



January 22, 2010

Mr. Robert A. Morin
Secretary General
CRTC
Ottawa, ON K1A 0N2

Online: <http://support.crtc.gc.ca>

RESPONSE
CRTC Broadcasting Notice of Consultation 2009-602
Call for comments on new draft regulations concerning CRTC Rules of Practice and Procedure

Dear Mr. Morin,

1. As the voice of more than 21,000 professional performers who live and work in every corner of Canada, the Alliance of Canadian Cinema, Television and Radio Artists (ACTRA) in REPLY to the matter of Public Notice CRTC 2009-602.
2. As noted in our initial intervention on this matter, ACTRA generally supports the Commission's efforts to streamline and modernize its rules and proceedings.
3. We are somewhat concerned, however, with the Commission's stated objectives in undertaking this process. More specifically, it is what isn't mentioned that gives us greatest pause, and that is a desire to make the process more publicly accessible and encourage public participation. Canadians own the communications spectrum and must be considered a central player in the Commission's activities. No one is served well if the primary objectives in changes are "harmonization", "modernization" and "streamlining". The Commission's regulatory decisions and policies will only be enhanced if facilitating public engagement and participation are priorities in any change in the Commission's rules and procedures.
4. In regard to specific proposed changes, after reviewing comments, ACTRA will limit our reply to four issues arising from the Proposed Rules: Notices of Consultation, confidentiality, deficiency in form, and the obligations of the applicant. We will also comment on several areas not addressed by the proposed rules: administrative applications, policy hearings, and limits on requests for amendments to broadcasting licences.

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Notices of Consultation

5. As ACTRA noted in our initial intervention in this matter, we do not agree with the move away from using Notices of Consultation for applications made by broadcasters. This significant change would have a negative impact on the capacity of organizations such as ACTRA as well and individuals to participate. A great imbalance already exists between the majority of applicants and public interest interveners; the resources and capacity of those impacted by its decisions vary tremendously.
6. The Astral/Corus intervention suggests that a list of applicants be posted to the Commission's website each day with a link to the full application. They also suggest that the Commission provide a description of the application cut and pasted from the first few paragraphs of the application. This is a far cry from the balanced and thoughtful analysis of the issues at stake that has previously been supplied by Commission staff. Under the proposal, the onus would be on interested parties to wade through and analyse often dense and vaguely worded applications to parse out the key issues.
7. As the CFTP's intervention notes, interveners will now be playing a role previously undertaken by CRTC staff in identifying issues. However, unlike CRTC staff, interveners do not have the capacity to make direct requests for clarification or amendments for deficiencies.
8. ACTRA urges the Commission to reconsider this proposal and instead continue with its current practice of issuing Public Notices for each application received from a broadcaster.

Confidential Information

9. ACTRA urges the Commission to revise the proposed rules governing Confidentiality to provide for greater clarification. These appear to be among the most controversial changes with some of the respondents on this matter claim the rules are too restrictive, while broadcasters claim they are too loose.
10. ACTRA's greatest concern is that the rules as drafted do not adequately specify what types of material can be made confidential and for how long. The rule refers generally to 'information' opening the possibility that the Commission is extending the possibility of confidentiality to *all* information. There is no reason for this. ACTRA has been encouraged by the Commission's recent steps towards more openness, for example the release of Disaggregated Financial Data. While still imperfect, this is a step in the right direction. This proposed rule would appear that the Commission is taking a step backwards; the public needs more information, not less. More information is needed, not less.

Deficiency in form

11. ACTRA disagrees with several broadcasters' assertions that there is no need for a "Deficiency in form" analysis. The filing of the required documents and the ticking off of

boxes does not mean that an application is complete or accurate. The Commission must have the ability to assess the application upfront and determine whether there is any information missing or whether any clarification is needed before the application is assessed by the Commission any interveners. Waiting until the reply phase to request additional information is too late and could potentially waste a lot of time and resources.

Obligations of the Applicant

12. The Canadian Association of Broadcasters (CAB) claims that the requirement to post applications on their websites within five days as “too onerous”. The CAB and Astral/Corus instead request that applicants be giving the option to make their applications available at licensee’s business office.
13. This is 2010. Requiring broadcasters to post their applications and notices of hearings on their websites is not an onerous request or an undue financial or technical burden. ACTRA also believes allowing applicants to only make copies of documents available at their offices is counter to the goal of making the CRTC’s processes more transparent and open to the public.

Absent from the Proposed Rules

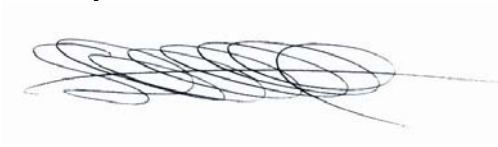
14. After close review of the Proposed Rules, ACTRA notes that several scenarios are not specifically provided for. ACTRA suggests that the Commission include adding clarification as to whether it will still consider dealing with some applications administratively and if so, what types of applications under what conditions.
15. ACTRA also strongly urges the Commission to draft specific rules regarding Policy Hearings. Policy Hearings are arguably the most important work the Commission undertakes. It would help guide this important process if the Commission adopted a set of guidelines and expectations.
16. ACTRA would also like to voice our support for the CFTPA’s suggestion that the Commission adopt new rules signalling to licensees that it will generally not consider amendments to broadcasting licences within a reasonable period of time following the issuance of a new licence or the acquisition of an existing service. Such a move would eliminate ‘fishing expeditions’ and represent a significant step towards’ the Commission’s goal of streamlining its processes.
17. time limits on comment on several areas not addressed by the proposed rules: administrative applications, policy hearings, and limits on requests for amendments to broadcasting licences.

Conclusion

18. In closing, we again remind the Commission of the four principles that it has previously indicated must guide its work: transparency, fairness, predictability and timeliness. We support this approach and urge the Commission to ensure that any changes adhere to these principles.

19. Thank you for this opportunity to contribute to this important process on behalf of our members.

Thank you.

A handwritten signature in black ink, appearing to read 'Stephen A. Waddell', written over a light gray rectangular background.

Stephen A. Waddell
National Executive Director

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