



Canadian Association of Broadcasters
Association canadienne des radiodiffuseurs

June 13, 2008

Via Epass

Mr. Robert A. Morin
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario
K1A 0N2

Dear Mr. Morin:

**Re: Broadcasting Notice of Public Hearing CRTC 2008-6:
Applications (Nos. 20078-0360-3, 2008-0361-0, 2008-0284-4) by High Fidelity HDTV
Inc., on behalf of a company to be incorporated**

1. The Canadian Association of Broadcasters (CAB) is the national voice of Canada's private broadcasters, representing the vast majority of Canadian programming services, including private radio and television stations, networks, specialty, pay and pay-per-view services. The goal of the CAB is to represent and advance the interests of Canada's private broadcasters in the social, cultural and economic fabric of the country.
2. The CAB is pleased to submit these comments in response to the three above-noted applications by High Fidelity HDTV Inc. (High Fidelity) for new Category 2 specialty services.
3. Two of the High Fidelity applications are for general interest movie services (one in SD, one in HD); the other application is for a general interest service providing programming from a variety of genres.
4. The CAB opposes all three applications on the basis that the proposed services would be: (i) inconsistent with the Commission's long-standing definition of "specialty" services; and (ii) competitive with existing pay television and other services, contrary to the Commission's policy with respect to the licensing of Category 2 specialty services.

Not “Specialty” Services

5. The CAB submits that the services for which High Fidelity is seeking Category 2 specialty service licences do not qualify for such licences. As the Commission established long ago, specialty services are narrowcast, niche services rather than the general interest services the applicant proposes.
6. Consistent with its approach since first contemplating the licensing of specialty services¹, the Commission in 1986 defined specialty programming services as “narrowcast services offering thematic or vertical programming, often targeting a specific demography and having a well-defined genre, such as news, sports or music.”² The Commission has relied on this definition for specialty services ever since.³ In fact, in its 2000 public notice announcing its framework policy for new digital pay and specialty services, the Commission stated its expectation that “Category 2 services will include services offering niche programming to particular audiences, services that provide multiple viewing opportunities for particular types of programming and services that repackage existing programming in creative ways.”⁴
7. There can be no suggestion that High Fidelity’s proposed services somehow fit within the Commission’s long-standing definition of a specialty service as a narrowcast, niche service: the applicant itself points out that “[p]ursuant to the respective CRTC licences of all existing Category 1 services and analog pay and specialty services, such services are not general interest services. They are narrowcast or niche-oriented services”.⁵ The applicant then emphasizes that, in contrast (at least with respect to its proposed Canada HD Network), it will offer a “widely-targeted, broadly-based” service. While High Fidelity suggests that this difference should work to its favour, the CAB submits instead that the applicant has clearly admitted that its proposed services do not qualify as Category 2 specialty services and therefore cannot be licensed as such.
8. The CAB is concerned that general interest Category 2 services, with the lower Canadian content obligations required of Category 2 services, would be able to compete unfairly with a wide range of already-licensed services, including general interest over-the-air TV services. Moreover, the licensing of these general interest services could create a precedent for other applicants to seek and be granted similar Category 2 licences to operate general interest services which would add further to the level of unfair competition in the system.

¹ For example, after licensing the first pay TV services, the Commission stated in Decision CRTC 82-240 that it would, in the future, be prepared to explore the introduction of discretionary specialty television services, *designed to appeal to particular audiences with special interests* (emphasis added). Subsequently, when first calling for applications for specialty services (Public Notice CRTC 1983-93), the Commission stated that the new services should “consist of *narrowcast television programming* and be complementary to existing services” (emphasis added).

² Public Notice CRTC 1986-199

³ See, for example, PN CRTC 1994-59.

⁴ Public Notice CRTC 2000-6 at par. 30. To the extent some may argue the last example (re-packaging) opens the door for less narrowcast services, the CAB would point out that the Category 2 designation may be applied to new digital pay TV services as well as specialty services (see par. 33); the references to “niche programming” and “particular types of programming” still clearly apply to new digital specialty services.

⁵ See Canada HD Network application, response to Question 4.9.

Competitive with Existing Services

9. The CAB further maintains that the three proposed applications should be denied as being contrary to the Commission's licensing framework policy for Category 2 services.
10. Pursuant to its digital licensing framework policy, the Commission will not licence a Category 2 service that is directly competitive with an existing pay or specialty service or a new Category 1 service. Notwithstanding High Fidelity's statements to the contrary, its proposed services will be directly competitive with existing licensed pay TV and other services.
11. While High Fidelity states in its applications that no existing services could be considered similar to – and therefore competitive with - its proposed services, this is clearly not the case.
12. As a general interest service, the applicant's proposed Canada HD Network would be free to offer programming of any genre in direct competition with any number of existing analog or Category 1 pay or specialty services, or indeed with licensed OTA television services. In this respect, the CAB notes the applicant's refusal, in response to a deficiency question, to accept conditions of licence typically applied to other Category 2 services which would impose restrictions on the amount of programming it could offer in certain categories. Absent such restrictions, the Canada HD Network service would be the only specialty service with complete freedom to alter its programming at any time to compete with whatever currently-licensed service it may consider most vulnerable. This would be totally contrary to Commission policy.
13. The CAB also notes that Astral has demonstrated in its intervention opposing these applications that the applicant's proposed general interest Diversion HD and Diversion SD movie services would be directly competitive with Astral's movie services, available in both analog and HD.

Conclusion

14. Given that the Commission has defined specialty services so as to exclude the kind of general interest services High Fidelity proposes, and that the applicant has failed to demonstrate, as required, that its proposed services would not be competitive with existing licensed services, the CAB submits that licensing any of the proposed services would be contrary to long-standing Commission policies. Further, the CAB submits that the applicant has failed to provide sufficient justification for the Commission to grant an exception to its policies in this instance. Accordingly, the CAB submits that all three applications should be denied.

Sincerely,

Original signed by

Jay Thomson
Vice-President, Regulatory and Policy

c.c. High Fidelity HDTV (E-mail: davidpatterson@hifihdtv.ca)

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