

25 August 2005

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

**Re: Broadcasting Public Notice CRTC 2005-74, Call for comments on a request by the CCTA to repeal section 22 of the *Broadcasting Distribution Regulations***

Dear Ms. Rhéaume:

1. The Canadian Broadcasting Corporation/Radio-Canada (CBC/Radio-Canada) is pleased to provide the following comments in response to the Commission's call for comments on a request by the Canadian Cable Telecommunications Association (CCTA) to repeal section 22 of the *Broadcasting Distribution Regulations* (the Regulations), which states:

*22. (1) Except as otherwise provided under a condition of its licence, a Class 1 licensee, and any Class 2 licensee that elects to distribute an audio programming service in a licensed area, shall distribute in the licensed area*

*(a) the programming services of all local radio stations; and*

*(b) if they are not distributed under paragraph (a),*

*(i) the programming services of at least one radio station that broadcasts in English and at least one that broadcasts in French that are owned and operated by the Corporation, and*

*(ii) the educational radio programming service of an educational authority designated by the province in which the licensed area of the undertaking is located.*

*(2) Despite subsection (1), a licensee is not required to distribute the programming service of a local digital radio station that is licensed on a transitional basis.*

2. CBC/Radio-Canada strongly opposes this application to repeal s. 22 of the Regulations on the following grounds:
  - Access to CBC/Radio-Canada radio services would be curtailed;
  - The Regulations already permit case-by-case exceptions;
  - A quarter of Canadians currently receive their radio services through cable;
  - Regulatory symmetry between DTH, MDS and cable is not desirable; and
  - The CCTA has provided no supporting evidence to support its allegations with regards to capacity constraints and interference problems.

### **Access to CBC/Radio-Canada radio services would be curtailed**

3. CBC/Radio-Canada's radio services are a fundamental element in the Canadian broadcasting system. Its English and French language radio services provide programming that is unique in the communities it serves. Section 22 of the Regulations ensures that CBC/Radio-Canada radio stations are distributed by cable distribution undertakings by virtue of paragraph (1) b) (i) of s. 22, which stipulates that at least one English-language radio station and at least one French-language radio station owned and operated by CBC/Radio-Canada must be carried, and also by virtue of paragraph (1) a), which stipulates that all local radio stations must be carried.
4. Section 3 (1) m) of the *Broadcasting Act* stipulates that CBC/Radio-Canada, as the national public broadcaster, should provide radio and television services with programming in English and in French which should "*be made available throughout Canada by the most appropriate and efficient means and as resources become available for the purpose*" (paragraph vii).
5. While CBC/Radio-Canada has the most extensive transmission infrastructure for the delivery of its radio services in Canada, serving every community is impossible to achieve at a reasonable cost. Section 22 of the Regulations plays a role in helping CBC/Radio-Canada achieve its public broadcaster mandate.

### **The Regulations permit case-by-case exceptions**

6. The CCTA has provided no compelling evidence to support the blanket removal of regulatory oversight which respect to which audio programming services should be distributed by cable broadcasting distribution undertakings ("BDUs"). The Regulations permit cable operators to seek relief by condition of licence of the requirement to carry mandatory audio programming services. This approach enables the Commission to grant exceptions, on a case-by-case basis, to the general rule that cable BDUs are required to carry certain audio programming services. In fact, the Commission has previously granted exceptions to cable BDUs.
7. Approval of the CCTA's application would change the range of audio programming services that are received by Canadians through cable television. It would remove the

requirement to provide Canadian audio programming services in both official languages. It would enable class 1 and class 2 cable distributors to “cherry pick” which Canadian audio programming services, if any, will be carried. It would also permit cable operators to distribute a majority of or exclusively non-Canadian audio programming services.

### **One in Four Canadians receive their radio via cable television**

8. The CCTA suggests that removal of the must-carry requirement will have little effect on the market since few cable subscribers make use of cable television to access radio stations. In support of its position, the CCTA relies on a telephone survey of 500 Rogers Cable subscribers in a limited geographical area, with no information on the specific regions or on whether the persons surveyed live in urban or rural areas.
9. The latest BBM survey (Spring 2005, adults 12+) contradicts the CCTA’s findings. According to BBM, a quarter of Canadians receive AM and FM radio stations through cable TV. The total sample size for the BBM radio survey, which is representative of all Canada, was 76,390 persons aged 12+. The margin of error associated with such a survey is very small.
10. The CCTA also suggests that usage levels of Rogers’ current cable audio offering is due, in part, to the complexity involved in accessing these services since subscribers must install a separate cable outlet or splitter to create a separate feed to the radio tuner and must scan all cable frequencies or contact the cable operator to get a list of the available cable audio frequencies. The survey is not sufficient to allow such a generalization. Further, increasing market awareness of the availability of audio channels on television and its value could result in an increase in usage levels.
11. Other factors point to an increase in interest and use of cable audio services by Canadians. Usage is expected to increase within the next few years as more and more cable subscribers move from analog to digital cable services. The transition to digital brings with it an Interactive Programming Guide (IPG), which lists the available radio stations which can be heard either directly on their television set or through a home theatre or stereo system connected to their digital set top box. Therefore, the migration to digital will also increase the interest of subscribers to access radio stations through cable.<sup>1</sup>
12. The results from the Rogers survey cannot be used as the basis for any general conclusions on Canadian’s use of cable television to access radio services, and even less so in the context of migration to digital cable.

### **Regulatory symmetry between DTH, MDS and cable is not desirable**

13. The CCTA suggests that the Commission should bring about regulatory symmetry between the rules for carriage of audio programming services that apply to cable

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<sup>1</sup> The Rogers survey indicates that amongst those respondents contemplating the shift to digital, 41% indicate that they would be “definitely” or “probably interested” in accessing radio stations with CD quality audio through the on-screen guide.

BDUs and those that apply to other BDUs such as DTH, which are not subject to the obligations to carry radio stations and Multipoint Distribution Systems (MDS) like Look TV, which is relieved by condition of licence from the audio must-carry obligations. This argument ignores the differences in the technologies between DTH, MDS and cable.

14. The Commission did not impose the requirement to carry radio stations on DTH distributors, “given the national nature of the services they provide, as well as the current transponder costs and capacity constraints” (*New Regulatory framework for BDUs*, Public Notice 1997-25, 11 March 1997 at paragraph 155). The Commission relieved Look Communication, by condition of licence, from the requirement to carry all mandatory audio programming services because of channel capacity constraints.
15. More recently, in Decision 2003-407, the Commission denied a request by Telus, a class 1 BDU, to be relieved of the requirement to distribute the signals of all local radio services in the affected markets. Telus argued that a similar exemption had been granted to Look TV. The Commission cited other precedents where it denied exemptions to new cable distribution undertakings<sup>2</sup> and stated:

The Commission is of the view that the applicant’s requests differ fundamentally from that approved in Decision 98-55. The undertaking approved in that decision, now known as Look TV, is a multipoint distribution system (MDS). While its operation is digital, it does not employ the same technology as TELUS, and has a limited spectrum equivalent to only 15 analog channels. The Commission notes that TELUS did not provide any information related to the costs TELUS asserts would be associated with the distribution of local audio services. Based on the limited information provided by the applicant in support of its request, the Commission is not convinced that the request should be approved.

**The CCTA has provided no evidence to support its claims respecting capacity constraints and interference problems**

16. The CCTA suggests that if cable operators were not obliged to carry all local radio stations as stipulated by s. 22 of the Regulations, the freed up capacity could then be made available for the carriage of additional digital and/or HDTV services. The CCTA provides that in some systems the additional capacity would enable the launch of thirty additional standard definition digital television services or six additional high definition television services.
17. The CCTA has not identified any system in particular and has not provided supporting evidence. Further, the basis for CCTA’s statement is unclear, as 50 FM radio stations require approximately 6.25 Mbits/s using current digital coding technology, which is equivalent to one standard definition TV channel or equivalent to one third of the capacity needed for one HDTV channel.
18. The CCTA also suggests that a cable operator’s ability to find interference-free frequencies for priority radio stations has become increasingly limited as some cable

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<sup>2</sup> Decisions 98-194, 2000-332, 2002-171 and 2002-235.

operators in larger markets are required to carry as many as 45 priority stations. We recognize that this may be a problem in some large markets, but only for analog cable and not for digital cable, as standard definition and HDTV television services use different frequencies. Further, as noted above, the Commission has the authority to grant, on a case-by-case basis, conditions of licence relieving a licensee of the must-carry audio channel requirements.

### **Conclusion**

19. For the above reasons, CBC/Radio-Canada opposes CCTA's application to repeal section 22 of the Regulations and believe the Commission should deny the application.
20. The Commission undertook an extensive public process to implement a regulatory framework for all BDUs and determined that there are sound policy reasons for a regulatory approach that takes into account different types of BDUs. The regulatory approach also contemplates that the Commission may permit exceptions to the general rule, on a case-by-case basis.
21. CBC/Radio-Canada notes that the potential capacity and interference issues identified by the CCTA would occur on a system-by-system basis. Cable BDUs are already permitted to apply to be relieved by condition of licence from the requirements of section 22.
22. CBC/Radio-Canada appreciates this opportunity to provide its comments.

Yours truly,



Bev Kirshenblatt  
Senior Director, Regulatory Affairs

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