



**Canadian
Association of
Broadcasters**

**L'Association
canadienne des
radiodiffuseurs**

March 18, 2005

VIA EMAIL

Ms. Diane Rhéaume
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario
K1A 0N2

Dear. Ms. Rhéaume:

Re: Broadcasting Public Notice CRTC 2005-6: Call for applications for a broadcasting licence to carry on a national general interest pay television service

The Canadian Association of Broadcasters (CAB) is writing to express its deep concern with respect to the timing of the above-noted Public Notice calling for applications for a broadcasting licence to provide a national general interest pay television undertaking (the Call).

The Call has been issued at a time when the fundamental rules with respect to the licensing and distribution of digital and high definition (HD) specialty and pay services are under review. In Public Notice CRTC 2005-1, the Commission has called for proposals for a framework to guide the migration of pay and specialty services from analog to a digital distribution environment (the digital migration proceeding). In Public Notice CRTC 2004-58, the Commission has called for comments on a proposed framework for the licensing and distribution of high definition pay and specialty services (the HD framework proceeding). Comments from interested parties are to be filed on April 21 for both of these proceedings.

These two important proceedings are directly relevant to the consideration of applications for new digital pay television services. The Commission's determinations with respect to the digital migration and HD proceedings, taken together, will establish the ground rules going forward for pay and specialty services in a digital distribution environment, precisely the environment in which any new pay services licensed as a result of the Call will be operating.

The CAB is concerned that the pay television applications that are to be considered for licensing in response to the Call will raise a number of critical questions concerning the detailed policy framework that will apply, both to the new applicants and to existing services. In the absence of a final digital migration and HD policy framework, it is difficult to understand how the Commission will be able to properly assess and make decisions on such applications without compromising the integrity of the decisions to be taken in the digital migration and HD framework proceedings.

The CAB submits that the following issues are particularly relevant in this context.

HD content

The Call directs applicants for general interest pay television services to specify the amount of HD programming that would be offered by the proposed service. This is a key issue in the context of the HD framework proceeding, where the Commission has proposed specific thresholds for the amount of HD content on English-language and French-language pay and specialty services that would be required to guarantee carriage by BDUs.

Without a final determination by the Commission as to what the appropriate thresholds should be, the CAB submits that it would be premature for the Commission to consider applications for new digital specialty or pay services that will include HD content in their programming schedule.

Genre protection

The current licensing policy for new digital specialty and pay television services, as stated in paragraph 47 of *Licensing framework policy for new digital pay and specialty services*, Public Notice CRTC 2000-6 (PN 2000-6) is that the Commission "...will not license Category 1 or Category 2 programming services that are directly competitive with existing pay or specialty services". In the Call, however, the Commission notes that, notwithstanding current policy, it could decide to licence a competitive digital pay television service. Furthermore, applicants responding to the call are explicitly requested to address why exceptions, if any, should be made with respect to any relevant aspects of the licensing policy set out in PN 2000-6.

At the same time, in paragraph 34 of Public Notice CRTC 2004-58, the Commission states that "...[pay and specialty] licensees should be given a reasonable period of time to prepare business plans and to apply for HD-transitional licenses. During this period, they will continue to enjoy the genre protection that they currently have." [emphasis added]

The CAB submits that the Commission is sending conflicting messages on this issue. On the one hand, it has stated that it could decide to license competitive pay television services as a result of the Call. On the other hand, its proposed HD framework assures existing pay licensees that they will continue to enjoy the genre protection that they currently have, at least for a reasonable period of time during the transition to HD.

Capacity issues

The capacity limitations of cable BDU undertakings during the transitional period are an important element in the Commission's consideration of the appropriate digital migration and HD policy framework. Indeed, in the HD framework proceeding, the Commission has asked the industry to provide its views on the capacity issue and how the proposed regulatory framework can best address capacity constraints.

New general interest pay television services with guaranteed access rights, if licensed, are likely to impose heavy capacity demands on BDUs because of the large amounts of bandwidth that could be required to accommodate their multiplexed offerings, which would be multiplied if they offer HD programming. The potential licensing of such services would therefore compromise the validity of any capacity analysis that might be provided by participants in the HD framework proceeding. Moreover, by raising the possibility of guaranteed access rights for a certain class of new digital services (i.e., general interest pay services), the Commission is sending further conflicting messages as to how it will balance issues related to BDU access obligations, capacity and competition.

Distribution and linkage rules

In the digital migration proceeding, the Commission has invited parties to submit proposals that envisage less restrictive distribution and linkage rules for the distribution of pay and specialty services on digital cable BDUs. Pay television services that might be licensed as a result of the Call would be subject to the changes in those rules, but applicants would obviously be unable to take this into account when preparing their business plans. Similarly, intervenors would be unable to fully assess the potential impact of new competitive pay television services on existing services, if the underlying rules governing the distribution of such services are subject to change as a result of the other proceedings.

For all of these reasons, the CAB submits that it is premature for the Commission to consider applications for digital pay television services at this time. In the absence of a full understanding of the regulatory framework that will govern the licensing and distribution of those services, neither the applicants for new pay television services nor potential intervenors would be able to make effective analyses and representations to the Commission with respect to the implications of licensing new services.

Accordingly, **the CAB urges the Commission to suspend the current call for pay television applications until such time as it completes the digital migration and HD proceedings and issues its final determinations.** At that time only, the CAB submits that it would be appropriate for the Commission to reactivate the Call and provide potential applicants 90 days to file applications taking into account the new policy framework.

The CAB appreciates the Commission's consideration of this request and looks forward to an early response.

Sincerely,

A handwritten signature in black ink, appearing to read "Glenn O'Farrell". The signature is fluid and cursive, with a large initial "G" and "O".

Glenn O'Farrell
President and CEO

c.c. Specialty and Pay Board

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