly, local advertising does not represent the largest piece of the revenue pie for private conventional television broadcasters. In 2006, local time sales represented only 17.1% of total revenues - and this number has fallen since 2002 when it represented 18.4% of total revenues. National time sales, on the other hand, represented 69% of total revenues in 2006 - and this is precisely the revenue source that HDTV hopes to attract." [par. 22].

advertising plans will indeed have a negative effect on the local broadcasters in its proposed markets; it can't credibly continue to suggest otherwise.

### **Market Research**

9. In its February 19 letter, HDTV Networks offered a brief description of its "market research" and indicated that it had provided the Commission with a DVD containing further details. As the applicant's letter confirms, HDTV Networks did not undertake any of the true market research the Commission requires of applicants for new OTA TV licences, such as research which demonstrates the extent to which the proposed service is likely to draw audiences and revenues away from the licensed services already operating in each of the markets the applicant intends to serve.<sup>3</sup> Research which demonstrates the extent to which Canadians buy HD TV sets and what kind of HD programming they like to watch, or would like to see, is not the kind of research the Commission demands.

### **HD is Not a Reason to License**

10. Although perhaps inadvertently, HDTV Networks finally acknowledged during its Reply comments what interveners - even the supporting intervener from Scenario Quebec<sup>4</sup> - had recognized: the fact the applicant intends to broadcast in HD is not in itself a distinguishing characteristic.
11. When asked by the Chair how the fact the applicant would be HD would distinguish its proposed service from the services of other broadcasters, all of which could also be HD by 2011, Mr. Bitove responded:

...we're just trying to get started now to get, you know, a healthy vibrant viewership as soon as possible.<sup>5</sup>
12. Mr. Bitove's colleagues then tried to distinguish HDTV Networks on the basis of its proposed programming approach.
13. These remarks confirm interveners' concerns that the applicant simply seeks to be just another competitor in an already fragile market, and the widely shared belief that the applicant's HD selling point is a red herring which should not influence the Commission's decision.

---

<sup>3</sup> See, for example, Broadcasting Decision CRTC 2004-98.

<sup>4</sup> During its February 12 appearance

<sup>5</sup> Transcript, vol. 2, at 2378

## **Conclusion**

14. The CAB submits that the Commission should not accept HDTV Networks' new token local programming commitment, and should recognize that the applicant's HD plans in themselves do not justify licensing this application. However, even if the Commission were to look favourably on these two aspects of HDTV Networks' application, the CAB emphasizes that all of our other reasons for opposing this application remain: in the CAB's view, this continues to be the wrong application, for the wrong licence, at the wrong time.

Sincerely,

***Original signed by:***

Glenn O'Farrell  
President and CEO

c.c. [HDTV@obelysk.com](mailto:HDTV@obelysk.com)

\*\*\* End of Document \*\*\*