



October 13, 2004

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

VIA Email procedure@crtc.gc.ca

Dear Ms. Rhéaume,

Re: Broadcasting Public Notice CRTC 2004-53: Review of the approach to assessing requests to add non-Canadian third-language services to the lists of eligible satellite services for distribution on a digital basis.

1. ACTRA is a national organization of professional performers working in the English-language recorded media in Canada. ACTRA represents Canadian performers in a third language that work in Canada as well as the interests of over 21,000 members across Canada - the foundation of Canada's highly acclaimed professional performing community. ACTRA's members are the acting professionals that bring to life the creativity of Canada's writers, directors, and producers.
2. ACTRA has always been a strong proponent of cultural diversity, especially when the cultural diversity springs from our domestic talent pool. To import diversity programming without maintaining domestic content standards necessary for promoting our own domestic diversity programming would do a disservice to the society we are so proud of as Canadians.
3. Public notice 2004-53 is in response to requests for additions of non-Canadian third-language services (foreign third language services) to the digital lists. The public Notice also seeks comments for ways to improve access by Canadians to non-Canadian third-language programming, while continuing to foster Canadian third-language and other ethnic services, in accordance with the objectives set out in the *Broadcasting Act*. This Public notice raises fundamental issues of Broadcasting policy.
4. We recognize that adding third language services to the digital lists could be, if appropriately regulated, consistent with Canadian broadcasting policy objectives for diversity programming. However, we are concerned that rushing to license foreign third language services would create a negative precedent that would ultimately weaken the Canadian broadcasting system. ACTRA trusts that the Commission will be wary of the larger issue of protection for domestic content that is one of the bedrock principles on which the Canadian Broadcasting system rests.
5. In this submission, ACTRA urges the Commission to first ensure that the Broadcasting system and the safeguards for Canadian content, specifically third language Canadian content, would not be jeopardized in this process by expanding access to foreign third language services. The Commission should also maintain meaningful regulations of foreign services with third language programming and provide that distribution undertakings are contributing to the continued production of Canadian content programming through the Canadian television fund (CTF). We

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address these concerns more thoroughly in the following paragraphs and respectfully request this matter be explored more fully in a public hearing at which ACTRA asks that it participate.

6. While we consider that diversity of programming is an issue which the Commission would need to ultimately address we consider that there are significant policy and licensing issues that effect the wider community of Canadians that the Commission should resolve in advance of the matter concerning third language services.
7. We need only remind the Commission that it has had before it, since 2002, the issue of the precipitous decline in English language television dramas aired by Canadian private broadcasters. Unlike the licensing of third language foreign services the English language television drama crisis is ongoing. It has become a well worn phrase, because of frequent repetition, that Canadian's are not able to tell their own stories; but the fact is they aren't if private broadcasters can continue to fill their schedules with reality programming and cheaply purchased American programming that are aired on Canadian networks and specialty channels according to scheduling decisions made in New York and Los Angeles. The rule of simultaneous substitution of US programming is enormously significant financially to private broadcasters in Canada. Simultaneous substitution also dictates what American programs Canadians will watch and when they will watch them. The long term effect because of the decline in television dramas is that the infrastructure that makes it possible for Canadians to choose to watch their own stories will disappear.
8. There are serious gaps in broadcasting policy that the Commission should have attended to already. The 1999 Television regulations is one of the most obvious. Changes in the television regulations that expanded the definition of "priority programming" allowed private broadcasters to avoid airing Canadian drama programs. The Commission's approach to a solution to the crisis in English language drama is now to favour incentives rather than meaningful regulations to ensure Canadian private broadcasters air more Canadian drama. The fact is clear that there are fewer television dramas aired now by Canadian private broadcasters than there were in 1999 despite the increased profits of these same broadcasters. We believe that there is a point of no return for domestic drama production and we are afraid that we may have reached this point as at least one Canadian network, CanWest Global, offers no new drama programming in its fall schedule this year.
9. Maintaining Canadian participation in terms of Canadian content and talent development within the Canadian multicultural communities is as crucial as maintaining Canadian content in the two official languages. Exempting foreign services from regulation or relaxing regulations would be as detrimental to the development of Canadian third language productions as the changes in the 1999 television regulations have been for English language drama programming.
10. ACTRA is concerned that the introduction of foreign language satellite services in Canada without regard to the applicability of Canadian content regulations will be detrimental in relation to Canadian services. We believe that the Broadcast policy needs to be interpreted so that "third language speaking Canadians" have the opportunity to also tell their own stories. The third language speaking Canadian public deserves to have access to third language programming with a Canadian perspective and not only a foreign point of view from a foreign service.
11. The report of the Standing Parliamentary Committee on Canadian Heritage, "Our Cultural Sovereignty" recommended,

...that the CRTC permit Canadian broadcasting distribution undertakings to offer a wider range of international programming while being respectful of Canadian Content regulations.

12. The intent of the Heritage Committee is clear, the Commission should not by-pass content regulations in an endeavour to implement an expeditious solution to permit the availability of third language foreign programming to Canadians via Canadian satellite services. As we stated above the Commission must ensure that its decision will not undermine Canadian broadcasting policy or open the door to a wider range of foreign services, not only those in a third language. This process should not be an opportunity for HBO, Fox and the other major US networks and specialty channels to make their claims for unregulated and therefore unfettered access to Canadians.
13. The Commission has requested that interveners answer a number of questions concerning the Commission's "competitiveness test" to determine if a foreign service should be made available.
14. The "competitiveness test" as the Commission has described it does not seem to contemplate the introduction of new domestic Canadian programming in the same foreign language as the proposed foreign service. In regard to applying a "competitiveness test" with existing domestic services, the Commission should consider to what extent permitting a foreign service will prohibit the development and growth of a new third language domestic service. Put another way if the field is already occupied by a foreign third language service would it be economically viable for a domestic service to attempt to compete with the foreign service?
15. Applying the "competitiveness test" and assessing the financial impact, as formulated by the Commission in the Public Notice, is not enough to determine the broader implication of licensing foreign services. Domestic third language programs that are available on Canadian services that also license foreign programming in the same third language would be threatened if direct access to the foreign services via satellite is licensed or worse exempt from licensing. Already such foreign language programming that is domestically produced is subject to financial constraints to the extent that programming is made cheaply and performers, writers and directors are forced to work below industry standards creating an underclass in domestic productions of that third language. This is not a practice that should be unintentionally sanctioned by a decision of the Commission. Furthermore, licensing foreign third language services would do very little to raise the standards or present opportunities for Canadian third language performers and other creators in television programming in Canada.
16. The problem that would face domestic third language productions is all too evident in respect to Canadian English language drama which must compete with US programming available to be dumped in the Canadian market at prices that make it more attractive to Canadian private broadcasters to import rather than to purchase domestic Canadian programming. Ineffective measures and weakened regulations have driven the precipitous decline in English language television drama. It is a scenario in which failure appears to be preplanned. If serious measures are not soon taken to reverse the decline in Canadian English language television drama it may be too late. We consider that similar results will befall domestic third language productions unless the Commission proceeds cautiously with the objective that any third language service that is made available must be regulated to an equivalent extent as Canadian services and to contribute to the broadcasting system.
17. The report released September 27th 2004, entitled "Integration and Cultural Diversity" by the Panel on Access to Third Language Public Television Services (the Panel), that was tasked to investigate the matter of access by Canadians to third language services, made nine recommendations many of which are complementary to those raised in this submission.
18. ACTRA agrees, in substance, with the recommendations made in the Panel's report and supports the recommendation that "the Government of Canada adopt a policy for third languages that includes "a regulatory framework for the broadcasting of third-language programs within Canada's broadcasting system.

19. A Government policy framework for foreign third language services and the CRTC's corresponding regulatory policy must meet the requirements and objectives of the *Broadcasting Act*. This policy framework should be presented for public comment and must take place before consideration of any requests to add non-Canadian third-language services to the lists of eligible satellite services.
20. The Panel's recommendations, including those for funding contributions, are subsequent to this Public Notice and are not referenced in the Public Notice. However we consider that these are significant to the Commission's request for other proposals.
21. The Panel recommended the creation of a third language program fund. It further recommended that as a condition of remaining on the eligibility list that foreign third language services (or the distributors of such services) contribute not less than 10% of their revenues (from the foreign service) to the third language program fund. This contribution would be in addition to existing obligations of BDUs to the CTF.
22. The spirit of the Panel's recommendation is pure but this is a case where the floor will also be the ceiling in respect to a recommendation of contribution of 10% of the BDUs' revenues from the service. In the circumstances, 10% of revenues (it's not clear that the Panel meant this would be gross revenues) appears to be merely a symbolic gesture and not a meaningful contribution. The percentage should be larger in the range of no less than 30% of gross revenues.
23. We trust that the Commission will permit access to foreign third language services in the broadcasting system, only if there are appropriate safeguards of Canadian content, and not create a Trojan horse from which will spring more applications including those for services in either of the official languages such as Home Box Office, Fox and the major US networks and US specialty channels.
24. We thank the Commission for this opportunity to provide our comments in respect to this matter and would be pleased to reply to any further questions raised by the Commission.
25. All of which is respectfully submitted.



Stephen Waddell, National Executive Director, ACTRA

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