

April 21, 2005

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

Re: Broadcasting Public Notice CRTC 2005-1, Call for proposals for a framework to guide the migration of pay and specialty services from analog to a digital distribution environment

Broadcasting Public Notice CRTC 2004-58, Call for comments on a proposed framework for the licensing and distribution of high definition pay and specialty services

Broadcasting Public Notice CRTC 2004-61-2, Call for comments on a request by the CCTA for the addition of HD Net and Discovery HD Theatre to the lists of satellite services eligible for digital distribution

Dear Ms. Rhéaume:

Introduction

1. The Canadian Broadcasting Corporation/Radio-Canada ("CBC/Radio-Canada") is pleased to provide the following comments on the three Public Notices referenced above. While all three notices deal with issues that are interrelated, we will comment on each in turn.

Summary of CBC/Radio-Canada's Position

2. The transition to a fully digital distribution environment in Canada should be guided by a single goal: To ensure that Canadians continue to be well

- served with strong Canadian programming services as the system moves through the process of digital evolution.
3. The role of broadcast distribution undertakings (“BDUs”) is set out in the *Broadcasting Act, 1991* (section 3(1)(t)) (“the Act”). One of the underpinnings of Canadian broadcasting policy is the obligation of BDUs to support the carriage, distribution and access to Canadian services. These proceedings to develop frameworks for the digital distribution of specialty and pay services must ensure that BDUs continue to contribute to the attainment of the objectives of the Act.
 4. Newsworld and le Réseau de l’information (RDI) are owned and operated by CBC/Radio-Canada. They were licensed to provide news and information programming. These are key services for Canadians and their presence in the system must be assured at all stages of that digital evolution.
 5. With respect to Digital Migration (Broadcasting Public Notice CRTC 2005-1), CBC/Radio-Canada believes that:
 - Consent to carriage is an essential precondition for digital distribution.
 - The basic service concept must be retained and supported by a policy framework that guides digital migration.
 - Dual status and modified dual status carriage must be carried forward into this new framework.
 - The transition to digital and the move to HD brings with it new costs. The CRTC will need to continue to regulate wholesale rates for services distributed on basic in digital distribution to ensure an effective transition.
 6. With respect to the CRTC’s proposed licensing and distribution policy for high definition pay and specialty services (Broadcasting Public Notice CRTC 2004-58), CBC/Radio-Canada believes that:
 - The HD programming thresholds proposed by the CRTC are unattainable by Newsworld and RDI in the short to medium term.
 - The opportunity for basic carriage in a digital environment of essential services, such as Newsworld and RDI which provide general interest news and information programming, must not be determined solely on the basis of how much HD programming they offer.
 7. Finally, CBC/Radio-Canada’s position on CCTA’s proposal to add HD Net and Discovery HD Theatre to the Lists of Satellite Services Eligible for Digital Distribution (Broadcasting Public Notice CRTC 2004-61-2) is that it is premature at this time.

Public Notice CRTC 2005-1: Migration of Analog Programming Services to Digital Distribution

8. The CRTC wishes to encourage the rollout of digital distribution technology and to maximize its contribution to the objectives of the *Broadcasting Act* as set out in section 3(1). To that end, the CRTC notes that a number of principles and requirements have been enunciated in various proceedings and decisions related to digital migration that could form the basis for a policy framework to guide the migration of analog services to digital distribution. Those elements are:

- Consent
- Provision of a basic service
- Distribution and linkage rules
- Wholesale rates

Consent to Carriage

9. With respect to the issue of consent, the Commission is seeking comment on whether programmer consent should be required for the migration of analog services to digital distribution on all cable BDUs.
10. CBC/Radio-Canada believes that the consent of the programmer to digital distribution continues to be an essential requirement to ensure distribution on reasonable terms.
11. Consent is a necessary precondition to distribution on mutually acceptable terms between BDUs and programmers. Consent helps ensure that programmers secure the wholesale rates and channel positioning they need in order to effectively serve their audience and fulfill their obligations. In the absence of a *consent to carriage* provision, programmers would lose effective control over the distribution of their services.
12. A programmer can reasonably be expected to consent to the digital distribution of its service where the programmer and the BDU agree on terms for digital distribution that ensure that the programmer is no worse off in terms of subscription revenue than it was in an analog environment.

Provision of Basic Service

13. In its call for comments the Commission reiterates the importance of the basic service concept in a digital environment.
14. CBC/Radio-Canada supports this view. Basic service is one of the primary tools of public policy. The basic service concept as set out in the *Broadcasting Distribution Regulations* establishes priorities between types

of services on the basis of their role in the system and their capacity to contribute to the objectives of the *Act*.

15. Newsworld and RDI are currently carried as basic services by BDUs in analog environments and in digital environments. The concept of basic service remains essential, particularly for services such as Newsworld and RDI, because it ensures that all BDU subscribers have access to these key services. The basic service concept remains vital in the migration to digital distribution.

Distribution and Linkage Rules

16. In Public Notice CRTC 2005-1, the CRTC is seeking proposals that envisage less restrictive distribution and linkage rules for the migration of analog services to digital distribution. The Commission's proposed approach suggests possible new packaging scenarios such as "pick and pay" or mini-themed tiers.
17. Distribution and linkage rules exist to maximize the distribution of and subscription to Canadian services. That in turn enables Canadian services to deliver value to the public and to maximize their contributions to the system through Canadian content and related program spending.
18. While certain services may lend themselves to this kind of narrow packaging approach, CBC/Radio-Canada believes that as key services, Newsworld and RDI must continue to be available to the widest possible audience. They must therefore continue to be offered as part of the basic service offering by BDUs.
19. A change in distribution technology from analog to digital does not negate the importance of Newsworld and RDI as key services. Therefore, dual status and modified dual status carriage should be carried forward in a digital distribution environment so that Newsworld and RDI can continue to be available to the widest number of Canadians.

Wholesale Rates

20. With respect to the issue of wholesale rates, the Commission is asking whether it would be appropriate that wholesale rates for the digital distribution of analog pay and specialty programming services be set by negotiation between the parties.
21. CBC/Radio-Canada believes that the transition to digital distribution by BDU's does not necessitate the abandonment of regulated wholesale rates.
22. Regulated wholesale rates for dual status and modified dual status services provide an essential reference point for programmers and the

- CRTC. Regulated wholesale rates for RDI and Newsworld, for example, provide the foundation on which those services are built and on which they are able to plan for the future. The wholesale rate increases provided to Newsworld and RDI in their last licence renewal are enabling a range of important program initiatives and establishing a stronger newsgathering presence in the various regions across Canada. These improvements would not have been possible without a regulated wholesale rate.
23. High definition brings with it higher capital costs, higher program production and acquisition costs and higher satellite distribution costs. Ultimately, these costs will have to be passed on to subscribers.
24. Subscription revenues currently account for approximately 80% of Newsworld and RDI's total revenue base. Subscription revenues are essential to determining the scope and quality of service that can be provided by Newsworld and RDI. If Newsworld and RDI are going to implement HD programming, the cost base for these services will expand and the existing revenue base may not be able to support that increase. Given this dynamic, there will be a continuing need for the CRTC to play a role in regulating wholesale rates for Canadian specialty services in the digital environment as high definition programming is introduced.

Public Notice CRTC 2004-58: Framework for the Licensing and Distribution of High Definition Pay and Specialty Services - Licensing Policy

25. In Public Notice CRTC 2004-58, the CRTC sets out a proposed framework for the licensing of high definition pay and specialty services. Specifically, the elements of that proposed framework are:
- Replacement technology
 - Unduplicated programming allowance
 - New licenses preferable
 - High Definition programming conditions
 - Exceptional cases
 - Timing of licence applications and new entrants
 - Stages of the transition to digital and to high definition service

CBC is Committed to HD

26. In its second response to the Report of the Standing Committee on Canadian Heritage (Reinforcing Our Cultural Sovereignty), the Government emphasizes the leadership role it believes CBC/Radio-

Canada can play in the transition to digital television and invites the Corporation to submit its plan for its transition to digital, including HD.

27. CBC/Radio-Canada has been laying the foundations of this plan for a number of years.
28. On the transmission front, CBC/Radio-Canada was granted its first transitional Digital TV licences on January 30, 2004 (CRTC Decisions 2004-68 and 2004-69). These were for CBLT and CBLFT in Toronto. The Commission on November 12, 2004 authorized subsequent applications for English DTV in Vancouver (CBUT), and CBMT and CBFT DTV in Montreal. Applications for Quebec City and Ottawa have recently been submitted and we are costing out options for rolling out beyond the first five markets. At present, however, there are no funds available within CBC's existing capital budget to go beyond these five markets.
29. CBC/Radio-Canada has managed to produce a number of high-impact specials that were either partially or completely HD productions, doing so both in-house and in co-operation with independent producers. In the 2003/04 season this has included:
- *The Nature of Things*
 - *An American in Canada*
 - *Life & Times*
 - *Witness*
 - *Nanalan* (pre-school puppet series);
 - *Grande Ourse* (drama series);
 - *Jack Carter* (drama series);
 - *I Was a Rat* (children's Canada-UK co-production);
 - *72 Hours* (reality-based series);
 - *Blobheads* (children's animated Canada-UK co-production)
 - *Ciao Bella* (drama co-production developed in 2004/05, slated for the 2004/05 season).
30. As well, CBC/Radio-Canada's program production and acquisition strategies for High Definition properties will ensure that programming with significant legacy value and high impact potential is available for Canadians when HD receiver penetration has reached more significant levels.
31. In terms of facilities, CBC/Radio-Canada is investing in some new production facilities. We have planned within our existing capital budgets for some high-definition production capability; however, the full transition will require a much more significant capital and operational investment. Investments to date include:

- New high definition mobile TV unit for English Television to be in service in June;
 - Conversion of a major studio in our Montreal facility to allow for high definition production which is already in service;
 - The introduction of high definition “islands” in network production areas as appropriate.
32. CBC/Radio-Canada’s strategy for HD, therefore, has begun with its main networks. The focus is on Canadian drama, high impact specials, documentaries and sports.
33. News programming, however, is at the end of CBC/Radio-Canada’s planning cycle for HD. The challenge associated with gathering and delivering news across a network, such as dealing with latency in ENG feeds or graphics or differing formats in newsgathering or how to handle low-resolution material in an HD context is still considerable.
34. To date, CBC/Radio-Canada has funded this strategy from within its current budget as surplus resources become available. However, CBC/Radio-Canada has reached the limit of what it can accomplish with existing resources. Accelerating the implementation of our digital transition strategy and making the full transition to digital requires a fully costed plan and a significant funding commitment from the Government. This will be essential if CBC/Radio-Canada is to play a leadership role in the transition to digital television.

Replacement technology

35. CBC/Radio-Canada believes that digital technology should be treated as a replacement for analog technology. In the broader context, over-the-air digital TV can be regarded as a replacement technology. On the basis of the original spectrum allotment plan for DTV, there is enough spectrum available to accommodate the delivery of an HD service by every local television station in Canada. Industry Canada’s spectrum planning and allotment process ensured that HD in an over-the-air environment could be treated as a replacement technology. The same is not true for satellite-delivered services.
36. However, in its proposed policy framework, the CRTC applies this concept by suggesting that high definition technology be treated as a replacement for the analog and low definition or standard definition (SD) digital technology used by today’s pay and specialty services.
37. The situation for pay and specialty services is different. HD requires 5 or 6 times the bit rates currently being allocated to SD channels. There isn’t enough space segment in the system to accommodate all of the existing pay and specialty services in high definition formats.

38. In its broadest context, CBC/Radio-Canada believes that digital technology should be treated as a replacement for analog technology. However, in the narrower context of high definition, HD should not be considered as a replacement to SD pay and specialty services. It should be regarded as an adjunct.

Unduplicated programming allowance

39. The Commission is proposing to permit specialty and pay licensees to deliver up to a maximum of 14 hours per week of unduplicated HD programming. This is consistent with its approach for over-the-air digital television as set out in Public Notice CRTC 2002-31. CBC/Radio-Canada supports this approach.

New licences preferable

40. The Commission is proposing to proceed through the issuance of new high definitional (HD-transitional) licences. CBC/Radio-Canada does not believe that it is necessary to proceed in this manner. A simple amendment to an existing licence should be sufficient.
41. The CRTC proceeded with new transitional digital licences for over-the-air television and radio because the model required authorization to use additional spectrum. No such requirement exists for pay and specialty services. The CRTC can achieve its goals through the less burdensome process of licence amendments.

Genre Protection

42. The Commission's proposed HD-transitional licence approach also contemplates the loss of genre protection for Canadian specialty and pay services "if an existing licensee fails to apply for an HD transitional licence within a reasonable period of time".
43. While we recognize that the Commission's intent with this proposed approach is to ensure that the implementation of HD proceeds in a timely manner, the introduction of HD programming on specialty and pay services will proceed unevenly over time based on the type of service and the resources that are available. A simple "use it or lose it" regime of authorization doesn't take these differences into account. The proposed approach would undermine the Commission's own policies that give Canadian services priority of distribution and some protection within their own genres.
44. CBC/Radio-Canada's ability to fully implement HD across all of its services will require funding support from the government. Since the

availability of additional funding is not subject to the Corporation's control and if that funding support is not forthcoming in a "reasonable period of time", then there is a real possibility of CBC/Radio-Canada losing any genre protection it currently enjoys for its specialty services as a result of this proposed approach.

45. Newsworld and RDI do not enjoy the same level of genre protection as other Canadian specialty services. News programming is available from a number of Canadian and non-Canadian sources. As well, the CRTC's recent decision (Decision CRTC 2005-131) to approve amendments to Newsnet's nature of service condition of licence further erodes the genre protection available to Newsworld.
46. Therefore, CBC/Radio-Canada is concerned that the complete loss of genre protection contemplated by the approach proposed above would undermine the Corporation's plans for the future provision of digital programming. The full implementation of HD by CBC/Radio-Canada's specialty services requires stability and the certainty that the CRTC is not going to license or authorize for distribution a service in the same genre that is directly competitive.

Mandatory Carriage and HD Programming

47. The Commission proposes that services provide a minimum level of HD programming to warrant mandatory carriage. Specifically, it is proposing that:
- English services have at least 50% of their programming in HD; and
 - French services have at least 30% of their programming in HD, of which 50% must be produced in French.
48. For the reasons noted above, these proposed thresholds will be unachievable for Newsworld and RDI for the foreseeable future.
49. Newsworld and RDI do carry a significant amount of documentary programming. This programming is acquired from independent producers. We anticipate that over the next several years, Newsworld and RDI will be acquiring more of its documentary programming in an HD format to ensure it has a legacy value. Within the next 3 years, Newsworld and RDI are aiming to offer approximately 15% of their respective evening broadcast schedule in an HD format.

Exceptional cases

50. In Public Notice CRTC 2004-58, it is suggested that in a limited set of circumstances it may be in the public interest to grant carriage rights for

HD-transitional services that offer less than the amount of high definition programming than might otherwise be specified in the policy.

51. CBC/Radio-Canada supports a flexible approach in this regard.
52. Newsworld and RDI are Canada's premiere Canadian news services and are a vital link for Canadians; keeping them informed on the critical events of the day. In fact, the CRTC has acknowledged the essential contribution of Newsworld and RDI in their last licence renewal decision (CRTC Decision 2000-3): "Both Newsworld and RDI have established themselves as important elements in the national public broadcaster's overall service to Canadians".
53. If the CRTC determines that an HD program threshold is necessary and if it decides on a threshold that is beyond what we believe RDI and Newsworld can achieve, then it is essential that the policy be flexible enough to ensure the distribution of key services such as Newsworld and RDI.

Public Notice CRTC 2004-61-2: Addition of HD Net and Discovery HD Theatre to the Lists of Satellite Services Eligible for Digital Distribution

54. As noted above, all three public notices are interrelated. The framework adopted as a result of the proceeding in Broadcasting Public Notice CRTC 2004-58 will govern the licensing and distribution of HD versions of existing Canadian and non-Canadian pay and specialty services, as well as new Canadian and non-Canadian HD services. The framework adopted as a result in the proceeding in Broadcasting Public Notice CRTC 2005-1 will set the rules for the migration of an analog to a digital regulatory framework.
55. In the circumstances, it would be premature to rule on CCTA's proposal to add *HD Net* and *Discovery HD Theatre* to the list of *Satellite Services Eligible for Digital Distribution* prior to the establishment of these policy frameworks.

Conclusion

56. The CRTC's proposed policy framework for the migration of analog specialty and pay services to digital distribution and its proposed framework for the authorization and distribution of HD specialty and pay services is an important part of CRTC's effort to put in place a set of policies that will guide the system in making an efficient and effective transition to digital.
57. The policy framework that guides and supports the transition of analog specialty and pay services to digital distribution must also promote the

distribution of Canadian services so they can maximize their contribution to the achievement of the objectives of the *Broadcasting Act*. For key services like Newsworld and RDI, basic carriage remains vital irrespective of the packaging opportunities the migration to digital may provide to BDUs.

58. The policy framework that defines the licensing or authorization framework for HD specialty and pay services must be flexible enough to recognize that not all services are at the same stage in the process of incorporating HD formatted programming. Given these differences, the CRTC's policy needs to ensure that the carriage opportunities for key services like Newsworld and RDI are not determined solely on the basis of how much HD programming they offer.

All of which is respectfully submitted.



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