

Broadcasting Notice of Public Hearing CRTC 2008-11

Canadian broadcasting in new media

Oral Remarks

Canadian Wireless Telecommunications Association

February 25, 2009

English

Mr. Chairman, Members of the Commission, good morning. I am Bernard Lord, President and CEO of the Canadian Wireless Telecommunications Association.

I'm here to speak with you about the intersection of wireless networks, the internet, and content, and how government decisions dating back more than 20 years have permitted the wireless industry to experiment and to create and develop innovative services and applications such as smart phones, mobile internet and data services including mobile broadcasting. I'm also here to urge you to continue in that tradition so that the industry can continue to bring new services to Canadians.

It was two years ago this month that the Commission issued Broadcasting Public Notice CRTC 2007-13¹ (the Mobile Broadcasting Exemption Order) exempting mobile television broadcasting undertakings from licensing requirements and associated regulations. In deciding to issue that Order, the Commission found that these mobile services were "unlikely to have a significant impact on traditional broadcasters"² or prevent them from meeting the objectives of the *Broadcasting Act*.

The CWTA believes this continues to be true today.

What is Mobile Broadcasting?

Wireless Service Providers and subscribers are exploiting the growing capabilities of mobile handsets and the faster speeds of wireless networks to access a variety of multi-media applications generically known as "mobile content"

Subscribers use mobile content to personalize their handsets — with ringtones, screensavers, and wallpapers to change the handset to express their tastes and their individuality.

Subscribers also use mobile content for entertainment. These users access games, music and video in a variety of forms. This content includes services that are "broadcasting" and some that are not.

Video content can be sideloaded³, downloaded in clips or streamed to a compatible handset. This means that a subscriber can download a video clip and watch it at his or her leisure, or watch an ongoing stream that has been formatted appropriately.

Where these services are defined as broadcasting and are delivered and accessed over the internet, the New Media Exemption would apply. The Commission issued the Mobile Broadcasting Exemption Order specifically to capture mobile services that use alternatives to the internet for either delivery or access. The Commission chose to do this because these mobile services:

"[were] unlikely to become substitutes for conventional broadcasting services or to interfere with the abilities of conventional broadcasters to meet their obligations under the Act."⁴

Mobile Broadcasting is a Nascent Service

Since the Mobile Broadcasting Exemption Order was issued two years ago, these services have remained niche applications, and there is no evidence that they are having a detrimental impact on traditional broadcasters.

Mobile Broadcasting remains a service in its developmental stages, and service providers continue to develop business models and adapt the service to consumer desires. Despite the fact that handsets are constantly adding features, there is still only a subset of handsets capable of using the mobile broadcasting services.

Mobile broadcasting services have not yet reached a broad acceptance level among Canadians. For example, when Canadian wireless subscribers were asked in the summer of 2008 to name the three most important activities conducted over a cell phone, mobile broadcasting or video services didn't even register in the responses⁵. This is consistent with international findings, where roughly half of wireless subscribers do not even know if their service provider offers mobile video services.⁶

These findings are consistent with the conclusion reached by Commission staff who reported in the May 2008 document *Perspectives on Canadian Broadcasting in New Media* that "consumer adoption of accessing mobile broadcasting content is still nascent"⁷.

This observation was reinforced by a survey reported in the *July 2008 CRTC Communications Monitoring Report* which found that despite a 65% mobile phone penetration rate, only 2% of respondents had viewed video using their cell phones, and that less than 1% of respondents had watched actual television programming on their handsets."⁸

Contributing to this slow adoption could be the technical limitations inherent in mobile broadcasting technologies which impact the user experience. Screen size and frame rates, audio quality, battery life, and processing power are all constraints when formatting and viewing video for mobile devices.

At the network level spectrum and capacity limits constrain the ability to provide real-time video services to substantial numbers of users simultaneously.

None of this is intended to diminish the possibilities presented by these mobile video services, as there is a tremendous potential to bring broadcasting services to subscribers' hands. However, it is simply not possible at this time to determine the pace and direction of the market's evolution. In our view, it is crucial that the Commission maintain the Mobile Broadband Exemption Order so that the market and consumer demand can shape the service offering.

Significant Investment Required

It is important to emphasize that mobile broadcasting services are only possible because of the significant ongoing investments made by wireless service providers. The introduction and successful adoption of new, more powerful handsets is only possible because their purchase is heavily subsidized by the wireless service providers.

More significantly, ongoing upgrades and enhancements to wireless networks continue to be required so that network speed and capacity can attempt to keep pace with the evolution of handset capabilities and the introduction of bandwidth-intensive applications, including among others mobile broadcasting. To give you a sense of the magnitude of this investment, from 2005 to 2007, Wireless Carriers invested nearly \$5 Billion in capital expenditures⁹. But additional investments are needed.

Most people are familiar with the Advanced Wireless Services, or AWS, Spectrum Auction last summer and the fact that roughly \$4.3 Billion was transferred from the industry to government. What often gets lost is the fact that this expenditure was simply to acquire the licenses for the privilege of using the spectrum.

In order to put that spectrum to use, wireless carriers will require further investments to build out networks and deploy new radio equipment. Hundreds of millions of dollars have been committed already and the expectation is that billions more will be required in the next few years.

These investments are being made in response to demonstrated consumer demand for wireless services of all sorts, including the high speed data capabilities that support the delivery of mobile content, including mobile broadcasting services.

The government and the Commission ought to be doing what it can to encourage this investment. Regulating mobile broadcasting would have the opposite affect – it would inhibit investment.

The Commission has explicitly recognized that it must be mindful of the relationship between the obligations it imposes and the current economic situation, as it did on Feb 13 when it announced the scope of the private conventional television license renewals.

With these same economic conditions affecting a nascent and still-developing service like mobile broadcasting, regulation would almost certainly do more harm than good by restraining innovation and inhibiting investment.

Levy Proposal

One of the key questions in this hearing is whether to impose a levy on wireless service providers to support new media content creation. To this we would respond absolutely not.

The argument presented in support of the need for such a levy seems to be that because WSPs generate fractional revenue from mobile broadcasting services, relative to voice or data, they should be required to make direct financial contributions to the production of Canadian content. This argument ignores two important realities.

First, the revenue streams attributable to mobile broadcasting are extremely modest, and even at that are illusory, given the huge investments that mobile providers have made in handsets and networks to make such content even possible.

Second, the argument ignores the significant contribution that mobile broadcasting is already making to the Canadian broadcasting system. Far from having a negative impact, we submit that the introduction of mobile broadcasting services is a potential success story for Canadian broadcasting. Although the penetration rate of such services is still very low, there is a significant amount of Canadian content and Canadian services available via mobile broadcasting. Imposing a contribution tax on WSPs would amount to penalizing success.

Moreover, in proposing a contribution tax calculated as a flat percentage of overall gross revenues, the levy amounts to little more than a cash grab from revenues wholly unrelated to broadcasting.

We echo the view of the Competition Bureau that “an ISP contribution regime is not a desirable instrument”¹⁰ We submit that this is equally true for a contribution regime applied to the wireless industry.

This proposed levy is doubly unreasonable considering the current economic climate.

No Evidence of Impact on Traditional Broadcasters or of Market Failure

The risk that regulation could do more harm than good should be considered by the Commission. Regulation runs the risk of disadvantaging Canadian companies relative to their international counterparts, stifling innovation, curtailing investment, discouraging the sale of certain types of handsets and creating incremental administrative burden on wireless service providers.

It is unnecessary to expose the industry to these risks because there is no evidence that that mobile broadcasting will ever be a viable market. There is also no evidence there has been, or is likely to be, a significant negative impact on traditional broadcasters that stems from mobile broadcasting services. Similarly, there is no evidence that there has been a failure of the wireless market to fulfill either telecommunications or broadcasting policy objectives – rather the contrary, in our view.

In exempting mobile broadcasting, the Commission described the “limited market impact” of these services and, as I mentioned earlier, found that these services were unlikely to either “have a significant impact on traditional broadcasters”¹¹ or “to interfere with the abilities of conventional broadcasters to meet their obligations under the *Act*.”¹²

We should remember that this finding was only two years ago. There is no evidence that this situation has changed, and in fact, there is evidence that this situation remains. Everything indicates that new media generally is ancillary or complementary to traditional broadcasting.

Mobile broadcasting services continue to have a limited impact on traditional broadcasting services. In fact, traditional broadcasters are exploiting these services to promote and enhance their existing services. Any impact is clearly positive. Certainly, it is clear the broadcasters favour maintaining the exemption orders.

We submit that mobile services are an example of the success of the market meeting the needs of Canadians in terms of access to Canadian content. The Commission found in 2006 that the wireless carriers provided predominantly Canadian channels¹³ and the *Perspectives* report found that nearly half of the mobile TV channels offered by the wireless carriers were Canadian.¹⁴

If mobile broadcasting — in the absence of regulation — is providing benefits to traditional broadcasters, and is in fact contributing to the achievement of the objectives of the *Act*, then there is simply no regulatory action required. There is no reason to withdraw the Exemption orders for mobile broadcasting or add new regulations, and every reason to maintain the existing order.

Success of Industry a Result of History of Forbearance

The mobile wireless industry is one of the most dynamic segments of the Canadian economy, producing high levels of growth as well as the rapid deployment of new technology and innovations.

The industry was born in competition and validates the long-held government policy designed to allow market forces to operate to the benefit of wireless consumers. Since the earliest days of cellular service, consumer demand— not regulatory fiat – has guided the decisions of the wireless operators. This approach has allowed the development of the huge variety of services available to consumers today.

As I have discussed, mobile broadcasting services are providing a means for traditional broadcasters to complement and enhance their current offerings and there is a substantial amount of Canadian content available. This shows that the Commission was correct to make the Mobile Broadcasting Exemption Order and that the market is functioning as it should, and to the benefit of the Canadian broadcasting system.

We urge you to maintain this legacy of forbearance in the wireless industry and continue to develop public policy that encourages growth, innovation, and competition to meet the demands of consumers. This, and not the imposition of new rules or new taxes on unrelated activities will best ensure that the Objectives of the *Broadcasting Act* will continue to be met.

In this instance that means maintaining the Exemption Orders as they are. Thank you.

NOTES

¹ 7 February 2007

² Paragraph 42, Broadcasting Public Notice 2007-13

³ Sideloaded is a term similar to "upload" and "download", but in reference to the process of transferring data between a computer and a mobile device

⁴ Paragraph 48, Broadcasting Public Notice 2006-47

⁵ CWTA 2008 Wireless Attitudes Study – Harris Decima page 15

⁶ Survey results prepared for Quickplay Media – UK – May 2008 by Market Tools – 44% did not know, US – April 2008 by Zoomerang – 47% did not know if their service provider offered mobile video

⁷ Perspectives on Canadian Broadcasting in New Media, paragraph 106

⁸ *CRTC Communications Monitoring Report*, July 2008, pp. 171.

⁹ Wall Communications for CWTA, December 2008 - \$4.9 Billion

¹⁰ Comments of Competition Bureau.

¹¹ Paragraph 41, BPN 2006-47, and Paragraph 42, BPN 2007-13

¹² Paragraph 48, Broadcasting Public Notice 2006-47

¹³ Paragraph 44, BPN 2006-47

¹⁴ Perspectives Report – 46% of Mobile TV channels Canadian