



January 12, 2010

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

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

Dear Mr. Morin,

**Broadcasting Notice of Consultation CRTC 2009-759:
Proposed carriage of the multicast (i.e., secondary or subsidiary) service Thinkbright
and Well Television (“Thinkbright”) on BDU systems owned by Rogers Cable
Communications Inc. (“Rogers”)**

1. The Alliance of Canadian Cinema, Television and Radio Artists (ACTRA) welcomes the opportunity to comment in this process on behalf of our 21,000 members and will bring to it the particular perspective of professional performers working in the English-language recorded media in Canada.
2. In PN CRTC 2003-61, the Commission stated that a BDU would have to obtain permission to distribute a multicast signal that was part of the digital signal of a non-Canadian service. However, the Commission has not set out specific rules regarding multicast services.
3. To ACTRA’s knowledge, this is the first application by a Canadian BDU to carry a multicast service since that directive was issued. In the absence of guidelines and procedures on multicast services, this becomes a precedent-setting application. Indeed, in this application it would appear that Rogers is attempting to both write the rules and apply them at the same time.
4. ACTRA submits that it is therefore premature to consider this application at this time. Instead, ACTRA urges the Commission to undertake a full public consultation to consider the policy going forward for the authorization of the distribution in Canada of non-Canadian multicast services.
5. If the Commission decides to proceed with consideration of this application, then in the absence of guidelines regarding the distribution of non-Canadian multicast services, one approach would be to apply the same requirements expected of non-Canadian services applying for carriage on Eligible Satellite Lists. Those requirements were clearly spelled

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out in Information Bulletin 2008-9, issued December, 17, 2008. One of the objectives of the information required when applying for inclusion to the Eligible Satellite Lists is to provide the Commission with the knowledge required to apply the 'directly competitive' test. ACTRA sees no reason why a non-Canadian multicast service should be measured any differently than a non-Canadian Eligible List Service and urges that both should be put to the same competitive tests.

6. In PN CRTC 2008-100, after extensive consultation, the Commission affirmed the effectiveness of its approach to authorizing non-Canadian, English- or French-language services: "The Commission will retain a competitiveness test, based primarily on overlap between non-Canadian and Canadian pay and specialty services."
7. It is critical that Canadian services have the opportunity to develop and grow without facing direct competition from non-Canadian services of the same genre. Canadians have extensive access to American programming throughout our broadcasting system, often on Canadian services. However if it is imperative to maintain a Canadian voice and ensure the availability of Canadian programming, the only way to do that is to ensure that Canadian services are given priority. Unfortunately, the information on the public file for Rogers' application is wholly inadequate to determine which, if any, Canadian services Thinkbright and Well Television may be directly competitive with.

Conclusion

8. ACTRA urges the Commission to postpone consideration of this application until it has held a full review and prepared a policy framework for the distribution of non-Canadian multicast services. Should the Commission proceed, we suggest that at minimum, it apply the same measures it would for an application to add a non-Canadian service to the Eligible Satellite Lists to ensure that Thinkbright is not a direct competitor to an existing Canadian service. If it fails this test the application must be denied.
12. ACTRA thanks the Commission for the opportunity to provide comment on this matter.

Thank you.



Stephen Waddell
National Executive Director, ACTRA

c.c.: Pamela Dinsmore, Vice President, Regulatory, Rogers Cable Communications, Inc.

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