



April 21, 2005

M s. Diane R héaume
Secretary General
Canadian Radio -television and
Telecommunications Commission
Ottawa, Ontario K1A0N2

VIA Email procedure@crtc.gc.ca

Dear M s. R héaume,

Re: Application by the Canadian Cable Television Association (CCTA) for the Addition of HD Net and Discovery HD Theater to the lists of Satellite Services Eligible for Distribution on a Digital Basis - Call for Comments Broadcasting Public Notice CRTC 2004-61

Introduction :

1. This is the submission of the Alliance of Canadian Cinema Television and Radio Artists (ACTRA) in the matter of the Application by the Canadian Cable Television Association (CCTA) for the Addition of HD Net and Discovery HD Theater to the lists of Satellite Services Eligible for Distribution on a Digital Basis - Call for Comments Broadcasting Public Notice CRTC 2004-61
2. ACTRA has represented the interests of professional performers working in the English language media in every region of Canada for over sixty years. ACTRA's principle function is looking after the collective bargaining needs of the more than 2,000 members and others, whose performances in movies, television programs, sound recordings and digital media entertain, educate and inform Canadians and global audiences.
3. ACTRA members have a vital stake in Canada's cultural future. ACTRA members benefit professionally when work opportunities are strong. ACTRA members 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.

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4. ACTRA is not opposed to HD content being provided in Canada; however, we are opposed to opening the floodgate that would allow foreign HD content to inundate the Canadian broadcasting system. ACTRA's primary concern with the present application is that the HD content on the proposed services will not be Canadian programming. In addition the development and broadcast of HD content within the Canadian broadcasting system should be initiated by Canadian programming services. It is important to note that in Canada that HDTV is still at an introductory stage and that a regulatory framework for the broadcast and distribution of HD content has not been established by the Commission. It is therefore premature to allow foreign services to take the lead on the broadcast of HD content to Canadian television audiences.
5. Approval of the CCTA's request would amount to letting the development of an important technological component of the Canadian broadcasting system be led and determined by non-Canadian broadcasters. This could have a negative impact on the competitive position of Canadian programming services within the Canadian broadcasting system, which would be contrary to the public policy objectives of the *Broadcasting Act*.

CCTA's Proposal

6. The CCTA has filed a request with the Commission to add two non-Canadian services to the Eligible List, namely HDNet and Discovery HD Theater. The CCTA described HDNet, a non-Canadian services as.. "A programming service offering high definition (HD) programming 24 hours per day, seven days per week, using 1080i format. HDNet currently offers several original series, including music and news programs. HDNet acquires programming from several sources, including Paramount, Warner and Sony. Live HDNet sports productions include NHL games, major league soccer games, horse racing, auto racing, boxing, football and basketball games." Discovery HD Theater the second service is similarly described as ... "A 24-hour, seven-days-a-week, HD programming service in 1080i HD format. Discover HD Theater's programming is in wide-screen (16:9 aspect ratio) HD format at high quality picture and CD quality sound. Programming is drawn from a substantial library of family-friendly HD programming and focuses on nature, wild life, science and technology, and world culture."
7. In support of its application the CCTA argues that the addition of HDNet and Discovery HD Theater will help to address the content deficit that consumers owning HD television sets now confront. The CCTA maintains that the addition of these two services is needed for the Canadian broadcasting system to make the transition to the high definition format. CCTA reasons that with less than 1% of Canadian households equipped to receive HDTV Services broadcasters may be reluctant to invest in HDTV until there is a larger market. Therefore the CCTA argues that the addition of these services will encourage more consumers to invest in high definition services.

8. The CCTA states that HDNet and Discovery HD Theater meet the Commission's competitive test and are neither totally or partly competitive with licensed Canadian specialty or pay television services. Further the CCTA claims the addition of HDNet and Discovery HD Theater would have no "discernible impact on Canadian broadcasters".

ACTRA's Reply

9. ACTRA strongly opposes the CCTA's request. As noted above, ACTRA is a strong proponent for Canadian programming services. The development of HD in the Canadian broadcasting system should be undertaken with Canadian programming services and should be done in an orderly fashion, with a process and goal in accord with the Canadian broadcasting policy.
10. The CCTA maintains, as justification for approval of its application, that there is a deficit of HDTV programming in Canada. The Canadian Digital Television (CDTV), a not-for-profit industry association dedicated to providing expert information on HDTV implementation in Canada suggests the contrary. CDTV states, in fact, that American networks available in Canada (e.g. NBC, ABC, CBS and PBS) already provide content in HD form and there is no need for additional foreign HD content within the Canadian broadcasting system.
11. The regulatory framework for the broadcast and distribution of HD programming services is not yet established for key components of our broadcasting system. Although the Commission has established regulatory frameworks for the licensing of DTV and HDTV conventional television services (Public Notice CRTC 2002-31), and for the distribution of conventional DTV and HDTV services by cable undertakings (Public Notice CRTC 2003-61) it is currently conducting two public processes to deal with HDTV: Call for Comments on a Proposed Framework for the Licensing and Distribution of High Definition Pay and Specialty Services (Broadcasting Public Notice CRTC 2004-58), and Call for Proposals for a Framework to Guide the Migration of Pay and Specialty Services from Analogue to a Digital Distribution Environment (Broadcasting Public Notice CRTC 2005-1).
12. It is, therefore, premature for the Commission to be adding foreign HD services to the Eligible List. At this time the Commission should instead, establish a moratorium on the addition of HD services to the Eligible List until a regulatory framework for Canada is in place.

(a) Impact of Approval of CCTA Proposal on Canadian Services

13. In its application the CCTA argues that the addition of *HDNet* and *Discover HD Theater* to the Eligible List will have "no discernible impact on Canadian broadcasters" and anticipates that at the end of 2004, less than 5% of Canadian households will be fully equipped to receive HDTV services" (p.4 & 5 of the CCTA application). The CCTA seems to reason that the impact of the two HDTV services

would be minimal because there are so few Canadian homes that are equipped to receive HD programming.

14. ACTRA considers that the impact the addition of *HDNet* and *Discovery HD Theater* would have on Canadian programming services is greater than the CCTA claim.
15. First, as increasingly more Canadian households become equipped to receive HDTV services, the audiences for *HDNet* and *Discovery HD Theater* will grow and overlap increasingly with those of other Canadian programming services. Canadian consumers have available to them a wide range of HD television sets in various technologies and prices as HD electronic devices continue to fall to levels that are affordable to consumers (see CDTV web site). According to a recent newspaper article flat-panel television sales are expected to double in Canada this year, and double again in 2006 (*Globe & Mail*, February 5, 2005, p. A1).
16. Second, the addition of these two foreign services to the Eligible List will impact negatively on the competitive position of Canadian services within our system. These services will also limit the Canadian services ability to launch and deploy HD content in a manner that is consistent with their commercial abilities and the demand of the Canadian market place.

(b) Competitive test

17. In Public Notice CR TC 2000-173 the Commission set out its criteria for adding a foreign English-language programming services to the Eligible List. Key to the criteria is that the foreign programming services must not be either totally or partially competitive with Canadian pay or pay television services.
18. The CCTA maintains that *HDNet* and *Discovery HD Theater* are neither totally nor partially competitive with Canadian specialty or pay television services. CCTA claims that... "These channels are distinctive in that all programming is dedicated to a true high definition format and are not merely up-converted digital signals. High definition is not competitive with the current analogue NTSC broadcast system or standard definition digital transmission." In other words the CCTA argues that *HDNet* and *Discover HD Theater* are not partially or totally competitive with any Canadian specialty or pay programming services because the programming they provide consists of HD content 24-hours per day.
19. The CCTA has misinterpreted the Commission's competitive policy requirement set out in Public Notice CR TC 2000-173. In considering applications of a number of foreign services to the Eligible List the Commission has assessed the extent to which the proposed foreign service's programming content, its nature of service, its target audience and its supplier of programming content overlap with those of existing Canadian specialty and pay programming services. This was affirmed in Broadcasting Public Notice CR TC 2004-71, which stated that:

"The Commission uses a case-by-case approach in assessing competitiveness. In making its assessment, the Commission considers such

factors as the nature of the service and genre of programming provided by the relevant Canadian and non-Canadian services and the target audience, taking into account the language of the service. The Commission compares these factors as they relate to the relevant services in order to determine the amount of overlap between them, and thus the extent to which they might compete with each other. The more significant the overlap in terms of the nature of service, including the genre of programming, target audience, language and program source, the more likely it is that the non-Canadian service will be found to be competitive with a Canadian service."

20. The CCTA's suggestion that a foreign service is neither totally nor partially competitive with a Canadian programming service because it provides content in HD and the Canadian service does not, should be rejected outright. The CCTA's argument is that the Commission should make its finding about whether to add a foreign service to the Eligible List based on the format in which the foreign content is broadcast and distributed, and not based on an analysis of the content and the nature of service offered by programming service. Based on the Commission's previous decisions there is no precedent for such an interpretation of the competitive test to be made, nor should one be made in this application.
21. If the CCTA's interpretation of the competitive test were accepted it would establish a precedent for the addition of foreign programming services being added to the Commission's Eligible List. Foreign programming services such as Showtime, HBO, Bravo (U.S.) and Cinemax, could be added to the Eligible List if they are providing HD content 24 hours per day, simply because the Canadian counterparts are not providing HD content 24 hours per day. We do not believe that a result such as this is the intent of the Commission's policy for determining whether foreign services may be added to the Eligible List.
22. ACTRA submits that the CCTA interpretation of the competitive test when assessing whether to add foreign services to the Eligible List should be rejected. The Commission must assess the extent to which the programming and nature of service of foreign programming services will overlap Canadian services.
23. *HDNet* and *Discovery HD Theater* programming schedules, and nature of service descriptions provided by the CCTA disclose that these programming services are competitive with Canadian programming services. In respect of *HDNet* it is either partially or totally competitive with such Canadian programming services as *Bravo!*, *TSN*, *CBC Newsworld*, *the Score* and *SportsNet*. As to *Discovery HD Theater*, it is either partially or totally competitive with such Canadian programming services as *The Discovery Channel*.
24. Adding more foreign HD content to the Canadian broadcasting system is not a solution, especially as HD will be an important component of the Canadian broadcasting system. If Canadian programming undertakings do not lead the way they may lose the competition for Canadian audiences. In an address to the CAB's 2004 Convention, Chair of the CRTC, Mr. Charles Dalfen noted it was important to

encourage the integration of HD "... so that Canadian broadcasters will continue to be vigorous competitors for television viewers."

Conclusion

25. The Commission is currently in the process of establishing the regulatory framework for broadcasting and distribution of HD content on specialty and pay programming services. It is far too early to abandon the Canadian broadcasting system to foreign programming services. There is already more than a sufficient amount of foreign content available in Canada that may be enjoyed in the HD format including content provided by the major US networks; NBC, ABC, and CBS.
26. ACTRA recommends that the Commission establish a moratorium on the addition of HD services to the Eligible List until such time as the HD regulatory framework for Canada is established. When the framework is in place, foreign HD services that wish to be added to the Eligible List should be required to be "Canadianized" in the same way that *Food Network Canada* was in 2000 in Decision CRTC 2000-217, where the Commission granted a licence to Alliance Atlantis Communications Inc., on behalf of a company to be incorporated, for a broadcasting licence to carry on the national English-language programming service Food Network Canada.
27. The CCTA's proposal should be denied as it is not consistent with the Commission's policy set out in Public Notice CRTC 2000-173, as HD Net and Discovery HD Theater are competitive with Canadian programming services.

We thank you for this opportunity to provide you with our comments.



Stephen Waddell, National Executive Director, ACTRA

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