FAX TRANSMISSION / TÉLÉCOPIE

CANADIAN CABLE TELEVISION ASSOCIATION
ASSOCIATION CANADIENNE DE TÉLÉVISION PAR CÂBLE
1010 - 360 rue Albert Street
Ottawa, Ontario K1R 7X7
(613) 232-2631 / Fax: (613) 232-2137
Web Site: www.ccta.ca

CCTA

ACTC

Date: November 17, 2003

TO / À: Mr. Nanao Kachi, Broadcasting Policy
Canadian Radio-television and Telecommunications Commission

Fax#: 994-0218

FROM / DE: CCTA

Tel. No. / No de téléphone: (613) 232-2631

Number of page(s) to follow / Nombre de page(s) à suivre: 3

COMMENTS / COMMENTAIRES:

An Application by the CCTA seeking changes in the policy of the Commission with respect to the use of local availabilities on U.S. specialty television services - Deficiency Responses

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Please contact Katherine Clarke at (613) 688-5546 if you experience problems with this transmission.
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CANADIAN CABLE TELEVISION ASSOCIATION
ASSOCIATION CANADIENNE DE TÉLÉVISION PAR CÂBLE

November 17, 2003

Mr. Nanao Kachi
Broadcasting Policy
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario
K1A 0N2

Dear Mr. Kachi:

Re: **An Application by the Canadian Cable Television Association seeking changes in the policy of the Commission with respect to the use of local availabilities on U.S. specialty television services – Deficiency Responses**

In a letter dated November 7, 2003, the Canadian Cable Television Association (CCTA) was requested to provide a complete copy of the CNN/HN affiliation agreement or another affiliation agreement of our choosing to be placed on the public record.

CCTA maintains that affiliation agreements are confidential contracts to which CCTA is not a party and, as such, CCTA does not have the authority to provide a copy of any such agreement for the public record. Moreover, it is the nature of these agreements that an abridged version would be of no material benefit to the Commission's determinations in this proceeding.

However, in an effort to provide as much relevant information to the Commission as possible, CCTA has reviewed the extract from the CNN/HN affiliation agreement that was previously filed (attached for convenience), as well as a complete copy of a separate affiliation agreement containing similar provisions. CCTA confirms that these provisions, which expressly provide the cable system with the contractual right to use the local availabilities, are common to all standard affiliation agreements with U.S. services. Moreover, CCTA confirms that these are the only provisions in the affiliation agreements that address the issue of the use of local availabilities by cable affiliates and any associated restrictions on the use of such availabilities (e.g., prohibition on offensive or adult

Suite 1010 360 rue Albert St. Ottawa Ontario Canada K1R 7X7 Tel: 613 232 2631 Fax: 613 232 2137

advertising). As such, all information within the affiliation agreements that is relevant to this proceeding has already been provided to the Commission.

CCTA trusts that this information is sufficient for the purposes of completing the record on CCTA's application.

Sincerely,

Michael Hennessy

Michael Hennessy
Acting President

Attachment

4. **Use of Services.**

B. Notwithstanding the foregoing and subject to news programming of overriding importance as determined in the sole discretion of ~~CNN LP~~TNS, Inc.:

(i) With respect to CNN, AFFILIATE shall have the right to utilize up to two (2) minutes specifically identified by ~~CNN LP~~TNS, Inc. (in ~~CNN~~TNS, ~~LP~~Inc.'s sole discretion) in each hour of CNN for AFFILIATE's own local promotions and local advertising on all Systems.

(ii) With respect to HN, AFFILIATE shall have the right to utilize:

(a) One (1) minute specifically identified by ~~CNN LP~~TNS, Inc. (in its sole discretion) in each half hour of HN for AFFILIATE's own local advertising and local promotions; or

(b) (1) Until further notice from ~~CNN LP~~TNS, Inc. as set forth herein, six (6) minutes, including no more than one and one half (1.5) minutes for AFFILIATE's own local advertising and local promotions, specifically identified by ~~CNN~~TNS, ~~LP~~Inc. (in its sole discretion) in each half hour of HN which shall be used exclusively for a daily topical locally produced video newscast consisting of certain news, sports, information, business, financial, weather and feature programming derived from locally occurring events of general local interest ("Local Edition"); provided, however, that the right to produce Local Edition shall not be granted to any entity that produces more than eight (8) hours of news per day without the express written consent of ~~CNN~~TNS, ~~LP~~Inc. AFFILIATE shall provide written notice to the Director of News Marketing at the address set forth in Paragraph 21, Notices, identifying the entity to which AFFILIATE has granted the right to provide Local Edition on each System within thirty (30) days of granting such right. Notwithstanding anything to the contrary herein, AFFILIATE shall discontinue cablecasting Local Edition upon one hundred twenty (120) days' notice by ~~CNN~~TNS, ~~LP~~Inc. Upon such notice, this Subparagraph 4.B.(ii)(b) shall be null and void.

(2) Whenever AFFILIATE is cablecasting Local Edition on a System, AFFILIATE shall cause such cablecast to include (x) a video lead-in, furnished by ~~CNN LP~~TNS, Inc., before the "open" of all Local Edition newscasts; (y) a continuous display of the Headline News logo or another method acceptable to ~~CNN~~TNS, ~~LP~~Inc. to identify the on-camera programming as part of Headline News and, in the case of other video programming (including, but not limited to, local weather programming), a joint identification with the local station/producer; and (z) at the conclusion of each Local Edition newscast, a verbal reference, by talent, while on camera, to the resumption of the Headline News cablecast (e.g., "More Headline News will continue in a moment").

(iii) All commercial matter or advertisements that AFFILIATE inserts with a Service shall (a) not be offensive in nature; (b) not suggest an affiliation between ~~CNN LP~~TNS, Inc., any of its partners, their respective parents, subsidiaries, affiliates, a Service, or any programming contained in a Service on the one hand and third party advertisers on the other hand; (c) generally be compatible with the commercial standards of ~~CNN~~TNS, ~~LP~~Inc. including, but not limited to, a prohibition on advertising (1) related to adult entertainment and/or (2) which advocates a position on any political or social issue (except advertisements for legally qualified candidates for public office, which shall comply with applicable laws and regulations), and/or (3) which promotes any video programming service that contains substantially similar content as the Service. Further, AFFILIATE shall not insert any advertisements on the Service from any network that does not allow insertion by the Service on its network.

CANADIAN CABLE TELEVISION ASSOCIATION
ASSOCIATION CANADIENNE DE TÉLÉVISION PAR CÂBLE

November 12, 2003

Mr. Nanao Kachi
Broadcasting Policy
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario
K1A 0N2

Dear Mr. Kachi:

Re: An Application by the Canadian Cable Television Association seeking changes in the policy of the Commission with respect to the use of local availabilities on U.S. specialty television services – Deficiency Responses

In a letter dated November 7, 2003, Commission staff requested that the Canadian Cable Television Association (CCTA) provide a complete copy of the CNN/HN affiliation agreement or another affiliation agreement of our choosing to be placed on the public record. CCTA is not a party to these agreements. CCTA does not have the legal authority to provide a copy of any such agreement for the public record.

Moreover, the specifically requested agreement and other similar affiliation agreements with US services contain non-disclosure clauses that restrict the ability of our members to disclose the substance of these agreements if they are to be placed on the public record.

This request puts the association in a quandary as to how to proceed. Nevertheless, CCTA would like to be of as much assistance as possible to Commission staff so that this application can proceed with little delay.

To help resolve this matter, CCTA requests that the staff deadline for reply be extended and that a meeting be arranged between CCTA and CRTC staff, including legal staff, to examine solutions that could assure the Commission that all information within the affiliation agreements that is relevant to this proceeding has already been provided to the Commission.

Sincerely,

Michael Hennessy

Michael Hennessy
Acting President

cc: Marc O'Sullivan
Nick Ketchum
John Keogh

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

Suite 1010 360 rue Albert St. Ottawa Ontario Canada K1R 7X7 Tel: 613 232 2631 Fax: 613 232 2137

Conseil de la radiodiffusion et des télécommunications canadiennes

Les Terrasses de la Chaudière
1, Promenade du Portage
Hull (Québec)

Canadian Radio-television and Telecommunications Commission

Adresse postale/Mailing Address
Ottawa, Ontario
K1A 0N2

7 November 2003

Mr. Michael Hennessy
Acting President
Canadian Cable Television Association
360 Albert Street
Suite 1010
Ottawa, Ontario K1R 7X7

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580 Hornby St.
Suite 530
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V6C 3B6
(604) 666-2111
TDD: 666-0778
Fax: 666-8322

Winnipeg
275 Portage Av.
Suite 1810
Winnipeg, MB
R3B 2B3
(204) 983-6306
TDD: 983-8274
Fax: 983-6317

Montréal
405, boul. de Maisonneuve est
Suite B2300
Montréal (QC)
(514) 283-6607

Halifax
Metropolitan Place
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Dartmouth, NS
B3A 4S5
(902) 426-7997
TDD: 426-6997
Fax: 426-2721

Toronto
55 St. Clair Av. East
Suite 624
Toronto, ON
(416) 952-9096

Regina
Cornwall Professional Bldg
2125, 11th Avenue
Suite 103
Regina, SK
(306) 780-3422

Edmonton
10405 Jasper Avenue
Suite 520
Edmonton, AB
(780) 495-3224

Re: Application by the CCTA seeking changes to the Commission's policy with respect to the use of local availabilities on U. S. speciality television services.

As attachments to your letter dated 24 October 2003, you submitted letters from U.S. speciality services confirming the arrangements between themselves and Canadian cable companies with respect to the use of local availabilities.

One of the attachments was a fax from Turner Network Sales Inc. which contained an excerpt from their standard CNN/HN affiliation agreement that describes the arrangement regarding local availability use in Canada.

The Commission is seeking a complete copy of the CNN/HN affiliation agreement or another affiliation agreement of your choosing to be placed on the public record. With respect to confidentiality, please feel free to block out any material you deem to be confidential in nature.

The information requested herein should be received at the Commission no later than 12 November 2003. A copy of this letter and your reply will be added to your application.

Should you need further information concerning this application, please do not hesitate to contact me at (819) 997-4700. I can also be reached by telecopier at (819) 997-9393 or by e-mail at nanao.kachi@crtc.gc.ca.

Yours truly,

Nanao Kachi
Broadcasting Policy
CRTC

FAX TRANSMISSION / TÉLÉCOPIE

CANADIAN CABLE TELEVISION ASSOCIATION

ASSOCIATION CANADIENNE DE TÉLÉVISION PAR CÂBLE

1010 - 360 rue Albert Street
Ottawa, Ontario K1R 7X7
(613) 232-2631 / Fax: (613) 232-2137

Friday, October 24, 2003

TO / À: Mr. Nanao Kachi Fax: 819-994-0218

FROM / DE: Mr. Michael Hennessy

Tel. No. / No de téléphone: (613) 688-5554

Number of page(s) to follow / Nombre de page(s) à suivre: 22

COMMENT / COMMENTAIRES:

An Application by the Canadian Cable Television Association seeking changes in the policy of the Commission with respect to the use of local availabilities on U.S. specialty television services – Deficiency Responses

Thank you

Please contact Joeann at 613-688-5554 if you experience any problems with this transmission/Veuillez communiquer avec Joeann au 613-688-5554 si vous éprouvez des difficultés de réception.

CANADIAN CABLE TELEVISION ASSOCIATION
ASSOCIATION CANADIENNE DE TÉLÉVISION PAR CÂBLE

October 24, 2003

Mr. Nanao Kachi
Broadcasting Policy
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario
K1A 0N2

Dear Mr. Kachi:

Re: An Application by the Canadian Cable Television Association seeking changes in the policy of the Commission with respect to the use of local availabilities on U.S. specialty television services – Deficiency Responses

Further to your letter of October 10, 2003, please find attached the responses to the Commission's further questions of clarification respecting the application by the Canadian Cable Television Association (CCTA).

Sincerely,

Michael Hennessy

Michael Hennessy
Acting President

Attachments

Suite 1010 360 rue Albert St. Ottawa Ontario Canada K1R 7X7 Tel: 613 232 2631 Fax: 613 232 2137

1. (A)

Paragraph 32 of CCTA's application filed 28 October 2002, states:

> "Cable television licensees must compensate U.S. specialty television services for their carriage. That compensation includes some consideration for the value that cable operators derive from local availabilities. The opportunity to include commercial advertising material in the local availabilities on U.S. specialty television services would help to offset the fees charged by these U.S. services."

There are a number of factors that are taken into consideration in arriving at appropriate compensation that cable operators provide to specialty services. These factors, including the right to insert local advertising, are not quantified individually so as to demonstrate the precise relationship between the compensation paid and a specific right granted to the cable operator.

In making the statement found at paragraph 32, CCTA was cognizant of the fact that U.S. cable operators have generated more than $2 billion in revenues from local advertising in each of the years 1999 to 2002. (See the <u>Ninth Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming</u>, Federal Communications Commission, Table 4.) The terms of affiliation agreements struck between the U.S. specialty services and Canadian cable operators reflect standard industry practices in the U.S. that are extended to Canada. As a result, the terms generally assume that Canadian cable operators will make similar use of the avails as their U.S. counterparts. The terms are not expected to vary based on any regulatory restrictions that the Canadian cable operators may face.

Regulatory restrictions do not permit Canadian cable operators to generate any significant value through the sale of local advertising on the avails of U.S. specialty services. Notwithstanding these restrictions, the terms of affiliation agreements can still take into account the fact that Canadian cable operators are permitted by the U.S. specialty services to make use of the avails, and as a result, have the <u>potential</u> to generate value through the sale of advertising. Given the duration of some affiliation agreements, the terms of compensation may still reflect the potential value regardless of whether it can be realized by the Canadian cable operators at the time that affiliation agreements are signed.

1. (B)

As indicated in the response to 1. (A), there are a number of factors that are taken into consideration in arriving at appropriate compensation that cable operators provide to specialty services. These factors would take into account the opportunity that cable companies have to derive economic value from avails as part of the revenue generating potential of the service. If Canadian cable operators are able to generate more revenue from the carriage of U.S. services through the sale of avails at market prices, it means actual earnings approach those generally assumed in the terms of the affiliation agreements. There is no reason, therefore, to expect increased compensation payments as a result of this activity.

CCTA submits that, for the reasons noted in response to 1. (A), there is no reason to expect demands for increased compensation from the U.S. services would occur specifically in response to a change in the use of the avails or that subsequent negotiations would result in higher payments. Cable operators make every effort to minimize expense increases, including demands from programmers for greater compensation. It is not CCTA's intent or expectation that the regulatory changes sought in the application could result in a deterioration of the financial position of cable companies.

CCTA submits that the issue of whether compensation may be increased as a result of this application has no bearing on the benefits that the application proposes to provide to the Canadian Television Fund (CTF). As proposed in the amended application filed by CCTA on May 21, 2003, 25 percent of the additional revenues earned from the use of the local avails would be directed to the CTF. The value of the contribution to the CTF depends on the revenues generated, and not the net profit earned. As a result, there would not be any impact on this contribution if the fees paid by the cable operators to the U.S. specialty services increased.

2.

CCTA has obtained information from the U.S. specialty services respecting the nature of the affiliation agreements they have with Canadian cable companies as these pertain to the use of local avails. CCTA has obtained from virtually all of the U.S. specialty services listed in CCTA's application letters or other documentation that confirm the rights of cable operators to use the local avails. Hard copies of these documents are included as Attachments to this submission.

The letters clearly indicate that, under the terms of the affiliation agreements, the U.S. specialty services permit Canadian cable operators to insert two minutes or more of local advertising in each hour of programming on the U.S. specialty services. Included in the documentation is an excerpt from an affiliation agreement for one of the U.S. specialty services (section 4. B). The covering letter to the excerpt indicates that the terms respecting ad avails apply across Canada. CCTA regrets that it was not possible to obtain copies of all of the specific actual affiliation agreements requested, however, the information set out in the letters conveys the relevant terms.

3.

As indicated in the response to 1. (A), there are a number of factors that are taken into consideration in arriving at appropriate compensation that cable operators provide to specialty services. The factors, including the right to insert local advertising, are not quantified individually so as to demonstrate the precise relationship between the compensation paid and a specific right granted to the cable operator. All relevant information respecting the use of local availabilities is indicated in the letters and other documentation provided by the U.S. specialty services.

A&E TELEVISION NETWORKS

October 21, 2003

Mr. Harris D. Boyd
Senior Vice President, Industry Affairs
and Office of Small Systems
Canadian Cable Television Association
Suite 1010
360 Albert Street
Ottawa, ON
K1R 7X7

Re: Local Advertising Avails

Dear Mr. Boyd:

I am writing to confirm that A&E Television Networks, which operates the specialty service A&E Network, is amenable to permitting Canadian cable companies to insert two minutes of local advertising in each hour of A&E Network's programming. This arrangement is customary in the United States, and A&E Television Networks currently permits cable operators to use two minutes in each hour for cross channel promotional purposes.

We look forward to continuing to work with you and the members of the Canadian cable television industry in supporting the Canadian broadcasting system.

Sincerely,

Shelly Blanc-Goodman/MR.B

235 East 45th Street
New York, New York 10017

Telephone: 212.210.1400
Facsimile: 212.210.1308

A&E Network, The History Channel
AETN International, AETN Enterprises
AETN Interactive

Astral Television Networks
BCE Place
181 Bay Street
P.O. Box 787, Suite 100
Toronto, Ontario
M5J 2T3

Tel.: (416) 956-2010
Fax: (416) 956-2018
www.astral.com

Astral Media

October 23, 2003

Mr. Harris Boyd
Sr. VP, Communications
CCTA
360 Albert Street
Suite 1010
Ottawa, Ontario
K1R 7X7

Dear Harris:

Re: Game Show Network (GSN)

Here is the information you requested. As you are aware, Astral Television Networks acts as the exclusive representative for the distribution of Game Show Network to BDU's in Canada.

With regard to Game Show Network's policy for local ad avail insertions on GSN Service, they allow a maximum of two (2) minutes during each hour of the GSN Service.

This, as you are aware, is consistent with the practice of a number of the CRTC US authorized services in Canada.

Regards,

Darrell Atherley
VP, Affiliate Sales & Marketing

DA/rs

Copy: Tom Troy, Game Show Network

October 22, 2003

Mr. Harris D. Boyd
Senior Vice President, Industry Affairs
and Office of Small Systems
Canadian Cable Television Association
Suite 1010
360 Albert Street
Ottawa, ON
K1R 7X7

Re: Local Advertising Avails

Dear Mr. Boyd:

I am writing to confirm that the distribution arrangements between Canadian BDU's and Black Entertainment Television, Inc., which owns and distributes the BET video programming , network, generally grant Canadian cable companies the right to use approximately two (2) minutes per hour on the BET Network for the airing of local advertising, commercials, promotions or announcements that conform with federal, provincial and local statutes or regulations and BET's advertising policies.

These rights are reflected through executed and pending affiliation agreements between our U.S. specialty network and both the relevant cable companies and the Canadian Cable Television Association.

We look forward to continuing to work with you and the members of the Canadian cable television industry in supporting the Canadian broadcasting system.

Sincerely,

Lee Chaffin
SVP, Affiliate Relations

APPROVED
by
BET Legal Dept
Date 12/24/03 Initials

BLACK ENTERTAINMENT TELEVISION
ONE BET PLAZA, 1235 W STREET, N.E., WASHINGTON, DC 20018-1211
TEL: (202) 608-2000 www.BET.com

October 21, 2003

Mr. Harris D. Boyd
Senior Vice President, Industry Affairs
and Office of Small Systems
Canadian Cable Television Association
Suite 1010
360 Albert Street
Ottawa, ON
K1R 7X7

Re: Local Advertising Avails

Dear Mr. Boyd:

I am writing to confirm that Discovery Communications, Inc. which operates The Learning Channel, permits Canadian cable companies to insert two minutes of local advertising in each hour of programming on our specialty service(s) (except for hours of programming that air without ad availabilities). This arrangement is included in affiliation agreements between our specialty networks and cable companies represented by the Canadian Cable Television Association.

We look forward to continuing to work with you and the members of the Canadian cable television industry in supporting the distribution of high-quality programming to Canadian viewers.

Sincerely,

John Risinger
Vice President Sales and Marketing

cc: Bill Goodwyn
Steve Sidel

SPEED CHANNEL™

Fox Sports Net South
1175 Peachtree Street NE
100 Colony Square, Suite 200
Atlanta, Georgia 30361
Phone 404 230 7315 • Cell 404 661 3906
Fax 404 230 7396 • e-mail: hchester@speedtv.com

Hawley T. Chester III
Director of Canadian Affiliates

October 8,2003

RECEIVED
OCT 10 2003

Mr. Harris D. Boyd
Senior Vice President, Industry Affairs
And Office of Small Systems
Canadian Cable Television Association
Suite 1010
360 Albert St.
Ottawa, On
K1R 7X7

Re: Local Advertising Avails

Dear Mr. Boyd:

I am writing to confirm the Fox Cable Networks which operates Speed Channel permits Canadian cable companies to insert at least two minutes of local advertising in each hour of programming on our specialty service. This arrangement is explicitly included in our affiliation agreements between our specialty network and the cable companies represented by the Canadian Cable Television Association.

We look forward to continuing to work with you and the members of the Canadian cable television industry in supporting the Canadian broadcasting system.

Sincerely,

Hawley T Chester III

Hawley T. Chester III
Director, Canadian Cable Sales & Marketing
Speed Channel

Boyd, Harris

From: Jeff Bernth [jbernth@golfchannel.com]
Sent: Wednesday, October 22, 2003 5:19 PM
To: Boyd, Harris
Subject: FW: Local Avails

Harris, below is the exact copy of the email from our legal department saying that this is covered in the affiliation agreement, hope this will help.

Thanks

Jeff Bernth
THE GOLF CHANNEL - **Central Regional Manager**
541 N Fairbanks Suite 2720
Chicago, Illinois 60611 USA
(o) 312-222-5807 ext. 229
(f) 312-222-0028
(c) 312-953-1431
jbernth@golfchannel.com
www.thegolfchannel.com

-----Original Message-----
From: Kate Asher
Sent: Tuesday, October 21, 2003 11:42 AM
To: Jeff Bernth
Subject: RE: Local Avails

We do not do this. It is covered in the Affiliation Agreement.

Kate E. Asher, Esq.
Associate Counsel

The Golf Channel
7580 Commerce Center Drive
Orlando, FL 32819
(407) 355-4005 (P)
(407) 363-7976 (F)
kasher@golfchannel.com (E-mail)

-----Original Message-----
From: Jeff Bernth
Sent: Tuesday, October 21, 2003 11:52 AM
To: Kate Asher
Subject: FW: Local Avails

Kate, please take a look at the attached document from Harris Boyd. He is looking for a letter expressing our agreement that Canadian Cable Companies are allowed 2min of local avails. I spoke with him and he is aware that this is covered in the affiliation agreement but desires a letter of confirmation (he attached a draft of a sample letter). Can you please look at this letter and see if we can come up with a letter to accomodate his request and forward this on to Bill for his approval to be sent out?

Thanks and call with any questions.

Jeff Bernth
THE GOLF CHANNEL - **Central Regional Manager**
541 N Fairbanks Suite 2720
Chicago, Illinois 60611 USA
(o) 312-222-5807 ext. 229
(f) 312-222-0028
(c) 312-953-1431
jbernth@golfchannel.com
www.thegolfchannel.com

-----Original Message-----
From: Boyd, Harris [mailto:boyd@ccta.com]
Sent: Wednesday, October 15, 2003 12:54 PM
To: Jeff Bernth
Subject: FW: Local Avails

-----Original Message-----
From: Boyd, Harris
Sent: Wednesday, October 15, 2003 1:52 PM
To: 'Jeff Bernth'
Subject: Local Avails

I discussed with Angela Walsh the need to provide some confirmation to the CRTC (the Canadian regulator) that Canadian cable companies have the right to use 2 minutes of advertising avails on US specialty services. Attached is a letter explaining this as well as a draft reply. If you would like to discuss please give me a call at 613-688-5556 . Thanks for your assistance.

(c) 312-953-1431

ATTACHMENT 7

October 23, 2003

Mr. Harris D. Boyd
Senior Vice President, Industry Affairs
and Office of Small Systems
Canadian Cable Television Association
Suite 1010
360 Albert Street
Ottawa, ON
K1R 7X7

Re: Local Advertising Avails

Dear Mr. Boyd:

I am writing to confirm that CNBC, Inc, which operates the CNBC cable programming service ("CNBC"), permits Canadian cable companies to insert two minutes of local advertising in each hour of programming on CNBC. This arrangement is explicitly included in affiliation agreements between our specialty networks and cable companies represented by the Canadian Cable Television Association.

We look forward to continuing to work with you and the members of the Canadian cable television industry in supporting the Canadian broadcasting system.

Sincerely,

Sandy Galman
Staff Attorney, NBC Cable Networks

4. Use of Services.

B. Notwithstanding the foregoing and subject to news programming of overriding importance as determined in the sole discretion of ~~CNN LP~~TNS, Inc.:

(i) With respect to CNN, AFFILIATE shall have the right to utilize up to two (2) minutes specifically identified by ~~CNN LP~~TNS, Inc. (in ~~CNN~~TNS, ~~LP~~Inc.'s sole discretion) in each hour of CNN for AFFILIATE's own local promotions and local advertising on all Systems.

(ii) With respect to HN, AFFILIATE shall have the right to utilize:

(a) One (1) minute specifically identified by ~~CNN LP~~TNS, Inc. (in its sole discretion) in each half hour of HN for AFFILIATE's own local advertising and local promotions; or

(b) (1) Until further notice from ~~CNN LP~~TNS, Inc. as set forth herein, six (6) minutes, including no more than one and one half (1.5) minutes for AFFILIATE's own local advertising and local promotions, specifically identified by ~~CNN~~TNS, ~~LP~~Inc. (in its sole discretion) in each half hour of HN which shall be used exclusively for a daily topical locally produced video newscast consisting of certain news, sports, information, business, financial, weather and feature programming derived from locally occurring events of general local interest ("Local Edition"); provided, however, that the right to produce Local Edition shall not be granted to any entity that produces more than eight (8) hours of news per day without the express written consent of ~~CNN~~TNS, ~~LP~~Inc. AFFILIATE shall provide written notice to the Director of News Marketing at the address set forth in Paragraph 21, Notices, identifying the entity to which AFFILIATE has granted the right to provide Local Edition on each System within thirty (30) days of granting such right. Notwithstanding anything to the contrary herein, AFFILIATE shall discontinue cablecasting Local Edition upon one hundred twenty (120) days' notice by ~~CNN~~TNS, ~~LP~~Inc. Upon such notice, this Subparagraph 4.B.(ii)(b) shall be null and void.

(2) Whenever AFFILIATE is cablecasting Local Edition on a System, AFFILIATE shall cause such cablecast to include (x) a video lead-in, furnished by ~~CNN LP~~TNS, Inc., before the "open" of all Local Edition newscasts; (y) a continuous display of the Headline News logo or another method acceptable to ~~CNN~~TNS, ~~LP~~Inc. to identify the on-camera programming as part of Headline News and, in the case of other video programming (including, but not limited to, local weather programming), a joint identification with the local station/producer; and (z) at the conclusion of each Local Edition newscast, a verbal reference, by talent, while on camera, to the resumption of the Headline News cablecast (e.g., "More Headline News will continue in a moment").

(iii) All commercial matter or advertisements that AFFILIATE inserts with a Service shall (a) not be offensive in nature; (b) not suggest an affiliation between ~~CNN LP~~TNS, Inc., any of its partners, their respective parents, subsidiaries, affiliates, a Service, or any programming contained in a Service on the one hand and third party advertisers on the other hand; (c) generally be compatible with the commercial standards of ~~CNN~~TNS, ~~LP~~Inc. including, but not limited to, a prohibition on advertising (1) related to adult entertainment and/or (2) which advocates a position on any political or social issue (except advertisements for legally qualified candidates for public office, which shall comply with applicable laws and regulations), and/or (3) which promotes any video programming service that contains substantially similar content as the Service. Further, AFFILIATE shall not insert any advertisements on the Service from any network that does not allow insertion by the Service on its network.

Conseil de la radiodiffusion et des télécommunications canadiennes

Les Terrasses de la Chaudière
1, Promenade du Portage
Hull (Québec)

Canadian Radio-television and Telecommunications Commission

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(604) 666-2111
TDD: 666-0778
Fax: 666-8322

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275 Portage Av.
Suite 1810
Winnipeg, MB
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(204) 983-6306
TDD: 983-8274
Fax: 983-6317

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Suite 520
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OCT 1 0 2003

Mr. Michael Hennessy
Acting President
Canadian Cable Television Association
360 Albert Street
Suite 1010
Ottawa, Ontario
K1R 7X7

Re: Application by the CCTA seeking changes to the Commission's policy with respect to the use of local availabilities on U. S. speciality television services.

On 28 October 2002, the Canadian Cable Television Association (CCTA) filed an application seeking changes to the Commission policy with respect to the use of local availabilities on U.S. speciality television services.

On 21 May 2003, the CCTA revised this application and the Commission issued a letter 16 July 2003 seeking clarification with regards to certain information presented in the application. The CCTA response was received 8 August 2003 and supplementary information followed 3 September 2003.

Further clarification is now being sought.

The information requested herein should be received at the Commission no later than 24 October 2003.

1. At paragraph 32 of its application of 28 October 2002, CCTA stated that cable television licensees must compensate U.S. specialty television services for their carriage, and that the compensation paid includes some consideration for the value that cable operators derive from local availabilities. CCTA added that the opportunity to include commercial advertising material in the local availabilities on U.S. specialty television services would help to offset the fees charged by these U.S. services.

    a) Explain which is meant by the phrase "the value that cable operators derive from local availabilities". In so doing, clarify whether CCTA is referring to Canadian or American cable operators, or both.

The agreements may be abridged to delete commercially sensitive information, such as subscriber figures or rates. The names of the parties may also be deleted, provided that the agreements are clearly labelled as being, for example, between a large cableco and a large service.

3. If agreements provided pursuant to the above do not explicitly address the use of local availabilities and the compensation thereof, please reduce to writing and provide the major terms of the agreement between the parties as to said use and compensation.

A copy of this letter and your reply will be added to your application. If you have submitted your application in an electronic format, please submit your reply in an electronic format, except for confidential material, which must be filed either in hard copy or on diskette. We also ask that you repeat each question in your reply.

In order to facilitate the routing of documents filed electronically, please repeat the "re: line" and add my name in the subject box of your email message and send it to procedure@crtc.gc.ca

Should you need further information concerning this application, please do not hesitate to contact me at (819) 997-4700. I can also be reached by telecopier at (819) 997-9393 or by e-mail at nanao.kachi@crtc.gc.ca.

Yours truly,

Nanao Kachi
Broadcasting Policy
CRTC

FAX TRANSMISSION / TÉLÉCOPIE

CANADIAN CABLE TELEVISION ASSOCIATION
ASSOCIATION CANADIENNE DE TÉLÉVISION PAR CÂBLE
1010 - 360 rue Albert Street
Ottawa, Ontario K1R 7X7
(613) 232-2631 / Fax: (613) 232-2137

September 3, 2003

TO / À: **Mr. Tim Hines** **Fax: 994-0218**

FROM / DE: **Janet Yale**

Tel. No. / No de téléphone: (613) 688-5554

Number of page(s) to follow / Nombre de page(s) à suivre: 6

COMMENT / COMMENTAIRES:

An Application by the Canadian Cable Television Association seeking changes in the policy of the Commission with respect to the use of local availabilities on U.S. specialty television services – Deficiency Responses

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CANADIAN CABLE TELEVISION ASSOCIATION
ASSOCIATION CANADIENNE DE TÉLÉVISION PAR CÂBLE

JANET YALE
President / Présidente

September 3, 2003

Mr. Tim Hines
Broadcasting Policy
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario
K1A 0N2

CCTA

Dear Mr. Hines:

ACTC

Re: An Application by the Canadian Cable Television Association seeking changes in the policy of the Commission with respect to the use of local availabilities on U.S. specialty television services – Deficiency Responses

The Canadian Cable Television Association (CCTA) wishes to file supplementary information to some of its deficiency responses filed August 8, 2003. The supplementary information is provided in the attachment with respect to questions one through four in your letter of July 16, 2003.

Sincerely,

Michael Hennessy for

Janet Yale

Attachment.

Suite 1010 360 rue Albert St. Ottawa Ontario Canada K1R 7X7 Tel: 613 232 2631 Fax: 613 232 2137

Question 1

In addition to the list of the U.S. services considered in CCTA's application and listed in the deficiency response to question one, filed August 8, the local avails on U.S. Superstations may also be available to the cable companies. While CCTA has applied for access to local avails on U.S. services in general, the analysis of the economic value of the avails was based on modelling only those U.S. services that cable companies carry predominantly on analog. The lower penetration of services on digital cable on a per system basis does not warrant including their potential economic value in the analysis.

Of the U.S. Superstations carried, WTBS-TV (TBS Superstation) is the most significant with more than 4 million subscribers. Other U.S. Superstations reach fewer than 750,000 cable subscribers on average, and in most cases, the majority of these subscribers receive the services on digital cable. The number of subscribers to TBS Superstation is included in the revised table below.

The total number of Canadian subscribers for each service is shown in the table below. This information was obtained from Mediastats (www.mediastats.com) and is current for the month of March 2003, with the exception of Court Television which is from June 2002.

Canadian BDU Subscribers to U.S. Specialty Services

	Cable	DTH	TOTAL
CNN - Cable News Network	6,470,856	1,154,593	7,625,449
TLC - The Learning Channel	6,181,947	1,154,593	7,336,540
A&E Television Network	5,573,889	1,247,312	6,821,201
TNN - The National Network	5,414,087	1,220,078	6,634,165
CNN Headline News	4,174,645	1,154,593	5,329,238
CNBC	3,566,618	1,154,593	4,721,211
TBS Superstation	**3,517,200**	**976,196**	**4,493,396**
Golf Channel	3,196,281	1,321,189	4,517,470
Speedvision	3,173,668	1,321,189	4,494,857
Black Entertainment Network	1,939,659	1,220,078	3,159,737
Gameshow Network	712,500	936,233	1,648,733
Court Television*			11,765

Question 2

The estimated economic value of the inventory of local availabilities would increase as a result of including TBS Superstation in the list of U.S. services. The impact on adding this service is provided for each of the valuation methodologies described in CCTA's deficiency response to Question 2 of August 8, 2003. The methodologies and resulting estimates reflect the analysis prepared for CCTA's application filed October 28, 2002.

I) Valuation Estimate One

Under Valuation Estimate One, the estimate of the economic value of the local avails was based on considering the U.S. services in three groups – the top two services, a middle group of six services and a third group of three smaller services. The addition of TBS Superstation would affect the calculation of the middle group of U.S. Services. It is estimated that the economic value of the total inventory of local avails on TBS Superstation would be comparable to the average 2001 advertising revenues of 22 Canadian specialty services with 4 million subscribers or more each (except TSN, Teletoon and YTV). This was calculated to be $10,052,394 in 2001. However, cable companies have access to only 2/12 of the average annual advertising revenue, therefore the estimated economic value of TBS Superstation would be woud be $1,675,399.[1] This is the same as for each of the 6 U.S. specialty services (CNN, TNN, CNN Headline News, CNBC, Golf Channel, and Speedvision). The total estimate for the 7 U.S. services including TBS Superstation would increase to $11,727,793, up from $10,052,394.

The overall advertising revenue that would be derived from the availabilities on U.S. specialty services would increase from the estimate to $27,193,580, up from $25,518,180 (i.e., $14,243,282 in total advertising revenue derived from the top 2 U.S. specialty services + $11,727,793 in total advertising revenue derived from 7 U.S. specialty services + $1,222,504 in total advertising revenue derived from 3 U.S. services).

[1] The ratio of 2/12 is applied to average annual advertising revenue to reflect the fact that The Canadian specialty services are generally permitted to air 12 minutes of advertising per hour whereas cable companies have access to 2 minutes per hour of the local availabilities on U.S. specialty services.

Question 2 (continued)

II) Valuation Estimate Two

Under Valuation Estimate Two, the estimate of the economic value of the local avails was based on considering the U.S. services in two groups – a group of eight larger U.S. services and a second group of three smaller services. The addition of TBS Superstation would affect the calculation of the group of larger U.S. Services. It is estimated that the economic value of the inventory of local avails on TBS Superstation would be comparable to the average 2001 advertising revenue of 25 Canadian specialty services (the same 22 included from the first estimate plus the top 3 services – TSN, Teletoon and YTV). This was calculated to be $13,973,689 for 2001. As in the case of Valuation Estimate One, cable companies have access to only 2/12 of the average annual advertising revenue, therefore, the estimated economic value of TBS Superstation would be $2,328,948. This is the same as employed for each of the 8 larger U.S. specialty services (A&E, The Learning Channel, CNN, TNN, CNN Headline News, CNBC, Golf Channel, and Speedvision) in the valuation methodology described in the deficiency response filed August 8, 2003. The total estimate for the 9 U.S. services including TBS Superstation would increase to $20,960,533, up from $18,631,585.

The overall advertising revenue that would be derived from the availabilities on U.S. specialty services would increase to $22,179,869, up from $19,854,089 (i.e., $20,960,533 in total advertising revenue derived from 9 larger U.S. specialty services + $1,222,504 in total advertising revenue derived from 3 U.S. specialty services).

Question 3

The U.S. specialty services employed in Valuation Estimate One and Valuation Estimate Two are listed below, amended to reflect the addition of TBS Superstation.

I) Valuation Estimate One

7 U.S. Services
CNN, TNN, CNN Headline News, CNBC, **TBS Superstation**, Golf Channel, and Speedvision

3 U.S. Services
BET, Gameshow Network and Court Television

II) Valuation Estimate Two

9 U.S. Services
A&E, The Learning Channel, CNN, TNN, CNN Headline News, CNBC, **TBS Superstation**, Golf Channel, and Speedvision

3 U.S. Services
BET, Gameshow Network and Court Television

Question 4

(A) The valuation method used to arrive at CCTA's revised estimate of the economic value of the local availabilities on U.S. specialty services, filed with the amendment to the application on May 21, 2003 is described below with the amendment to add TBS Superstation. It is similar to the Valuation Estimate One methodology described in response to question 2.

Revised Valuation Estimate, with TBS Superstation

Under the Revised Valuation Estimate, the estimate of the economic value of the local avails was based on considering the U.S. services in three groups – the top three services, a middle group of five services and a third group of three smaller services. The addition of TBS Superstation would affect the calculation of the middle group of U.S. Services. It is estimated that the economic value of the total inventory of local avails on TBS Superstation would be comparable to the average 2002 advertising revenues of 22 Canadian specialty services with 4 million subscribers or more each (except TSN, Teletoon and YTV). This was calculated to be $11,869,976 in 2002. However, cable companies have access to only 2/12 of the average annual advertising revenue, therefore the estimated economic value of TBS Superstation would be would be $1,978,329.[2] This is the same as for each of the 5 U.S. specialty services (TNN, CNN Headline News, CNBC, Golf Channel, and Speedvision). The total estimate for the 6 U.S. services including TBS Superstation would increase to $11,869,976, up from $9,891,647.

The overall advertising revenue that would be derived from the availabilities on U.S. specialty services would increase to $36,204,033, up from $34,225,704 (i.e., $22,367,594 in total advertising revenue derived from the top 3 U.S. specialty services + $11,869,976 in total advertising revenue derived from 6 U.S. specialty services + $1,966,463 in total advertising revenue derived from 3 U.S. services).

[2] The ratio of 2/12 is applied to average annual advertising revenue to reflect the fact that The Canadian specialty services are generally permitted to air 12 minutes of advertising per hour whereas cable companies have access to 2 minutes per hour of the local availabilities on U.S. specialty services.

CANADIAN CABLE TELEVISION ASSOCIATION
ASSOCIATION CANADIENNE DE TÉLÉVISION PAR CÂBLE

JANET YALE
President / Présidente

August 8, 2003

Mr. Tim Hines
Broadcasting Policy
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario
K1A 0N2

Dear Mr. Hines:

Re: An Application by the Canadian Cable Television Association seeking changes in the policy of the Commission with respect to the use of local availabilities on U.S. specialty television services – Deficiency Responses

Further to your letter of July 16, 2003, please find attached the responses to the Commission's questions respecting the application by the Canadian Cable Television Association (CCTA).

Sincerely,

Janet Yale

Attachment.

Suite 1010 360 rue Albert St. Ottawa Ontario Canada K1R 7X7 Tel: 613 232 2631 Fax: 613 232 2137

Question 1

The list of the U.S. services considered in CCTA's application and the total number of Canadian subscribers for each service is shown in the table below. This information was obtained from Mediastats (www.mediastats.com) and is current for the month of March 2003, with the exception of Court Television which is from June 2002.

Canadian BDU Subscribers to U.S. Specialty Services

	Cable	DTH	TOTAL
CNN - Cable News Network	6,470,856	1,154,593	7,625,449
TLC - The Learning Channel	6,181,947	1,154,593	7,336,540
A&E Television Network	5,573,889	1,247,312	6,821,201
TNN - The National Network	5,414,087	1,220,078	6,634,165
CNN Headline News	4,174,645	1,154,593	5,329,238
CNBC	3,566,618	1,154,593	4,721,211
Golf Channel	3,196,281	1,321,189	4,517,470
Speedvision	3,173,668	1,321,189	4,494,857
Black Entertainment Network	1,939,659	1,220,078	3,159,737
Gameshow Network	712,500	936,233	1,648,733
Court Television*			11,765

Question 2

The steps and hypothesis used to estimate the economic value of the total inventory of local availabilities on U.S. specialty services, as provided in the Appendix A to CCTA's application filed October 28, 2002, is described below. It follows closely on that indicated in the Commission's letter of July 16, 2003, with some minor methodological differences.

I) Valuation Estimate One

First, the average advertising revenue of the top 3 Canadian specialty services (TSN, Teletoon and YTV), ranked according to their average minute audiences, was calculated to be $42,729,848 per service in year 2001. This was calculated from the sum of all advertising revenue earned by the three services which was $128,189,545 in 2001.

The Canadian specialty services are generally permitted to air 12 minutes of advertising per hour whereas cable companies have access to 2 minutes per hour of the local availabilities on U.S. specialty services. The ratio 2/12 was applied to the average advertising revenue per Canadian specialty service to estimate the average advertising revenue that would be derived from local availabilities on each U.S. specialty service. As a result of taking 2/12 of $42,729,848, it was estimated that each of the top 2 U.S. specialty services (A&E and The Learning Channel) would be $7,121,641. Consequently, the total advertising revenue that would be derived from the top 2 U.S. specialty services is estimated at $14,243,282 (i.e., $7,121,641 X 2).

Second, the average 2001 advertising revenues of 22 Canadian specialty services with 4 million subscribers or more each (except TSN, Teletoon and YTV) was calculated to be $10,052,394. This was calculated from the sum of all advertising revenue earned by the 22 services which was $221,152,669 in 2001. For the reasons noted above, the ratio 2/12 was applied to the average advertising revenue per Canadian specialty service to estimate the average advertising revenue that would be derived from local availabilities on each U.S. specialty service. As a result of taking 2/12 of $10,052,394, it was estimated that each of the next 6 U.S. specialty services (CNN, TNN, CNN Headline News, CNBC, Golf Channel, and Speedvision) would be $1,675,399. Consequently, the total advertising revenue that would be derived from the next 6 U.S. specialty services is estimated at $10,052,394 (i.e., $1,675,399 X 6).

Question 2 (continued)

Third, the average 2001 advertising revenue of 4 Canadian specialty services with less than 4 million subscribers each (i.e., StarTV, Pulse24, TalkTV and Food Network) was calculated to be $2,445,008. This was calculated from the sum of all advertising revenue earned by the 4 services which was $9,780,032 in 2001. For the reasons noted above, the ratio 2/12 was applied to the average advertising revenue per Canadian specialty service to estimate the average advertising revenue that would be derived from local availabilities on each U.S. specialty service. As a result of taking 2/12 of $2,445,008, it was estimated that each of the smallest 3 U.S. specialty services (BET, Gameshow Network and Court Television) would be $407,501. Consequently, the total advertising revenue that would be derived from the smallest 3 U.S. specialty services is estimated at $1,222,504 (i.e., $407,501 X 3).

Finally, the overall advertising revenue that would be derived from the availabilities on U.S. specialty services was estimated at $25,518,180 (i.e., $14,243,282 in total advertising revenue derived from the top 2 U.S. specialty services + $10,052,394 in total advertising revenue derived from 6 U.S. specialty services + $1,222,504 in total advertising revenue derived from 3 U.S. services).

II) Valuation Estimate Two

First, the average 2001 advertising revenue of 25 Canadian specialty services (the same 22 included from the first estimate plus the top 3 services – TSN, Teletoon and YTV) was calculated to be $13,973,689. This was calculated from the sum of all advertising revenue earned by the 25 services which was $349,342,214 in 2001.

The Canadian specialty services are generally permitted to air 12 minutes of advertising per hour whereas cable companies have access to 2 minutes per hour of the local availabilities on U.S. specialty services. The ratio 2/12 was applied to the average advertising revenue per Canadian specialty service to estimate the average advertising revenue that would be derived from local availabilities on each U.S. specialty service. As a result of taking 2/12 of $13,973,689, it was estimated that each of the 8 larger U.S. specialty services (A&E, The Learning Channel, CNN, TNN, CNN Headline News, CNBC, Golf Channel, and Speedvision) would be $2,328,948. Consequently, the total advertising revenue that would be derived from the 8 larger U.S. specialty services is estimated at $18,631,585 (i.e., $2,328,948 X 8).

Question 2 (continued)

Second, the average 2001 advertising revenue of 4 Canadian specialty services with less than 4 million subscribers each (i.e., StarTV, Pulse24, TalkTV and Food Network) was calculated to be $2,445,008. This was calculated from the sum of all advertising revenue earned by the 4 services which was $9,780,032 in 2001. For the reasons noted above, the ratio 2/12 was applied to the average advertising revenue per Canadian specialty service to estimate the average advertising revenue that would be derived from local availabilities on each U.S. specialty service. As a result of taking 2/12 of $2,445,008, it was estimated that each of the smallest 3 U.S. specialty services (BET, Gameshow Network and Court Television) would be $407,501. Consequently, the total advertising revenue that would be derived from the smallest 3 U.S. specialty services is estimated at $1,222,504 (i.e., $407,501 X 3).

Finally, the overall advertising revenue that would be derived from the availabilities on U.S. specialty services was estimated at $19,854,089 (i.e., $18,631,585 in total advertising revenue derived from 8 larger U.S. specialty services + $1,222,504 in total advertising revenue derived from 3 U.S. specialty services).

<u>Question 3</u>

The U.S. specialty services employed in Valuation Estimate One and Valuation Estimate Two are listed below.

I) Valuation Estimate One

6 U.S. Services
CNN, TNN, CNN Headline News, CNBC, Golf Channel, and Speedvision

3 U.S. Services
BET, Gameshow Network and Court Television

II) Valuation Estimate Two

8 U.S. Services
A&E, The Learning Channel, CNN, TNN, CNN Headline News, CNBC, Golf Channel, and Speedvision

3 U.S. Services
BET, Gameshow Network and Court Television

Question 4

(A) The valuation method used to arrive at CCTA's revised estimate of the economic value of the local availabilities on U.S. specialty services, filed with the amendment to the application on May 21, 2003 is described below. It is similar to the Valuation Estimate One methodology described in response to question 2, with two notable changes: (1) updated results of advertising revenue earned by Canadian specialty services in 2002; and (2) revised allocation of the U.S. specialty services. The revision to the allocation was to move CNN into the same group as A&E and The Learning Channel, based on stronger audience share results.

Revised Valuation Estimate

First, the average advertising revenue of the top 3 Canadian specialty services (TSN, Teletoon and YTV), ranked according to their average minute audiences, was calculated to be $44,735,187 per service in year 2002. This was calculated from the sum of all advertising revenue earned by the three services which was $134,205,561 in 2002.

The Canadian specialty services are generally permitted to air 12 minutes of advertising per hour whereas cable companies have access to 2 minutes per hour of the local availabilities on U.S. specialty services. The ratio 2/12 was applied to the average advertising revenue per Canadian specialty service to estimate the average advertising revenue that would be derived from local availabilities on each U.S. specialty service. As a result of taking 2/12 of $44,735,187, it was estimated that each of the top 3 U.S. specialty services (A&E, The Learning Channel and CNN) would be $7,455,865. Consequently, the total advertising revenue that would be derived from the top 3 U.S. specialty services is estimated at $22,367,594 (i.e., $7,455,865 X 3).

Second, the average 2002 advertising revenues of 22 Canadian specialty services with 4 million subscribers or more each (except TSN, Teletoon and YTV) was calculated to be $11,869,976. This was calculated from the sum of all advertising revenue earned by the 22 services which was $261,139,475 in 2002. For the reasons noted above, the ratio 2/12 was applied to the average advertising revenue per Canadian specialty service to estimate the average advertising revenue that would be derived from local availabilities on each U.S. specialty service. As a result of taking 2/12 of $11,869,976, it was estimated that each of the next 5 U.S. specialty services (TNN, CNN Headline News, CNBC, Golf Channel, and Speedvision) would be $1,978,329. Consequently, the total advertising revenue that would be derived from the next 5 U.S. specialty services is estimated at $9,891,647 (i.e., $1,978,329 X 5).

Question 4 (continued)

Third, the average 2002 advertising revenue of 4 Canadian specialty services with less than 4 million subscribers each (i.e., StarTV, Pulse24, TalkTV and Food Network) was calculated to be $3,932,927. This was calculated from the sum of all advertising revenue earned by the 4 services which was $15,731,706 in 2002. For the reasons noted above, the ratio 2/12 was applied to the average advertising revenue per Canadian specialty service to estimate the average advertising revenue that would be derived from local availabilities on each U.S. specialty service. As a result of taking 2/12 of $3,932,927, it was estimated that each of the smallest 3 U.S. specialty services (BET, Gameshow Network and Court Television) would be $655,488. Consequently, the total advertising revenue that would be derived from the smallest 3 U.S. specialty services is estimated at $1,966,463 (i.e., $655,488 X 3).

Finally, the overall advertising revenue that would be derived from the availabilities on U.S. specialty services was estimated at $34,225,704 (i.e., $22,367,594 in total advertising revenue derived from the top 3 U.S. specialty services + $9,891,647 in total advertising revenue derived from 5 U.S. specialty services + $1,966,463 in total advertising revenue derived from 3 U.S. services).

The estimate of the economic value of the availabilities of $35 to $40 million, submitted by CCTA in its amended application, reflects the higher advertising revenues in 2002 as well as expected further growth in advertising revenue in 2003.

(B) In CCTA's application filed October 28, 2002, it stated that the specialty television advertising revenues are expected to continue to grow, with an annual average rate in excess of 14%. CCTA does not have any further information on the potential for higher rates of growth. Please see the response to question 6.

(C) CCTA submits, however, that its proposal to contribute 25% of revenues generated from local availabilities to the Canadian Television Fund (CTF) will ensure that in the event there is more revenue this will result in a proportionately higher contribution. Under this approach, the CTF will always receive an appropriate benefit relative to the sale of local avails. This approach can be readily applied at the level of the individual distributor.

Question 4 (continued)

Establishing a commitment based on a minimum guarantee of an aggregate annual dollar amount, as opposed to a fixed percentage of revenues, would require considerable analysis for each individual satellite or cable operator if this option was pursued. The value of the local avails will vary considerably depending on the type of distributor (e.g., cable, satellite), number of subscribers, regional differences and small versus large systems. In addition, advertising rate cards may vary over time. Such variations would make it complex to determine in advance an appropriate dollar amount for each distributor.

Question 5

On June 18, 2003, CCTA filed an application with the Commission requesting that the Commission add to the Lists of Eligible Satellite Services (the Lists) a number of new non-Canadian programming services. CCTA considers that approval of this application has the potential to accelerate the transition to digital television as well as help to retain and repatriate subscribers from black and grey market satellite services. CCTA expects this initiative will generate net benefits for the Canadian broadcasting system.

On April 2, 2003, CCTA applied to add five foreign services to the eligible satellite list for distribution on a digital only basis. As indicated in that application, adding these services will help to drive the penetration of digital boxes in Canada, thereby creating larger audiences for all Canadian pay and specialty services licensed for digital distribution.

With respect to enforcement initiatives against black market satellite use, CCTA continues to participate with members of CASST (Coalition Against Satellite Signal Theft) on a number of fronts. This includes civil actions against specific satellite dealers, public awareness initiatives such as the Public Service Announcements (PSAs) and speeches, research on the scope of black and grey market satellite activity and its economic impact, as well as working with the Film and Video Security Office (FVSO) and meeting with representatives of the Federal Government and RCMP. The cable industry has been working with the FVSO to assist in gathering information on illegal satellite activity. The CCTA has also worked with other members of CASST to develop proposed amendments to the *Radiocommunications Act* to increase penalties and provide officials at Canada Customs and Revenue Agency with more powers to seize illegal receiving equipment entering Canada.

The CCTA and its member companies have devoted considerable resources towards these initiatives, including out-of-pocket expenses that are approaching $1 million incurred to date. While the expenses have been significant, they would represent less than 3 percent of the estimated $35 million in economic value that could be generated by the local availabilities each year.

CCTA would also note that decreasing unauthorized satellite use is expected to bring additional benefits to the Canadian broadcasting system, in terms of increased revenues for licensed distributors, Canadian programming services and contributions to the CTF and other production funds. In addition, increasing the penetration rate of digital cable, which is a secure technology, provides more opportunities to carry new Canadian and foreign services. This represents one of the most effective means of combating satellite theft.

<u>Question 6</u>

The projected growth in specialty television advertising revenues of 14% per year over the period 2001 to 2005 was sourced from analysis prepared by Griffiths & McBurney & Partners (GMP), using information from the Television Bureau of Advertising and its own estimates. A copy of the report is being filed with these responses.

At page 12 of that report, GMP provides a table of Canadian Advertising Expenditures by market segment for the years 1990 to 2005. The data reported for the Television – Specialty segment for the period 2001 to 2005 was used to develop the projection of 14% average annual growth, as indicated at paragraph 44 of CCTA's application filed October 28, 2002. CCTA notes that the estimates for 2001 and 2002 shown at page 12 of the GMP report are on track with the actual results published by the CRTC for the Canadian specialty services in its Statistical and Financial Summaries.

Question 7

CCTA is unable to provide further information as to the specific nature of the carriage arrangements between cable companies and U.S. specialty services and the extent to which the terms of compensation reflect the value of local availabilities. These arrangements are not public or available to CCTA.

In the United States, cable companies earned more than $2.5 billion (U.S.) in 2002 from advertising availabilities. The ability of cable companies to generate such a significant stream of revenue from availabilities is one of the many factors that are taken into account when content owners negotiate the terms of carriage with distributors.

Question 8

The detailed steps and hypothesis used to estimate the revised economic value of the total inventory of local availabilities on U.S. specialty services, estimated at $35 to $40 million, is described in response to question 4.

Question 9

While CCTA considers that its proposal to contribute 25% of revenues from local avails to the Canadian Television Fund (CTF) is an appropriate way to address public policy priorities for Canadian drama, CCTA would not object to a reallocation of the benefit it has proposed such that a portion of the inventory from local avails would be used to promote 9(1)(h) services if the Commission determined that would be in the public interest. CCTA notes, however, that it could be a complex matter to implement a reallocation of the benefit, since the proposed benefit to the CTF is measured as a percentage of revenues earned from the sale of inventory whereas the promotion of 9(1)(h) services would be measured in minutes of local avails inventory set aside for promotion. CCTA submits that an allocation of the inventory of local avails to promote 9(1)(h) services could dilute the revenues that would be directed to the CTF, assuming that the inventory would otherwise be fully sold. CCTA submits that, if the Commission were to pursue an option where the benefit was shared between the CTF and 9(1)(h) services, more analysis would be required to establish a workable formula.

Conseil de la radiodiffusion et des télécommunications canadiennes

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16 July 2003

Ms. Janet Yale
President and CEO
Canadian Cable Television Association
360 Albert Street
Suite 1010
Ottawa, Ontario
K1R 7X7

Re: Application by the CCTA seeking changes to the Commission's policy with respect to the use of local availabilities on U.S. specialty television services.

On 28 October 2002, the Canadian Cable Television Association (CCTA) filed an application seeking changes to the Commission's policy with respect to the use of local availabilities on U.S. specialty television services. On 21 May 2003, the CCTA amended this application.

The Commission has examined the CCTA's application and is posing questions necessary for its consideration. The information requested herein should be received at the Commission by no later than 8 August 2003.

1. In *Proposal to insert certain promotional material in the local availabilities of U.S. satellite services*, Decision CRTC 95-12, the Commission determined that licensees listed in the appendix to this decision "may, by condition of licence, at their option, insert certain promotional material as a substitute for the local availabilities (i.e., non-Canadian advertising material) of non-Canadian satellite services." Paragraph 16 of the CCTA application states that "in 2001, there were as many as 11 U.S. specialty television services available on Canadian cable television systems" (Mediastats source). As "U.S. specialty television services" is not a defined term and because there are more than eleven U.S.-origin specialty services and additional foreign-origin specialty services provided for under the local availabilities condition of licence, please provide a complete list of the U.S. services that are the subject of this application. For each of these U.S. services, please indicate the total number of Canadian

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Canada

subscribers, distributed by carrier type (i.e., cable subscribers, DTH subscribers, etc.) and identify the source. If exact figures are not available, please provide estimates.

2. In its original application, CCTA estimated that the total inventory of local availabilities on U.S. specialty services would have an economic value of $20-$25 million in 2001. This estimate is calculated using 2 valuation estimates:

I) Valuation estimate one:

First, the average advertising revenue of the top 3 Canadian specialty services (TSN, Teletoon and YTV) was calculated to be $42,729,848 per service in year 2001. This average advertising revenue was related to the 78,840 minutes of advertising per year on an 18 broadcast hour per day basis on each of these services (that is, 12 minutes per hour X 18 broadcast hours per day X 365 days per year). Therefore, the average economic value of a minute of advertising was estimated at $542 (i.e., $42,729,848/78,840 minutes).

Based on the estimated average value of a minute of advertising on the above-noted top 3 Canadian specialty services, the advertising revenue that would be derived from the local availabilities on <u>each</u> of the top 2 U.S. specialty services (A&E and the Learning Channel) is estimated at $7,121,641 (that is, $542 of adverting per minute X 13,140 minutes per year), assuming 2 minutes of local availabilities per hour X 18 broadcast hours per day X 365 days per year). Consequently, the total advertising revenue that would be derived from the top 2 U.S. specialty services is estimated at $14,243,282 (i.e., $7,121,641 X 2).

Second, the average 2001 advertising revenues of 22 Canadian specialty services with 4 million subscribers or more each (except TSN, Teletoon and YTV) was calculated to be $10,052,394. The average economic value of a minute of advertising on these 22 services was estimated at $128 (i.e., $10,052,394/78,840 minutes). Based on this estimate, the total advertising revenue that would be derived from local availabilities on 6 U.S. specialty services is estimated at $10,052,394 (i.e., $128 of advertising revenues per minute X 13,140 minutes per year X 6 services).

Third, the average 2001 advertising revenue of 4 Canadian specialty services with less than 4 millions subscribers each (i.e., StarTV, Pulse24, TalkTV and Food Network) was calculated to be $2,445,008. The average economic value of a minute of advertising on these 4 services was estimated at $31 (i.e., $2,445,008/78,840 minutes). Based on this estimate, the advertising revenue that would be derived from local availabilities on 3 U.S. specialty services is estimated at $1,222,504 (i.e., $31 of advertising revenue per minute X 13,140 minutes per year X 3 services).

Finally, the overall advertising revenue that would be derived from the availabilities on U.S. specialty services was estimated at $25,518,180 (i.e., $14,243,282 in total advertising revenue derived from the top 2 U.S. specialty services + $10,052,394 in total advertising revenue derived from 6 U.S. specialty services + $1,222,504 in total advertising revenue derived from 3 U.S. services).

II) Valuation estimate 2:

First, the average 2001 advertising revenue of 25 Canadian specialty services with 4 million subscribers or more each was calculated to be $13,973,689. The average economic value of a minute of advertising on these 25 services was estimated at $177 (i.e., $13,973,689/78,840 minutes). Based on this estimate, the total advertising revenue that would be derived from local availabilities on 8 U.S. specialty services is estimated at $18,631,585 (i.e., $177 of adverting per minute X 13,140 minutes per year X 8 services).

Second, the average 2001 advertising revenue of 4 Canadian specialty services with less than 4 million subscribers each (i.e., StarTV, Pulse24, TalkTV and Food Network) was calculated to be $2,445,008. The average economic value of a minute of advertising on these 4 services was estimated at $31 (i.e., $2,445,008/78,840 minutes). Based on this estimate, the advertising revenue that would be derived from local availabilities on 3 U.S. specialty services is estimated at $1,222,504 (i.e., $31 of adverting revenue per minute X 13,140 minutes per year X 3 services).

Finally, the overall advertising revenue that would be derived from the availabilities on U.S. specialty services was estimated at $19,854,089 (i.e., $18,631,585 in total advertising revenue derived from 8 larger U.S. specialty services + $1,222,504 in total advertising revenue derived from 3 U.S. specialty services).

Please confirm the above steps and hypotheses used to estimate the economic value of the total inventory of local availabilities on U.S. specialty services. If there are any errors in the above descriptions, please correct them.

3. Please identify the 6 and the 3 U.S. specialty services you used in the above noted Valuation estimate 1, and the 8 and the 3 U.S. specialty services you used in the Valuation estimate 2.

4. In paragraph 18 of its application, CCTA "estimates that, in 2001, the total inventory of local availabilities would have an estimated economic value of $20-$25 million, assuming that they could have been sold to advertisers at rates comparable to those of the average Canadian specialty television service. It is reasonable to expect that, given the audience ranking of some of the U.S. specialties, higher rates may have been attainable. In such circumstances, the estimated economic value could exceed $25 million annually".

   In paragraph 7 of its amended application, CCTA stated that it "has revised its estimate of the potential economic value of the local avails to be in the range of $35 to $40 million"

   With respect to the above statements:

   (a) Please update the valuation methods described in question 2 to reflect CCTA's revised estimate of the economic value of local availabilities.

   (b) In light of CCTA's amendment to its application, does the CCTA believe there remains the potential for yet higher rates? If yes, please elaborate on any such potential and provide estimates of the total expected economic value of local availabilities on U.S. specialty services. In particular include a complete description of the basis for CCTA's belief that higher rates may be achieved and provide your assumptions (sell-out rate, sell rate, etc., for each U.S. specialty service) as well as all supporting calculations and sources of data.

(c) If the higher rates described in (b) were achieved, would the CCTA, on behalf of its membership, be willing to commit to a minimum threshold payment to the Canadian Television Fund?

5. CCTA states in paragraph 24 of its application that "government inaction on the spread of black market satellite use has resulted in a substantial exodus of Canadian viewers from the Canadian broadcasting system (estimated at some 700,000 viewers). The proposal in this application presents the Commission with the opportunity to enable distributors to take immediate action to counter the erosion of broadcasting revenues arising from black market activity". In the same paragraph, CCTA also states that "the ability to recoup lost revenues and reinvest these funds in support of advancing the roll-out of digital cable service would have a major impact on the success of these services and future services such as digital broadcasting stations."

   Does the CCTA foresee initiatives in addition to the roll-out of digital cable service that aim to impede black market satellite use? If yes, please elaborate on these initiatives, comment on the CCTA's overall campaign against black market satellite use and provide a statement on the projected costs of each initiative relative to the economic value associated with the potential approval of this application.

6. CCTA indicates in paragraph 44 of its application that "Industry experts, such as the Television Bureau of Advertising (TVB), project that specialty television advertising revenues will grow very rapidly, with an average annual rate of growth in excess of 14% over the period 2001-2005". Please provide a copy of the study (or studies) conducted to arrive at the above mentioned growth rate.

7. CCTA states in paragraph 32 of its application that "Cable television licensees must compensate U.S. television specialty services for their carriage. That compensation includes some consideration for the value that cable operators derive from local availabilities". Please elaborate on the compensation paid by

Canadian cable television licensees to U.S. television specialty services for the local availabilities. With respect to CCTA's response to this question, include actual examples, calculations and related assumptions with respect to the manner in which the value of local availabilities are singled-out from the fees paid for U.S. specialty services.

8. CCTA states in paragraph 7 of its letter of May 21 that "Using the more recent advertising revenue figures and taking into consideration the gains in average minute audience of certain U.S. services, CCTA has revised its estimate of the potential economic value of the local avails to be in the range of $35 to $40 million". Please provide the detailed steps and hypotheses used to estimate the revised economic value of the total inventory of local availabilities on U.S. specialty services.

9. In *Call for comments on the channel placement of services whose distribution has been required pursuant to section 9(1)(h) of the Broadcasting Act,* Broadcasting Public Notice CRTC 2002-49, 16 August 2002, the Commission announced that its sought comments on questions surrounding the channel placement of programming services that have been licensed for mandatory carriage as part of the basic service pursuant to section 9(1)(h) of the *Broadcasting Act*, but are not identified in Section 17 of the Broadcasting Distribution Regulations for distribution beginning with the basic band.

   Given the significant contributions of services such as APTN and TVA to the policy objectives of the *Broadcasting Act,* would CCTA be willing to amend its application to assign a portion of the local availabilities specifically to promotion of 9(1)(h) services? If yes, please comment on the volume and value of local availabilities that CCTA members would assign to 9(1)(h) services.

A copy of this letter and CCTA's reply will be added to the file on this application. As CCTA has submitted its application in an electronic format, please submit the reply also in an electronic format, except for confidential material, which must be filed either in hard copy or on diskette. We also ask that CCTA repeats each question in its reply.

In order to facilitate the routing of documents filed electronically, please repeat the "re: line" and add my name in the subject box of your e-mail message and send it to procedure@crtc.gc.ca

Should you need further information, please do not hesitate to contact me at (819) 997-1194 or Mohamed Moussa at (819) 997-4532. We can also be reached by telecopier at (819) 997-4504 or by e-mail at tim.hines@crtc.gc.ca or mohamed.moussa@crtc.gc.ca.

Yours truly,

Tim Hines
Broadcasting Policy
CRTC

CANADIAN CABLE TELEVISION ASSOCIATION
ASSOCIATION CANADIENNE DE TÉLÉVISION PAR CÂBLE

JANET YALE
President / Présidente

May 21, 2003

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

Dear Ms. Rhéaume:

Re: **An Application by the Canadian Cable Television Association seeking changes in the policy of the Commission with respect to the use of local availabilities on U.S. specialty television services – Proposed Amendment**

CCTA

ACTC

1. On October 28, 2002, the Canadian Cable Television Association ("CCTA") filed an application seeking a change in the policy of the Commission with respect to the use of local availabilities on U.S. specialty television services.

2. In its application, CCTA had demonstrated how the use of avails on U.S. specialty services could contribute to both the financial health of its members and to the Canadian broadcasting system as a whole. Since it filed its application last October, a key element of the system, the Canadian Television Fund (CTF) has come under pressure to continue to fund Canadian television programming at current levels due to reductions in contributions to the fund, including a reduction of $25 million in Government funding.

3. Accordingly, CCTA proposes an amendment to its application to allow for 25 percent of the additional revenues earned from the use of the local avails to be directed to the CTF. CCTA considers that this amendment would further the

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benefits of its application and restore some measure of financial stability to the CTF.

4. CCTA notes that in Decision CRTC 95-12, the Commission approved in part a proposal by Rogers Cable TV Limited to use the local availabilities to promote its services and enhance awareness of Canadian programming services. As noted in CCTA's initial application, broadcasters now have multiple windows to promote their services and, in terms of penetration and financial performance, awareness is high. The overall strength of programming services stands in stark contrast to the challenge of producing high quality distinctive Canadian television programming. CCTA submits that its modified proposal addresses this challenge without materially impacting programming services.

5. As noted in the initial application, the CCTA believes that access to the U.S. avails acquired by its members would be in the public interest, and would directly contribute to the achievement of the policy objectives of the *Broadcasting Act*. The insertion of commercial advertising into the local availabilities on U.S. specialty television services would capture economic value for the Canadian broadcasting system that is not fully realized and result in increased funding for the production of Canadian television programming, with no material negative economic impact on licensed Canadian programming services. In addition, the requested policy change would allow distributors to take immediate action to counter the growing harm to the broadcasting system caused by black market activity.

6. Under the original application, up to 5 percent of any additional revenues would be directed to the Fund, consistent with the current obligations on the part of BDUs to contribute to the support of Canadian television programming. The proposed amendment to the application would report these revenues as a separate line item and allow for 25 percent of the additional revenue resulting

from a change in the local avails policy to be directed to the CTF. With this amendment, the revenues earned by BDUs from the sale of local advertising availabilities on U.S. specialty services would be identified on an annual basis and 25 percent of that amount would be directed to the CTF.

7. In CCTA's initial application, it was estimated that the full economic value of the local avails would be in the range of $20 million - $25 million per annum. This estimate was based on the assumption that availabilities on U.S. services[1] could have been sold to advertisers at comparable rates to those of Canadian specialty services, as reflected in their advertising revenues for 2001. In February 2003, the Commission released up-dated financial statistics for Canadian specialty services for 2002. Using the more recent advertising revenue figures and taking into consideration the gains in average minute audience of certain U.S. services, CCTA has revised its estimate of the potential economic value of the local avails to be in the range of $35 to $40 million.[2]

8. In the context of the overall market for Canadian advertising on television, however, the impact of the proposed change would be minimal. Even at $40 million, the value represents less than 2 percent of the total revenues earned in 2002 by private television stations and specialty services.

9. Based on the revised estimates, CCTA's proposal to direct 25 percent of the additional revenue from local avails to the CTF could result in new contributions of as much as $10 million annually.

[1] According to Mediastats, these services included: A&E, BET, CNN, CNBC, Court TV, Game Show, Golf, Headline News, The Learning Channel, Speed Channel and TNN.

[2] The revised estimates assume that A&E, CNN and The Learning Channel would have a potential economic value approximating those of the higher ranked Canadian specialty services. The range also takes into consideration further advertising revenue growth in 2003.

10. The benefit of increased contributions to the Fund cannot be overstated. The Fund continues to be heavily oversubscribed. The additional funding that would be contributed through the local avails would ease pent-up demand for production support and offset the negative impact on the CTF's revenues that has occurred this year.

11. Given the pressing financial needs of the Fund and the general consensus that more must be done to encourage the production of Canadian television programming, especially Canadian drama, CCTA requests that the Commission gazette its October 28 application, as amended, at its earliest convenience.

12. In addition to the clear benefits to the broadcasting system, CCTA submits that a favourable disposition of this application would also contribute to offsetting the costs to distributors of maintaining support for the ongoing achievement of public policy obligations in an increasingly competitive environment.

Sincerely,

Janet Yale

CANADIAN CABLE TELEVISION ASSOCIATION
ASSOCIATION CANADIENNE DE TÉLÉVISION PAR CÂBLE

JANET YALE
President / Présidente

October 28 2002

Diane Rhéaume
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario
K1A ON2

Dear Mme Rhéaume:

Re: An Application by the Canadian Cable Television Association seeking changes in the policy of the Commission with respect to the use of local availabilities on U.S. specialty television services

1. This is an application by the Canadian Cable Television Association ("CCTA") on behalf of its members seeking a change in the policy of the Commission with respect to the use of local availabilities on U.S. specialty television services.

2. Local availabilities on U.S. specialty television services represent a significant source of economic value for distributors and for the Canadian broadcasting system, which is not fully realized under the current rules. The CCTA believes that it would be in the public interest, and would directly contribute to the achievement of the policy objectives of the *Broadcasting Act* if cable licensees and other distributors could maximize the true economic value of this resource. The pressures of legal and illegal competition, as well as the costs associated with expanding regulatory obligations, makes it imperative that the cable industry be afforded the opportunity to generate new revenues. In addition, these avails represent a strategic asset for cable distributors that

could provide a cost-effective means to more fully match many of the joint-marketing opportunities and advantages of integration available to the telephone companies particularly BCE.

3. CCTA respectfully requests, for the reasons set out in detail in this application, that the Commission change its current policy to allow cable licensees to insert commercial advertising into the local availabilities on U.S. specialty television services and be permitted to use the availabilities for the promotion of any non-broadcast services offered by cable companies. CCTA submits that granting the requested change in policy is a matter of considerable urgency, as it would provide cable distributors with an immediate resource to respond to the growing threat of black market satellite use.

1. ***Assessment of the Current Policy Framework***

4. The current policy framework governing the use of local availabilities in U.S. specialty services has been in place since 1995, and was last formally reviewed in 1997.

5. U.S. specialty services generally reserve two minutes of their advertising inventory each hour for use by affiliates that distribute their services. In 1994, Rogers Cable sought authority, by condition of licence, to alter the signals of U.S. specialty services by inserting promotional material into those availabilities. Rogers proposed that a minimum of 50% and not more than 66% of the availabilities would be used to promote licensed Canadian programming services, with the remainder to be used to provide customer

service information, to promote cable services, and to broadcast public service announcements.[1]

6. In Decision CRTC 95-12, the Commission determined that:

   - -75% of local availabilities must be made available for the promotion of licensed Canadian programming services, the promotion of the community channel or for the broadcast of unpaid Canadian public service announcements;
   - -25% of local availabilities may be used to promote cable services related to programming, such as discretionary programming packages or cable FM services, and to provide customer service information; and
   - -local availabilities may not be used to broadcast paid commercial advertising.

7. In Public Notice CRTC 1999-93, the Commission clarified that the condition of licence that provides cable companies with the opportunity to promote their services excludes non-programming services such as Internet and telephony. The Commission did not discuss the policy rationale for this exclusion. With respect to the promotion of bundled services, the Commission staff has provided some guidance as to including references to non-core services, however, it has not "put its mind to the issue" of the maximum amount and frequency of availabilities that could be accessed for a non-core service.[2]

8. In Decisions CRTC 95-501, 97-667 and 98-271, the Commission approved applications by Shaw Cable, ExpressVu and Star Choice, respectively, to allow similar use of local avails. In Decision CRTC 98-271, the Commission

[1] CCTA notes that the notion of a "local" avail refers to the nature of the distributor in the U.S. rather than the nature of the ad itself, which could be of a local, regional or national nature depending on the markets covered by a distributor's systems.
[2] Letter from Jean-Pierre Blais, A/Executive Director, Broadcasting, CRTC, November 19, 1999.

also concluded that broadcast distribution undertakings should not be prohibited from recovering the costs of inserting promotional material for licensed programming services.

9. The Commission last undertook a formal review of this policy framework in 1997. In Public Notice CRTC 1997-25, entitled New Regulatory Framework for Broadcasting Distribution Undertakings, the Commission considered a proposal by Rogers Cable that cable licensees be allowed to insert advertising material into the local availabilities on U.S. specialty television services. At that time, the Commission concluded that it could "discern no compelling reason to alter its policy in this area".

10. CCTA submits that the environment cable distributors operate under today is sufficiently different to support a change to the rules. In the years since the rules were put in place, the cable industry has been subject to increasing competition, such that nearly 20% of households subscribing to multi-channel television rely on wireless distributors. As well, cable distributors must increasingly compete with well-financed companies like BCE that, due to the liberalization of joint-marketing and bundling rules, have more flexibility to compete on an integrated basis. CCTA submits that the application of asymmetric rules respecting the ability to leverage the synergies of integrated operations grants an unfair advantage to the telephone companies relative to other distributors. CCTA further submits that the prohibition on the insertion of commercial advertising material by cable television licensees and the obligation to provide broadcasters with access to the local availabilities at below market rates results in a significant economic value that is not fully realized by distributors and the Canadian broadcasting system. CCTA estimates that the full economic value would be in the range of $20 million - $25 million per annum.

11. In addition, the dynamics of the broadcasting industry are strongly influenced by the following factors:

- The financial health of the broadcasting system is intrinsically linked with the financial health of distributors, such that outcomes that benefit distributors will provide flow-through benefits to broadcasters and programmers.
- Competition in distribution is eroding the margins cable distributors traditionally rely on to support public interest obligations imposed by the Commission.
- Competitors in the form of highly integrated, well-financed telephone corporations benefit from liberalized joint-marketing and bundling rules to the detriment of cable distributors.
- Consolidation and the issuance of numerous specialty licences has provided many broadcast groups with multiple windows to promote their programming services.
- Competition in distribution has stimulated the market for specialty services resulting in greater than anticipated growth in both subscription and advertising revenues.

12. CCTA submits that these findings constitute compelling reasons to alter the current policy framework.

2. *Proposed Changes to the Current Policy Framework*

13. The CCTA has carefully reviewed the implementation and effectiveness of the policy framework for the use of local availabilities on U.S. specialty television services, noting in particular the additional economic value that could be realized by the Canadian broadcasting system and synergies lost to distributors due to the limitations on promoting their own non-broadcast services.

14. The CCTA submits that this review and the factors noted above warrant a change in the policy framework for the use of local availabilities on U.S. specialty television services. Accordingly, the CCTA requests that the policy be modified to allow more efficient and comprehensive use of the availabilities on U.S. specialty services. The amendments proposed would eliminate the current restrictions on the use of these availabilities, permitting the insertion of commercial advertising material, including advertising of non-core services and products offered by cable distributors, at market-based rates.

15. The CCTA submits that this proposed change in the policy would best serve the public interest, and would directly contribute to the achievement of the policy objectives of the *Broadcasting Act*. Moreover, CCTA submits that this proposed change will have little or no material economic impact on licensed Canadian programming services. In fact, this change will have a net positive impact on the Canadian broadcasting system as a result of a substantial increase in contributions by cable distributors to Canadian production funds, additional funding to combat the negative impact of black market satellite activity in Canada and enhanced competitiveness in the distribution market overall, to the ultimate benefit of Canadian consumers.

A. Capture unrealized economic value for the Canadian broadcasting system

16. In 2001, there were as many as 11 U.S. specialty television services available on Canadian cable television systems,[3] including A&E and The Learning Channel, which were respectively the first and fourth ranked specialty television services in Canada by average minute audience.[4] Together, these 11 services offered their distributors a total of 396 minutes of local availabilities over the course of an 18-hour broadcast day, where all 11 services are carried. It is important to keep in mind that the volume of availabilities on U.S. specialty services represents only 4 percent of the availabilities that can be accessed on Canadian specialty services, and an even smaller percentage of the availabilities across the television dial.

17. Cable companies provide licensed Canadian programming services with access to 75% of these local availabilities, or 297 minutes, at rates that cover no more than the cable companies' incremental cost of inserting the material. This represents a significant discount to the potential revenue that could be generated from commercial sales. In a number of cases, the local availabilities are not fully utilized by the programming services, resulting in even greater unrealized revenues. Given the current market conditions, it is no longer necessary or appropriate to require distributors to extend to broadcasters such significant discounts on the cost of using these availabilities. Many broadcasters have access to availabilities on their own properties.

[3] According to Mediastats, these services included: A&E, BET, CNN, CNBC, Court TV, Game Show, Golf, Headline News, The Learning Channel, Speed Channel and TNN.
[4] Nielsen Media Research.

18. CCTA estimates that, in 2001, the total inventory of local availabilities would have had an estimated economic value of $20 - $25 million, assuming that they could have been sold to advertisers at rates comparable to those of the average Canadian specialty television service. It is reasonable to expect that, given the audience ranking of some of the U.S. specialties, higher rates may have been attainable. In such circumstances, the estimated economic value could exceed $25 million annually.

19. This valuation is based on the expectation that the target advertising market for these availabilities would be similar to that for existing Canadian specialty services and, accordingly, would attract an economic value equivalent to an average minute of advertising on Canadian specialty services. The changes that we have proposed would ensure that this economic value is captured by distributors and the Canadian broadcasting system.

20. A detailed calculation of the estimated unrealized economic value of the local availabilities on U.S. specialty television services is set out in Appendix "A".

21. As discussed above, significant economic value could be realized from the commercial sale of local availabilities. For the distributor it helps offset the erosion of revenues from competition, both legal and illegal, and thereby maintain the ability to contribute to cultural obligations that may not offer economic returns (e.g., analog carriage of mandatory services). Further, any new revenues earned from the sale of availabilities would increase the contributions that distributors make towards programming funds and the community channel.

22. The Broadcasting Distribution Regulations require all larger cable television licensees to contribute 5% of gross revenues to Canadian television programming through the Canadian Television Fund (CTF) or community

channel. The revenues generated by cable television licensees from the sale of commercial advertising within the local availabilities of U.S. specialty services also would be subject to the 5% contribution rule. As such, the policy changes that we are proposing would automatically result in an annual increase in funding for Canadian television programming, most likely in excess of $1 million.

23. The benefit of increased contributions to the Fund cannot be overstated. The Fund has never been so oversubscribed as it is currently. Any additional funding would ease pent-up demand for production support. Moreover, additional funding would offset the negative impact on the CTF's revenues caused by growth in signal theft.

24. Government inaction on the spread of black market satellite use has resulted in a substantial exodus of Canadian viewers from the Canadian broadcasting system (estimated at some 700,000 viewers). The proposal in this application presents the Commission with the opportunity to enable distributors to take immediate action to counter the erosion of broadcasting revenues arising from black market activity. The repatriation of lost revenues can support initiatives to retain viewers within the system to the ultimate benefit of all Canadian programming services: conventional broadcasters, services licensed by the Commission for mandatory distribution on the basic service, established Canadian specialty services that have been distributed on an analog basis for many years, existing/future Canadian digital specialty services and premium Canadian pay services, including pay-per-view and video-on-demand services. The ability to recoup lost revenues and reinvest these funds in support of advancing the roll-out of digital cable service would have a major impact on the success of these services and future services such as digital broadcasting stations.

B. Provide opportunities to recover the costs of public interest initiatives

25. There have been fundamental and material changes in the competitive structure of the broadcasting distribution market since the policy framework on local availabilities on U.S. services was put in place. As the CRTC noted, as recently as 16 August 2002 (BPN CRTC 2002-48), satellite distribution undertakings have established themselves as viable alternatives to cable. As of mid-2002, competitive broadcasting distribution systems (DTH and MMDS) had about 2 million subscribers, for a 20% share of the market of households subscribing to a BDU's services.[5] Cable television systems serving more than 60% of all cable subscribers have had applications approved, or have applications pending, for the deregulation of the basic cable rate due to the establishment of effective competition within their local service area. In addition, as noted above, it is estimated that in excess of 700,000 Canadian households receive their programming from black market satellites. These changes in the competitive structure of the market have placed strong downward pressure on the financial returns for cable licensees.

26. However, notwithstanding the introduction of effective competition, cable television licensees continue to contribute in a number of ways to fulfill certain objectives under the *Broadcasting Act*. These include must carry rules, tiering and packaging rules and the requirement to contribute five percent of gross broadcast revenues to community programming and/or the Canadian Television Fund. CCTA submits that, while the objectives of the *Broadcasting Act* have not changed as a result of the introduction of competition, the economics of the system have and it is critical that distributors have the opportunity to fully utilize core assets to ensure contributions are maintained.

[5] Individual company financial reports and Mediastats.

27. Although cable distributors are now subject to increased competition and declining margins, the contributions and obligations continue to increase in a financial sense. Obligations are not without cost to the cable companies. At the same time, many carriage obligations bring with them only minimal new revenue opportunities. For instance must carry obligations imposed on cable networks are no longer matched by any expectation that subscribers will actually buy the programming services cable operators are obliged to distribute. Cable companies are under pressure to find new sources of revenue that can offset these costs and the growing impact of both legal and illegal competition. The need to respond to these pressures is a matter of considerable urgency to distributors, and the broadcasting industry in general.

28. In an environment where the Commission has been seen to encourage competition while requiring further contributions to non-economic goals, it seems reasonable to reduce those regulatory barriers that could provide cable distributors with the opportunity to grow their revenues. This is entirely consistent with the Commission's statement in Public Notice CRTC 1996-59 (Policy Regarding the Use of Exemption Orders):

> The regulator is able to ensure that the various elements [of the broadcasting system] adapt to changing circumstances and that there is an appropriate balance between the obligations expected of licensees and the measure designed to ensure that they have the resources required to enable them to fulfill these obligations.

29. The opportunity to insert commercial advertising into the local availabilities that distributors have paid for would allow cable licensees the opportunity to generate increased revenues to help offset the ongoing cost of maintaining contributions to the system.

C. *Help to offset the cost of distributing U.S. specialty television services*

30. U.S. specialty television services are popular with subscribers. As was noted earlier in this submission, A&E and The Learning Channel are respectively the first and fourth ranked specialty television services in Canada. These U.S. specialty services benefit the system by providing strong support for the Canadian programming services that are included with them in a package or on a tier.

31. Canadian specialty services that are carried on the same tier as popular U.S. services enjoy a lift in subscriber penetration that contributes directly to their financial health. The benefit received by these services comes at no cost to them. The higher penetration increases the specialty services' subscription revenues. This results in higher advertising rates due to higher potential audiences. Canadian specialty services have demonstrated strong financial results, both in terms of revenue and improved profitability, as the penetration rate of their services has risen over the years.

32. Cable television licensees must compensate U.S. specialty television services for their carriage. That compensation includes some consideration for the value that cable operators derive from local availabilities. The opportunity to include commercial advertising material in the local availabilities on U.S. specialty television services would help to offset the fees charged by these U.S. services.

D. Respond to advantages dominant telephone companies have been granted through integration and liberalization of joint-marketing restrictions

33. CCTA submits that irrespective of arguments on the economic impact of using avails for commercial advertising, there are no compelling broadcast policy arguments to support restrictions on distributors using the avails they have acquired to promote affiliated non-core products, such as Internet, telephony or wireless services. In fact, CCTA submits that the promotion of such services is both a reasonable use of a distributor's strategic assets and entirely consistent with the Commission's general policies to foster a more competitive and innovative environment through policies that have supported integration, convergence, joint-marketing and bundling. The Commission has issued rulings to implement these policies, as demonstrated by the number of telephone companies that have been granted or have applied for a BDU licence to deliver programming services over the same networks they use for telephony and Internet. In contrast, CCTA submits that by maintaining restrictions on distributors' joint-marketing opportunities through restrictions on avails, the Commission would inadvertently bestow an advantage on more fully integrated entities like BCE, its affiliates and alliance partners. The situation is particularly inequitable when consideration is given to the control that BCE subsidiaries exercise over a number of advertising properties through its Bell Globemedia holdings of CTV, a number of Canadian specialties and the Globe and Mail national newspaper. CCTA submits that, while avails may not have the same reach as spots on the CTV network or advertising in the Globe and Mail, access to these avails would provide cable companies with a reasonable opportunity to match the synergies of the telephone companies.

34. In past decisions, the CRTC has determined that cable distributors could not use avails to promote non-core products like Internet because these are not considered to meet the definition of services as contemplated in its earlier decision in 1995. While such promotions were restricted based on a narrow interpretation of the rules, the Commission has never addressed any public policy reasons for restricting an integrated company from using this asset to promote non-broadcast services it offers. Conversely, when it comes to integration of other CRTC regulated entities, such opportunities to leverage synergies have been found to be in the public interest.

35. In Telecom Decision CRTC 98-4, Joint Marketing and Bundling, the Commission lifted restrictions on the telephone companies in recognition of the competitiveness of the market, the benefits for consumers, improved cost efficiencies and the inability of the telephone companies to control the advertising, marketing and distribution of competitive products. In the wake of this and related findings, the BCE family of companies - Bell, Aliant, Bell ExpressVu, CTV and the Globe and Mail - have gained enormous opportunities to cross-promote. BCE boasts of its access to some 24 million customer connections, including the largest private television network, the top-ranked national daily newspaper and more than 13 million telephone lines with nearly ubiquitous access to households through much of Eastern Canada from Ontario to Newfoundland. Promotional opportunities include the extensive advertising opportunities presented by CTV, its suite of numerous specialty services, the Globe and Mail, as well as the use of monopoly telephone bills (both inserts and the outside of the envelope), telephone directories and customer call centers that are tasked with promoting all BCE properties on any customer call. Yet a much smaller company like EastLink is restricted from promoting telephony on the avails it paid for as part of its compensation to U.S. services. Any potential advantage associated with the avails pales by comparison to the advantages a competitor like Aliant has

from the synergies of BCE's integrated organization – many of which derive from the Commission's determinations.

36. CCTA submits that it is unfair for the Commission to permit joint-marketing and bundling of telephone, broadcast and Internet services, particularly when it includes access to leading television and print media entities and ubiquitous local telephone services and billing, yet prohibit the use of a much smaller advantage of integration by distributors. Clearly if the telephone companies are permitted to market as they do, then arguments of potential preference for distributors can carry no weight. The only other argument is that broadcasters would be subject to economic harm. This is not the case.

37. As CCTA demonstrates below, commercial use of avails will cause no material impact on the broadcasting system. The use of avails for promotion of non-core products does not cause a net loss of ad revenue. These avails provide a window for integrated companies to leverage synergies they acquired by investing in convergence strategies. This is not lost business but incremental promotions that arise because of synergies, which is the point of convergence.

38. CCTA submits that it would be unfair not to allow distributors to leverage these synergies since: (a) it results in no harm to the broadcasting system; and (b) other Commission rules and policies permit much larger competitors in these non-core markets to benefit from their own synergies many of which derive from CRTC liberalization of rules on joint-marketing.

3. <u>*Impact Analysis*</u>

39. The evidence clearly indicates that our proposed policy changes will have little or no material negative economic impact on licensed Canadian programming services.

40. In general, the target advertising market for the avails on U.S. specialties is expected to correlate closely with that of licensed Canadian specialty services, rather than conventional television. As such, CCTA submits that sale of the availabilities on U.S. specialties by Canadian cable operators would have little or no impact on advertising revenues of conventional television broadcasters. CCTA further submits that any impact on Canadian specialty services would be negligible given their strong growth and the minimal incremental additions to the inventory of availabilities that this proposal would generate for this portion of the advertising market.

A. *Minimal Additional Advertising Inventory*

41. The Canadian specialty television market has demonstrated a remarkable ability to absorb significant increases in both local and national advertising inventory, as a result of the increasing number of licensed services, with no material evidence of rate deflation. The number of Canadian specialty television services reporting financial results to the Commission doubled, from 22 services in 1997 to 47 services in 2001. In terms of advertising inventory, this represents an increase from 1.7 million minutes to more than 3.7 million minutes. Over the same time period, specialty television advertising revenues more than doubled, increasing by 130%. This clearly demonstrates that there was no downward pressure on advertising rates due to increased inventory. The overall pool of advertising revenue is not fixed. It

grew faster than the rate of growth of inventory available on specialty services.

42. The insertion of commercial advertising into the local availabilities on U.S. specialty television services will add approximately 145,000 minutes of national and local specialty television advertising inventory to a total market of over 3.7 million minutes, increasing the total size of the market by only 4%. This assessment assumes that 100% of the U.S. availabilities would be sold for commercial advertising. To the extent that cable distributors would use some portion of the avails for the promotion of core and non-core services, the actual additional inventory used for commercial advertising would be less.

B. *Strong Growth in Specialty Television Revenues*

43. The specialty television market has experienced, and is projected to continue to experience, strong economic growth. Overall, the specialty television sector has achieved an average growth in profits of almost 18% annually over the period 1997 to 2001. Total specialty television revenue increased at an average annual rate of almost 20% over the same five-year period. Total revenues more than doubled from $590 million in 1997 to $1.2 billion in 2001. While a portion of this growth was due to subscription revenue gains, advertising was the more significant source of growth. Specialty television advertising revenues, including both national and local advertising revenues, increased at an average annual rate of 24% over the period 1997 to 2001, from $184 million to $438 million.

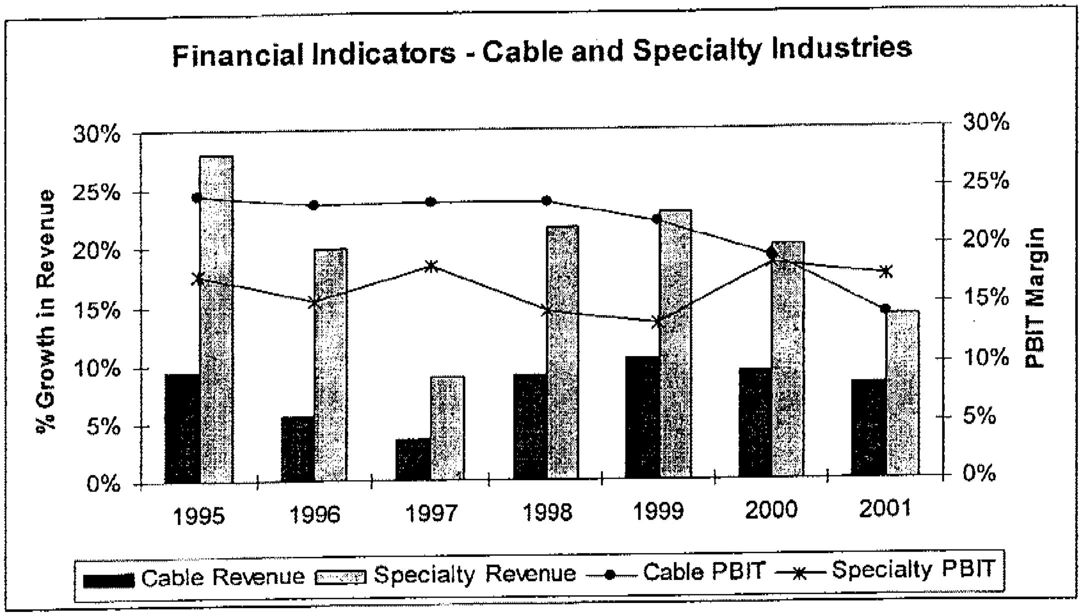
44. Industry experts, such as the Television Bureau of Advertising (TVB), project that specialty television advertising revenues will continue to grow very rapidly, with an average annual rate of growth in excess of 14% over the period 2001 – 2005.

45. Advertising revenues tend to track closely with economic growth. Forecasts for the Canadian economy project annual growth at 3% or more for 2003. This growth rate is not as high as the 1999-2000 period, but it is higher than the growth experienced in prior years. During the same period, advertising revenue for specialty programmers exhibited growth rates of between 12% and 31% each year. An annual growth rate of 14% for future years should be entirely possible, in light of strong economic growth and past performance of the specialty industry.

46. Subscriber revenues, which accounted for almost 70% of the total revenues accruing to Canadian specialty television services in 2001, also experienced strong growth over the period, with average annual growth of over 19%[6]. Strong economic growth, particularly growth in housing starts, suggests that there will continue to be growth in subscribers. As subscriber levels increase, so do the revenues from subscriptions. Moreover, higher subscriber levels should also produce higher advertising revenue.

47. The specialty television sector has posted impressive financial results, as demonstrated in the growth in advertising and subscriber revenues. It has exhibited much stronger growth in revenues relative to the cable industry. The specialty industry has enjoyed double-digit growth in revenues almost throughout the period, exceeding 20% in some years. By comparison, the cable industry has experienced revenue growth of less than 10%. The profitability of the specialty sector has remained strong, while it is clearly in decline for the cable industry. The following chart demonstrates the dramatic shift that has occurred in the relative financial strength of the specialty services versus cable industry.

[6] CRTC, Pay and Specialty Statistical and Financial Summaries, 1997 – 2001 and TVB.



48. The specialty television sector can look forward to further growth in subscription and advertising revenues while the cable industry absorbs further subscriber losses as competition continues to erode its market share. The specialty television sector has the financial wherewithal to absorb the negligible impact that could arise from the proposal in this application, particularly when viewed in light of the sector's strong performance as its advertising inventory almost doubled.

49. Given the substantial size and projected future growth of thc specialty television advertising market and the minimal additional inventory that would be introduced, it is clear that the changes proposed in this application will have little or no material negative economic impact on licensed Canadian programming services.

4. ***Conclusions and Recommendations***

50. Based on the preceding analysis, the CCTA believes that the policy changes proposed in this application would be in the public interest, and would directly contribute to the achievement of the policy objectives of the *Broadcasting Act*.

51. The insertion of commercial advertising into the local availabilities on U.S. specialty television services would capture economic value for the Canadian broadcasting system that is not fully realized and result in increased funding for the production of Canadian television programming, with no material negative economic impact on licensed Canadian programming services.

52. The requested policy change would allow distributors to take immediate action to counter the growing harm to the broadcasting system caused by black market activity. For these reasons, we believe that it would be in the public interest for the Commission to give expeditious consideration to this application.

Yours Sincerely,

Janet Yale

Attachment

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

VALUATION ESTIMATE - ONE

Top Canadian Specialty Services, National Advertising Revenues*

TSN	63,288,759		
Teletoon	19,520,484		
YTV	45,380,302		
Total	128,189,545		
Average	42,729,848		

** Ranked by Average Minute Audience 2001-2002*

U.S. Speciality Services - Potential Revenues from Avails

A&E	7,121,641	*US avails 2 minutes/hr vs. Cdn 12 minutes/hr*
The Learning Channel	7,121,641	*US avails 2 minutes/hr vs. Cdn 12 minutes/hr*
Total	14,243,283	

All Other Canadian Specialty Services, National Advertising Revenues*

English-language only

**Grouped by subscribers (4 million or more, less than 4 million)*

	4 million plus	less than 4 million	
Weather	8,686,897		
MuchMusic	32,337,477		
Vision	1,431,290		
Life	8,652,219		
Showcase	9,171,443		
Bravo	9,307,654		
Discovery	17,912,212		
Newsworld	10,091,000		
WTN	11,079,433		
CMT	10,715,170		
TCN	9,181,162		
CTVN1	4,670,856		
H+E	5,817,877		
CLT	287,515		
SportsNet	22,923,563		
ROBTv	3,334,005		
PrimeTV	10,527,557		
Space	15,812,586		
Outdoor	3,290,025		
HGTV	9,210,578		
StarTV		859,395	
Pulse 24		4,798,058	
Headline Sports	10,191,046		
MuchMore	6,521,104		
TalkTV		55,407	
Food Network		4,067,172	
Total	221,152,669	9,780,032	
Average/Cdn service	10,052,394	2,445,008	
$ per US service	1,675,399	407,501	*US avails 2 min/hr vs. Cdn total 12 min/hr*
Total US (by large/small)	10,052,394	1,222,504	*assumes 9 US specialties; 6 match larger Cdn*
+ US high audience reach	14,243,283		*top 2 US specialties higher ad rev*
Total ALL US	$ 25,518,181		

VALUATION ESTIMATE - TWO

<u>All Canadian Specialty Services, National Advertising Revenues*</u>

English-language only

**Grouped by subscribers (4 million or more, less than 4 million)*

	4 million plus	less than 4 milllion	
Weather	8,686,897		
TSN	63,288,759		
MuchMusic	32,337,477		
Vision	1,431,290		
YTV	45,380,302		
Life	8,652,219		
Showcase	9,171,443		
Bravo	9,307,654		
Discovery	17,912,212		
Newsworld	10,091,000		
WTN	11,079,433		
CMT	10,715,170		
TCN	9,181,162		
CTVN1	4,670,856		
Teletoon	19,520,484		
H+E	5,817,877		
CLT	287,515		
SportsNet	22,923,563		
ROBTv	3,334,005		
PrimeTV	10,527,557		
Space	15,812,586		
Outdoor	3,290,025		
HGTV	9,210,578		
StarTV		859,395	
Pulse 24		4,798,058	
Headline Sports	10,191,046		
MuchMore	6,521,104		
TalkTV		55,407	
Food Network		4,067,172	
Total	349,342,214	9,780,032	
Average/Cdn service	13,973,689	2,445,008	
$ per US service	2,328,948	407,501	*US avails 2 min/hr vs. Cdn total 12 min/hr*
Total US (by large/small)	18,631,585	1,222,504	*assumes 11 US specialties; 8 match larger Cdn*
Total ALL US	$ 19,854,089		