

March 27, 2009

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 reply 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 2008-11-1, *Notice of consultation and hearing*, dated 22 January 2009 (“the Notice”).

2. 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.

Introduction

3. The New Media proceeding has demonstrated that the provision of audiovisual content by mobile service providers has had no detrimental impact on the broadcasting system; in fact, the record of this proceeding shows the positive, complementary role played by the wireless industry by providing an additional platform for the promotion of Canadian broadcasters and Canadian programs, driving viewer loyalty to Canadian broadcast brands and programs and “stickiness” to the websites and broadcast services of Canadian broadcasters. The record also shows that a significant amount of Canadian content and Canadian services is available on suitably equipped mobile handsets, both through “walled gardens” and, increasingly, through wireless browsers that provide access to the open Internet.

4. With only positive impacts on the Canadian broadcasting system, broad broadcaster support in this proceeding and the availability of significant amounts of Canadian content to wireless users, CWTA submits that it is clear that the objectives of the *Broadcasting Act* (the *Act*) are being met appropriately by the wireless industry without regulatory intervention, and that regulation will not contribute in a positive manner to the implementation of the broadcasting policy set out in the *Act*. Accordingly, the Exemption Order for New Media Broadcasting Undertakings, as it applies to wireless service providers, and the Exemption Order for Mobile Television Broadcasting Undertakings continue to be appropriate and should be maintained as they are.

5. CWTA would like to take the opportunity to address briefly several discrete issues that arose during the course of the proceeding.

Myths About Wireless Broadcasting Revenue

6. CWTA notes that some hearing participants seem to tie the development of wireless broadband networks to expectations of delivery of video to wireless handsets, which they incorrectly label as broadcasting. The argument seems to be that wireless networks are being upgraded largely to provide bandwidth-intensive video content to users, which must mean that wireless providers are expecting significant revenue streams in the future from wireless video streaming or downloading. Finally, the argument suggests that it is appropriate to saddle this putative revenue stream with a tax to support the production of the broadcasting content that is supposedly driving network expansion and enhanced service revenues. There are several flaws with this line of thinking.

7. Certainly, video is bandwidth intensive and is therefore one of the drivers of speed and capacity upgrades to wireless networks, but it is far from the only driver of broadband. Wireless providers are also building up their networks to more readily manage the exchange of document and video attachments to e-mail, provide increased messaging speeds and facilitate the use of a whole range of interactive, web-based content, such as Facebook, which may or may not include significant amounts of video. Moreover, most video on wireless networks is not broadcasting. While there may be some broadcasting on wireless networks, such as the MobiTV streamed television services, these services have very few

subscribers and are not the future of wireless video services. The current make-up of wireless video traffic suggests that there are likely more e-mailed video attachments of children's birthday parties than actual broadcasting services. Accordingly, it would be incorrect to assume that network upgrades are being driven solely - or even primarily - by anticipated revenues from the delivery of broadcasting services over wireless networks.

8. Another significant part of the wireless broadcasting revenue myth is that there is somehow a direct incremental correlation between the amount of broadcasting distributed over wireless networks and the amount of revenue realized by wireless providers. In fact, as pointed out by Bell in its opening remarks, no such correlation exists; to the contrary, both subscriber growth rates and average subscriber revenue growth rates have actually decreased as video traffic has increased. Moreover, as TELUS explained during its appearance, the fact that video content, by nature, uses more bandwidth than other types of content or activities does not mean that subscribers value video services more.

9. Finally, as noted during CWTA's appearance, the wireless industry continues to make very significant ongoing investments to increase the speed and capacity of its networks and subsidize the costs of feature-rich handsets and smartphones -- \$5 Billion in the last three years alone. Any small amount of gross revenue that may be attributable to the nascent field of wireless broadcasting is quickly overwhelmed by the capital investments and expenses required to provide wireless broadcasting services. In providing an important new window for Canadian broadcasters and a new platform for the exhibition of Canadian programming, these investments alone represent a significant contribution by the wireless industry to the Canadian broadcasting system.

Wireless Providers Don't Control Access

10. Another issue that needs to be addressed is the call by Pelmorex and others for the imposition of Canadian content and/or undue preference rules on wireless providers.

11. First, it is important to correct Pelmorex's allegation that users somehow pay a premium to access content over the open Internet through a wireless browser versus those that access broadcasting content through a "walled garden" offered by their wireless service provider. This is simply not the case. All wireless users normally have to pay for data usage

when accessing video content, and there are a variety of packages available from different wireless providers. Subscribers to the current “walled garden” offerings also have to pay for data usage, and can pay various rates to do so (with some wireless providers bundling together charges for content access and data use, and some offering these at standalone price points). While it is possible to pay for wireless data by the Megabyte, for any users of significant wireless bandwidth, such as viewers of video content, it is more economical to subscribe to a fixed price data package that allows for high levels of bandwidth without incurring additional charges. This is the route taken by the overwhelming majority of video users. It is also the way of the future, with less and less content being provided via “walled gardens”. Consumers want to access what they want without intermediaries -- not what is present to them. Carriers are responding to this consumer demand.

12. CWTA also wishes to clarify that, irrespective of any “walled garden” offerings, wireless users can, and increasingly, do access the open Internet on devices equipped with a mobile browser, and can locate and interact with websites in exactly the same way as they can when using a wireline ISP, although content that is specifically formatted for wireless browsers is often easier to navigate. CWTA notes, by way of example, that the sites for both the Weather Network and The Score (two interveners that expressed concerns about alleged “gatekeeping”) can readily be found, accessed and even bookmarked for future visits through a simple Internet search on a wireless browser. Both of these services offer sites that are explicitly formatted for wireless viewing, and both services even offer downloadable applications that give wireless subscribers instant and direct access to the Weather Network site from the desktop of their smartphone, without the need to first open their wireless browser.¹ Moreover, both the Weather Network and The Score are available through the “walled gardens” offered by some wireless service providers.

13. With such ready, open and non-discriminatory access to these services by wireless subscribers, it is difficult to see why regulatory intervention would be required. There is simply no demonstrable access problem. Indeed, the record of the proceeding shows that many of the submissions citing undue preference concerns were highly theoretical and seemed almost half-hearted. When questioned by the Chairperson on why it was raising the alarm about the possibility of controlled access and undue preference, Pelmorex

¹ For application details see <http://www.theweathernetwork.com/mobile> and <http://www.thescore.ca/scoremobile/>.

essentially admitted that it had no current access problems, but was trying to raise a hypothetical policy issue (Vol. 8, 8758-8766).

14. Both the Commission and the wireless industry have enough on their plates without creating rules just in case there might conceivably be a problem in the future. In an environment of unstable business models and immature measurement capabilities the risk of making regulatory errors and imposing unnecessary regulatory costs escalate dramatically. The reality is that Canadian broadcasters are currently well-served by wireless broadband services and there is no real-world problem requiring regulatory intervention.

Regulation Not Required To Ensure Canadian Programs Are Available

15. As demonstrated in this proceeding, Canadian programs and Canadian broadcasters are currently well-represented on the “walled garden” offerings of Canadian wireless service providers. To the extent that such offerings continue to exist in the future, Canadian content will continue to be available, without the need for regulatory intervention. This is because there are solid commercial reasons to make available programming and services with direct, local relevance to Canadian users. In any event, even if a particular program is not part of a wireless provider’s packaged video services, customers can easily access the desired program through their wireless Internet browser. There are no barriers to access.

16. Wireless consumption of audio-visual content is a unique market in many ways, largely because of the nature of the technology and the inherent limitations of image and sound quality and screen size. Wireless audio-visual content is really intended to be consumed by users when away from home or conventional television sets. As a result, users of this technology tend to demand bite-sized, culturally and geographically relevant content that can easily be viewed and digested on the run – in airports, in line at Starbucks, etc. In many cases, this means users are looking for news, weather and sports highlights, which are all programming categories that are well-suited to mobile platforms, and with respect to which market forces tend to ensure the creation and presentation of Canadian content. Indeed, for the most part, the types of video content to which wireless users are drawn are the types of programming that the Commission itself has tended to view as commercially self-sustaining, requiring little in the way of regulatory support for production and priority carriage.

17. In the wireless space in particular, market forces will ensure that platform-suitable Canadian content will continue to be available.

Wireless Handsets Are Not Set Top Boxes

18. Some have alleged that a mobile handset could be used as a substitute for a decoder box or PVR. Based on this erroneous assumption, some have concluded that wireless video content could be a direct substitute for conventional broadcasting, and must therefore be regulated in the same way.

19. With respect, this assumption is implausible. While it is theoretically possible to download a program to a wireless device, then plug the device in to a standard television set for viewing (assuming that the requisite interface was readily available), it is not clear why anyone would want to do this. Content intended for a mobile device is compressed significantly, and is streamed using half the frame rate of standard broadcast video. Although a program intended for viewing on a wireless device can provide acceptable quality on a 2 to 3 inch screen, the image quality will be very poor on a conventional TV screen. On the other hand, if a user downloads from the open Internet content that is intended for a conventional television or state of the art video monitor (rather than a mobile device), such a program would require more media storage capacity than their handset would likely have. Moreover, the downloading of that program would use a significant amount of wireless bandwidth, which would be delivered at lower speeds and greater expense than if it came via the terrestrial Internet. It just doesn't make any sense for viewers to use mobile devices in this way; accordingly, the Commission should not be concerned about such potential usage.

No Justification For A Levy

20. One of the most significant proposals raised in this proceeding is the creation of a levy on wireless service providers that would be used to subsidize the production of Canadian content.

21. As previously indicated by the CWTA, such proposals amount to little more than a cash grab – and the transparency of such arguments have been amply demonstrated in these hearings. The appearance of ACTRA, one of the main proponents of the levy, is particularly telling. No evidence was introduced that would demonstrate the need for additional funding, nor were compelling evidence or arguments advanced to support the imposition of a levy on wireless service providers for the small amount of broadcast content with respect to which wireless providers take anything more than an entirely passive role. Rather, the thrust of the ACTRA submission seems to be that the more funding for Canadian production will always be required and any available funding source should be tapped to satisfy this purported need.

22. The Commission should strongly reject such opportunism, particularly if an insatiable desire for Canadian production funding is being used as the basis for a proposed tax on a small and nascent wireless broadcasting industry, where revenues fall far short of the investments required to offer the services. Such a levy is clearly not required, and will only serve to discourage innovation and investment in an industry in which significant ongoing capital expenditures are required.

Conclusion

23. Some two years ago, the Commission issued Broadcasting Public Notice CRTC 2007-13, 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*. This proceeding has demonstrated that there have been no material changes since that time that could compel the Commission to come to any different conclusion or course of action.

24. Mobile broadcasting continues to be an emerging service feature, very much in an experimental phase. Revenues have been extremely modest, and non-existent when one takes into account the substantial investments required to make mobile broadcasting at all possible.

² Paragraph 42, Broadcasting Public Notice 2007-13

"Walled garden" distribution models seem to be increasingly giving way to direct access by wireless users to the open Internet, but only time will tell which business models become viable and which do not. Within the "walled gardens", Canadian programs and Canadian broadcasters continue to be well-represented, and there have been no real access issues brought forward – only hypothetical scenarios that may never come to pass.

25. Mobile services continue to have no detrimental impact on traditional broadcasters, and in fact, even at this early stage of development, show every indication of making a positive contribution to Canadian broadcasters by providing an additional window for broadcasters to build audiences and promote their core broadcast services.

26. 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 for the Commission to ensure that innovation continues to occur, and that consumer interests continue to be met, is to preserve the exemption orders for new media broadcasting undertakings and mobile television broadcasting undertakings. Taking into account behaviour to date and the ongoing demand of wireless users for relevant Canadian content, such a course of action will also ensure that new media continue to contribute in an appropriate manner to the achievement of the policy objectives of the *Act*.

Sincerely,

Filed electronically

J. David Farnes

Vice President,

Industry and Regulatory Affairs

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