



Canadian Association of Broadcasters
Association canadienne des radiodiffuseurs

February 10, 2009

Via fax: 819-994-0218

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

Dear Mr. Morin:

Re: Broadcasting Notice of Public Hearing CRTC 2008-8: Unresolved Issues Related to the Accessibility of Telecommunications and Broadcasting Services to Persons with Disabilities – Reply Comments Made on Report on Closed Captioning and Proposed Standards for English- and French-Language Television Services

1. The Canadian Association of Broadcasters (CAB) is the national voice of Canada's private broadcasters, representing the vast majority of Canadian programming services, including private television and radio stations, and specialty, pay and pay-per-view services.
2. This submission is in response to comments received in response to the preliminary report on closed captioning and the proposed *Closed Captioning Standards and Protocol for English-language Television Programming Services* and the new guidelines (*Projet de lignes directrices et protocole du sous-titrage à l'intention des télédiffuseurs canadiens de langue française*) recommended by the French-language working group, filed on 2 December 2008, as well as the validation exercise report filed by the CAB on 15 December, 2008. In the context of this reply, it should be noted that the CAB is expressing the views of all Canadian French and English private, public and educational television broadcasters.

The Issue of Pop on versus roll up

3. Some interveners who have filed comments on January 19th, 2009, in response to the Closed Captioning preliminary report and proposed *Closed Captioning Standards and Protocol for English-language Television Programming Services* argue that the use of roll-up captioning should not be allowed for pre-recorded programming in Canada. For Mr. Joe Clark, the Commission should "reject the claimed CAB captioning standard and associated research" and should

“prohibit the use of scrollup (e.g. roll up) captioning for fictional narrative programming captioned in Canada”. In his submission, Mr. Henry Vlug states that *“roll up captioning should not be allowed at all for non live programming”.*

4. The Canadian Association of the Deaf (CAD), on the other hand argued that *“...roll up captions in purchased programming should only be acceptable on a temporary basis, that efforts had to be made to get the programs more appropriately captioned, and that roll ups should be limited to actual live programs as opposed to rebroadcasts of what were live programs.”* Given that these recommendations were not adopted by the English-language closed captioning working group, the CAD concludes that the proposed *Closed Captioning Standards and Protocol for English-language Television Programming Services* should be rejected. In lieu of which it is stated that:

“CAD submits that it is time for CRTC to mandate and enforce standards. If time is needed to develop these standards then specific tasks and timelines should be set. CAB has shown it is unable to do this so CRTC should do it and use expert help if needed. Possibly the experts at Ryerson University and TDI in the USA can be tasked with this job.”

5. The above-noted interveners’ recommendation to prohibit the use of roll-up captioning for non live programming seems to lie on the apparent belief that not relying on pop on captioning for pre-recorded programming goes against the entitlement of the hearing impaired community to access television programming. Further, it implies that the English-language working group recommendation to allow the use of roll up captioning for pre-recorded programming is solely based on either a question of cost or unwillingness on the part of broadcasters to serve the hearing impaired community.
6. In response, Canadian television programming services wish to provide the following comments:
7. All English or French private, public and educational Canadian television programming services are committed to complying with CRTC’s policy with respect to closed captioning as set out in Broadcasting Public Notice CRTC 2007-54. This policy states that:

“English- and French-language broadcasters will be required to caption 100 % of their programs over the broadcast day, with the exception of advertising and promos.”

8. This means that as of the beginning of their next licence term, or other arrangements agreed upon by the CRTC, each Canadian broadcaster will caption all programs, Canadian or foreign, to be aired on their programming service, regardless of whether or not such programs are watched or not by closed captioning users. To put things into perspective, this means that on an annual basis more than 2 million hours of programming will be available with closed captioning. Of the 2 million hours 1.64 million hours or more than 80 % will be provided with English captioning and close to 400,000 hours will be provided with French captioning. This increase to captioned programming illustrates Canadian broadcasters commitment to provide the widest range of access possible to Canadian television broadcasting system for the hearing impaired community. We believe this should be celebrated as a great benefit for the hearing-impaired community.

9. On the other hand, Canadian broadcasters however don't believe that the type of captioning used by broadcasters should be imposed upon them by the regulator. Simply put, pop on captioning of pre-recorded programming is not an entitlement and therefore it should not be mandated by the CRTC. Such a requirement would be in our view as unreasonable and unwarranted as mandating every programs aired by a Canadian third language television service be made available in both of the official languages or mandating programs shot in black and white be provided in color, at the Canadian broadcaster's expense, because viewers might appreciate it better in that format or mandating requiring that all foreign language programs aired by a Canadian English-language television programming services be shown in its original version with English subtitles, because many English speaking viewers don't like to see programs dubbed in English.
10. Given that the vast majority of the programming, Canadian and foreign, aired by Canadian broadcasters are pre-recorded, having the regulator mandate pop on captioning on all of these programs would place an unreasonable burden on the Canadian broadcasting system, as it would significantly increase the cost of providing captioning on thousands of hours of English-language programming, some of which air on digital specialty services that attract limited viewers let alone closed captioning users. It would also entail that broadcasters would need to recaption, at significantly additional cost, programs already available in roll up captioning, which would not represent the best use of limited financial resources of Canadian broadcasters. Therefore, we respectfully submit that this would go against provision 5 (2) (g) of the *Broadcasting Act* that states that:

The Canadian broadcasting system should be regulated and supervised in a flexible manner that is sensitive to the administrative burden that, as a consequence of such regulation and supervision, may be imposed on persons carrying on broadcasting undertakings.

11. Furthermore, we reiterate that should the Commission require that the proposed *Closed Captioning Standards and Protocol for English-language Television Programming Services* becomes mandatory for all English-language broadcasters, as part as their individual condition of licence, the Commission must take into consideration the context in which Canadian English-language broadcasters operate. It must recognize that Canadian English-language broadcasters will, for the foreseeable future, continue to acquire US programming that has been captioned in the US. Given the clear indication made by the FCC that it does not envision regulating this field, it remains highly likely that the captioning provided by US producers or distributors will not, for the foreseeable future, be subject to quality standards and, accordingly, will continue to vary in quality and format from one service provider to the next.
12. Given this situation, and given that the *Closed Captioning Standards and Protocol for English language Television Programming Services* cannot apply only to Canadian programming but to all programming broadcast by these services, it will be impossible for Canadian English-language broadcasters to guarantee that all dramatic programming or pre-recorded programming will be captioned using the pop-on format. In this context, requiring that Canadian English-language broadcasters systematically provide pre-recorded programming

with pop on captioning would only ensure that these broadcasters be in non compliance with CRTC regulation. We don't believe such an outcome would serve neither public policy purposes nor the public interest overall.

13. That being said, Canadian broadcasters acknowledge and understand that many closed captioning users prefer to watch pre-recorded programming, such as drama, captioned in pop on, as illustrated by the results of the validation exercises conducted last December. To this end, English-language Canadian broadcasters are committed to passing along pop on caption data, where available, for acquired pre-recorded programming.
14. Accordingly, Canadian broadcasters recommend that the proposed *Closed Captioning Standards and Protocol for English language Television Programming Services* submitted on December 2nd be approved by the Commission.

Comments made by le Centre Québécois de la déficience auditive (CQDA):

15. In its submission filed on January 12th, 2009, CQDA indicates that it had recommended some change to the wording of the new guidelines (*Projet de lignes directrices et protocole du sous-titrage à l'intention des télédiffuseurs canadiens de langue française*) recommended by the French-language closed captioning working group, recommendation that was not reflected in the document filed on December 2nd by the CAB. After reviewing the document, CAB concurs with CQDA that the change recommended was omitted in both the French and English version of the *Projet de lignes directrices et protocole du sous-titrage à l'intention des télédiffuseurs canadiens de langue française*. A revised version of this document incorporating the wording change recommended by CQDA is appended to our reply submission.
16. In its submission, CQDA stated its concern over the section of the validation report (page 9) that deals with the level of error rate that users might tolerate in the delivery of closed captioning. More specifically, CQDA is recommending that this section of the validation report not be taken into account by the Commission in its determination with respect to the quality of closed captioning provided by the Canadian broadcasting system.
17. In response, we want to reassure CQDA that Canadian broadcasters are viewing the results of the validation exercises simply as an indication of a small sample of users reactions to issues related to closed captioning, including on the issue of tolerance to error rates. In no way, do we consider these results as definitive. With respect specifically to the issue of error rates acceptable for the delivery of closed captioning, Canadian broadcasters are of the view that, given the complexity of the issue, further studies and analysis are required before an error rate level or range, or indeed, definition of what an error would be, could be established. We believe that further discussions and exploration at the working groups level are required to develop the right approach and a more global solution to improve the quality of closed captioning as it relates to the error rate the industry should meet.

Conclusion

18. As this document constitute the final reply in the accessibility hearing process, we are submitting the final report of the English and French-language closed captioning working groups as part of this filing. Given what we have stated above, this report remains identical in its substance and maintains the same recommendations made in the preliminary report filed on 2 December, 2008.

Sincerely,

Original signed by

Pierre-Louis Smith
Vice-President, Policy and Chief Regulatory Officer

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