

December 5, 2008

By e-pass

Robert A. Morin
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, ON
K1A 0N2

Dear Mr. Morin:

RE: Broadcasting Notice of Public Hearing CRTC 2008-11– Canadian broadcasting in new media

1. These comments are filed on behalf of the Canadian Wireless Telecommunications Association (“CWTA”) in accordance with the procedure outlined in Broadcasting Notice of Public Hearing CRTC 2008-11, *Notice of consultation and hearing*, dated 15 October 2008 (“the Notice”). CWTA wishes to appear at the hearing scheduled to commence on February 17, 2009.
2. At the hearing, CWTA intends to address a number of the issues raised in the Notice, including, but not limited to, the importance of maintaining the exemption orders for new media broadcasting undertakings and mobile television broadcasting undertakings.
3. CWTA is the authority on wireless issues, developments and trends in Canada. It represents cellular, PCS, messaging, mobile radio, fixed wireless and mobile satellite carriers as well as companies that develop and produce products and services for the industry. CWTA actively participated in the proceedings leading to Broadcasting Public Notice CRTC 2006-47 - *Regulatory framework for mobile television broadcasting services* and Broadcasting Public Notice CRTC 2007-13 - *Exemption order for mobile television broadcasting undertakings*.
4. The growth and innovation in the wireless industry is largely the result of government policies encouraging healthy and robust competition among operators, and the Commission’s deliberate decisions to forbear and exempt the sector from regulation. This open, competitive environment has driven the industry to invest heavily in networks that reach 98% of the population. These networks represent a key building block of the Canadian economy and help increase productivity for all industries.

5. Canada's mobile wireless carriers have invested nearly \$5 billion in their networks over the last three years alone. This investment allowed them to, among other things, provide subscribers mobile access to the internet and a variety of multimedia services including video, audio and interactive gaming. Further investment has been made to ensure that these services can be delivered and specifically formatted for use and enjoyment on mobile wireless handsets.
6. Mobile new media services represent a new and developing market that continues to evolve and adapt to a host of variables including handset availability and features; network capabilities; and consumer demands and their willingness to pay. At this early stage many services are operated at a loss and it is still too early to understand how this market will evolve. Some services will flourish while others will fail to survive. Imposing any sort of levy on these services or regulating this market at this time will serve only to increase the risk and act as a disincentive for investment rather than an encouragement. Regulatory flexibility is required to ensure that development can continue and that wireless carriers can justify their ongoing investment in these nascent services.
7. CWTA submits that the exemption orders for new media broadcasting undertakings and mobile television broadcasting undertakings continue to be appropriate, particularly as they apply to the services offered by wireless carriers. It has been just two years since the Commission determined it was appropriate to exempt mobile television broadcasting undertakings from the application of Part II of the *Broadcasting Act* (the "Act"), and circumstances have not materially changed since that decision.
8. By ensuring there are regulatory exemptions in place to stimulate and encourage growth, the Commission can promote the continued development of products and services to meet the changing needs and demands of consumers.
9. There is no evidence that mobile broadcasting services have, or will in the near future, become substitutes for conventional broadcasting services. Nor is there evidence that these services impede the ability of traditional broadcasters to fulfill their obligations under the *Act*. CWTA submits that new regulations could be potentially harmful to a fragile industry that is in its infancy. Investment needs to be encouraged not hindered by regulation.
10. Withdrawing or modifying the exemption orders for new media broadcasting undertakings and mobile television broadcasting undertakings would also impair the ability of the industry to innovate; harm consumers, and would not contribute in a material manner to the implementation of the policy objectives of the *Act*.
11. CWTA strongly encourages the Commission to maintain the regulatory exemptions that have allowed the growth and innovation that are the hallmarks of the wireless industry. The best way to ensure that innovation continues to occur, and consumer demands are met is to preserve the exemption orders for new media broadcasting undertakings and mobile television broadcasting undertakings. As the Commission has found previously, this will also ensure that new media contribute in an appropriate manner to the achievement of the policy objectives of the *Act*.

12. 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 validates the long-held government policy designed to allow market forces to operate to the benefit of wireless consumers. In the current Canadian economic climate, public policy should continue to encourage growth sectors rather than implement policies that may hamper growth and innovation.

Sincerely,

Filed electronically

J. David Farnes
Vice President,
Industry and Regulatory Affairs

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