



September 12, 2005

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 2005-82 Call for comments on a regulatory framework for mobile broadcasting services

1. This is the submission of the Alliance of Canadian Cinema Television and Radio Artists (ACTRA) in the matter of Broadcasting Public Notice CRTC 2005-82: Call for comments on a regulatory framework for mobile broadcasting services.
2. ACTRA's principal function is looking after the collective bargaining needs of the more than 21,000 members and others, whose performances in movies, television programs, sound recordings and digital media entertain, educate and inform Canadians and global audiences. ACTRA and its predecessor organizations have represented the interests of professional performers working in the English language media in every region of Canada for over sixty years.
3. ACTRA members have a vital stake in Canada's cultural future and benefit professionally when work opportunities are strong. They also believe passionately that Canada needs a strong Canadian presence wherever entertainment and information services are created and however these are provided to Canadians. We believe in our own creativity; our capability to tell and perform our own stories. It is this belief that motivates ACTRA's participation in the public processes about the future of Canadian television, film and other media that make up the cultural industries.
4. These are the preliminary comments of ACTRA in the matter of the proposal by TELUS Mobility (TELUS), Bell Mobility Inc. (Bell), Rogers Wireless Inc. (Rogers) and LOOK Communications Inc. (LOOK) to provide mobile television broadcasting services. We expect to make further comments in reply to the submissions of other interested parties.
5. In the past four years, ACTRA and its members have been in the forefront of the campaign to reverse the precipitous decline in the availability of domestically produced

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English language television drama. We have raised this issue publicly, with politicians and with the Commission. There is an ongoing crisis in English language television drama that requires urgent and immediate action, and every appropriate CRTC process should be directed at reversing this trend. Therefore granting exemptions to licensing to MobileTV broadcasting distribution undertakings would not benefit the broadcasting system as a whole and would not provide any measurable assistance to stem the crisis in English language television drama. To the contrary it would likely contribute to a further decline in English language Canadian television drama and at the very least perpetuate a series of negative precedents in which content obligations have been drastically reduced or altogether exempt for new technologies and new media applications.

6. Our comments about the proposal to introduce Mobile TV are motivated by these beliefs.
7. When the CRTC first considered the issues surrounding “new media,” ACTRA’s approach was straightforward. We stated then that the developing technologies were transforming the way in which content would be produced and distributed, and we argued that these technologies should be embraced. We noted that the role of the CRTC was to ensure that Canadians have access to a full range of high quality Canadian choices, regardless of how the content is created or distributed. We further argued that the Commission has the responsibility and the authority under the Broadcasting Act to achieve this objective, while the mechanisms the Commission will need to use to achieve the objective will undoubtedly change because new applications of technology would bring more individual consumer choice.
8. While it may be happening more quickly than many believed, the convergence of telecom, information technology, the Internet, media and entertainment are already here. According to Stefan Jenzowsky of Germany’s Siemens Communications, 59 percent of cell phone airtime in Japan is now used to access entertainment content. In Decima’s 19 August 2005 Canadian Communications Reports, he states: “wireless carriers are becoming entertainment companies.”
9. ACTRA believes that the mobile broadcasting services proposed by TELUS, Bell, Rogers and LOOK should be authorized by CRTC license, subject to the application of appropriate conditions which ensure that a range of Canadian choices is fully integrated into the program offerings and that the companies distributing the programs are making a reasonable contribution to the production of the Canadian programs.
10. The mobile broadcasting services proposed by Bell, Rogers and Telus, share similar platforms. On 13 May 2005, the Commission sent letters to LOOK, Bell and Rogers requesting detailed descriptions of their proposed services, including a description of their content, the originator of such content, and a description of how the service would be delivered to subscribers. The Commission requested similar information from Telus at a later date. The Commission also asked these companies to provide their views on whether their proposed services would be considered broadcasting, and, if so, what the appropriate form of regulation for these services would be. The Commission requested that the these companies address, in particular, the applicability of the exemption order set out in the appendix to Exemption Order for New Media Broadcasting Undertakings, Public Notice CRTC 1999-197, 17 December 1999 (the New Media Exemption Order). In responding to a Commission letter, Bell, Rogers and TELUS stated that their services would provide wireless customers with real-time access to audio-visual content on their

wireless handsets. Subscribers to these services would have to be equipped with a compatible handset, subscribe to a data service plan provided by a wireless carrier and pay a monthly subscription fee. Bell and Rogers disclosed that they will partner with MobiTV, a U.S.-based service. MobiTV would host the content server and convert the content into a format that can be accessed through a wireless handset. In addition to initiating the transmission of content to travel through the public Internet to a server in Canada, and from there to the customer's wireless mobile device. MobiTV would also convert the video content to a format compatible with the mobile browsers and handsets. TELUS also revealed that it would have a partner supplier that would perform functions similar to those that MobiTV would perform on behalf of Rogers and Bell. The three wireless providers take the view that their service would fall within the definition of broadcasting, but each argues that its service would qualify for exemption from licensing under the New Media Exemption Order.

11. ACTRA does not take issue with the claims of the three wireless carriers that their respective services fall within the definition of broadcasting set out in section 2 of the Broadcasting Act. ACTRA does however take issue with the claims that the services would qualify for exemption from licensing pursuant to the New Media Exemption Order. These companies are proposing to deliver broadcast signals to mobile phones, thus they will be acting as Broadcast Distribution Undertakings. The means by which they deliver these broadcasting signals is irrelevant. ACTRA submits they should be licensed as BDUs, with appropriate Canadian content regulations and a responsibility to contribute financially to the production of Canadian programs like all other BDUs. ACTRA notes there is no indication in the CRTC notice about how much Canadian content each of the services will broadcast to mobile subscribers and we fear that using a U.S. supplier will mean there will be little or none.
12. LOOK appears to be taking a different approach. While they will be providing content to customers equipped with a mobile receiving apparatus through their existing spectrum allocation, the service will distribute programming that LOOK is authorized to distribute under its broadcasting licence and will meet all requirements of the Broadcasting Distribution Regulations. We assume this means that they will provide Canadian television signals and only an appropriate and limited number of those foreign services that are authorized for carriage in Canada
13. If our understanding of the LOOK service is correct, ACTRA believes this is an appropriate approach, since there are rules on the availability of Canadian programming and financial contributions to production. We will review the comments of others in the next phase to determine if our understanding of the LOOK service is incorrect.
14. Rogers argues that its service would be both "delivered and accessed over the Internet" in accordance with the New Media Exemption Order. For its part, Bell submitted that, from a technical standpoint, "the service operates no differently than any Internet media player application". "When the subscriber selects a video stream from the menu MobiTV client on his handset, it is the equivalent, on the PC, of clicking on a view video option. Bell Mobility's system translates this request to an URL (IP address), and the request for a connection is initiated, from the Bell Mobility central office, through the public Internet. The server responding to the URL address (IP address) responds by streaming the video content back to the receiver."

15. ACTRA does not consider that the Telus, Bell and Rogers services should be exempt from licensing under the New Media Exemption Order. The new media exemption order should not apply as there is insufficient technical information to determine whether these services are broadcasting over the internet. We note that in response to the questions posed in correspondence from the Commission to Telus and Bell dated 10 June 2005 and 27 May 2005 that these services require a multi link chain of transmission and that the last link in the transmission to a mobile phone is not via the internet. It is our understanding that this is also the case for the Rogers service. We do not believe that the new media exemption was intended to apply in circumstances such as proposed in these services.

The New Media Exemption Order

16. In theory, Canada's broadcast regulatory system is to be technology neutral, but ACTRA believes the exemption order works against that principle by trying to carve out particular technologies for special treatment. This approach is being overtaken by technological developments. It is useful to consider the state of technology when the CRTC made its new media decision in 1999. The Internet was primarily about the exchange of written text and documents and there was little commercial activity through it. Music exchange was taking place, but video streaming via the Internet was in its infancy and there was little broadband connectivity. Broadcasters' use of the Internet was primarily for promotional purposes, with information about scheduling, weather, sports scores and similar informational programming. There was some transmission of radio programs and excerpts from audiovisual programs as streamed video but this was slow and of poor quality. In fact, most sites of broadcasters continue to look pretty much like this today. The purpose of the exemption order was to permit these forms of uses to grow and develop without regulatory impediments, particularly because they represented only a small corner of the Internet.
17. ACTRA and others told the Commission that technology would quickly develop beyond that rudimentary level, but these views were largely ignored as speculative. Now, however, many people have broadband connections that can be wireless or landlines, the technology permits transmission of digital quality audio and video, and many people purchase goods and services through it. In addition, the computer will soon become an integral part of the home entertainment system, moving us rapidly into an era in which there is complete interconnectivity and the "Internet" will be indistinguishable from broadcasting. However, as contemplated by the Exemption Order, the Internet was an open and public system, not a closed system where individuals subscribed to broadcasting services.
18. In its 1999 New Media decision, the CRTC stated that some of what was taking place on the Internet was broadcasting and it left open the possibility that it would decide in future to regulate new media. We believe it is an appropriate and timely opportunity for the CRTC to do precisely that.

19. We thank you for this opportunity to provide you with our comments. We look forward to participating in the second stage of this inquiry. We would be pleased to appear before the Commission at a public hearing for the MobileTV services and welcome the opportunity to participate in a new media policy review.

Thank you.

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Stephen Waddell, National Executive Director, ACTRA

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