



June 9, 2006

Ms. Diane Rhéaume
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario K1A 0N2

VIA Email procedure@crtc.gc.ca

Dear Ms. Rhéaume,

Re: Broadcasting Public Notice CRTC 2006-48: Call for comments on proposed exemption order for mobile television broadcasting undertakings

1. This is the intervention of the Directors Guild of Canada (DGC), the Writers Guild of Canada (WGC), and the Alliance of Canadian Cinema, Television & Radio Artists (ACTRA) (the Unions) concerning Broadcasting Public Notice CRTC 2006-48: Call for comments on a proposed exemption order for mobile television broadcasting undertakings regardless of how they deliver their services.
2. The DGC is a national labour organisation that represents key creative and logistical personnel in the film and television industries. Its membership includes over 3,800 individuals drawn from 47 different craft and occupational categories covering all areas of direction, production, editing and design of film and television programming in Canada.
3. The WGC is a national association representing more than 1,800 writers working in film, television, radio, and multimedia production in Canada. Members of the Guild are professionals who write dramatic TV series, feature films, MOWs, documentaries, animation, comedy and variety series, children's and educational programming, radio drama, as well as digital productions for a variety of digital platforms including the Internet and cell phones.
4. The Alliance of Canadian Cinema, Television and Radio Artists (ACTRA) is a national organization of professional performers working in the English-language recorded media, representing the interests of 21,000 members across Canada.
5. These are the preliminary comments of the Unions in the matter of Broadcasting Public Notice CRTC 2006-48: Call for comments on proposed exemption order for mobile television broadcasting undertakings regardless of how they deliver their services.
6. This intervention follows on the Commission's decision on a regulatory framework for mobile broadcasting services (Broadcasting Public Notice CRTC 2006-47), in which the Commission announced its determination that several mobile television broadcasting services that are delivered and accessed over the Internet are exempt from regulation under the New Media exemption order.



7. The services offered by TELUS Mobility (TELUS), Bell Mobility Inc. (Bell), Rogers Wireless Inc. (Rogers) provide mobile television broadcasting services that will not be licensed or subject to any conditions to encourage the use of Canadian creative resources, including new drama short programs written, directed and performed by Canadians.
8. The Commission is now proposing an exemption order that "is intended to capture undertakings offering the type of mobile television broadcasting services described in Public Notice 2006-47, but whose services are not necessarily 'delivered and accessed over the Internet.' The only condition in this proposed new exemption order is that "mobile television broadcasting undertakings be required to obtain the prior consent of any broadcaster for the retransmission of its signal".
9. It is the CCAU's submission that no further exemption order is necessary at this time. First, it is now appropriate to review the new media exemption order because it has been more than six years since the order was first made, and many developments have occurred in the interim that should be examined in light of that exemption order. A review should reassess the mobile broadcasting services that are currently exempt under the new media exemption order. If this current proceeding does result in a new exemption order, it should be limited to two years at the most, by which time the Commission should undertake a review of both it and the new media exemption order.
10. Second, while there are Canadian channels on mobile TV, these channels are primarily news and weather reporting, a very narrow range of programming. If mobile broadcasting undertakings are left unregulated, the marketplace will fail to take into consideration the desires of the Canadian audience and the policies of the *Broadcasting Act*.
11. Finally, mobile broadcasting is not so limited that it will not impact mainstream broadcasting. Mobile telephone and other receivers are changing daily, with early adopters upgrading their phones on a quarterly basis. Screen resolution, battery life, screen size, image and audio quality are all improving radically and swiftly. These technical improvements will accelerate penetration of mobile broadcasting services in the market place.

Review of the New Media Exemption

12. In its 1999 New Media decision, the Commission stated that some of what was taking place on the Internet was broadcasting, and it left open the possibility that it would decide in future to regulate new media. We believe this is an appropriate and timely opportunity for the CRTC to do precisely that. When the CRTC first considered the issues surrounding "new media," the Unions' approach was straightforward. We stated then that the developing technologies were transforming the way content would be produced and distributed, and we argued that these technologies should be embraced. We noted that the role of the Commission was to ensure that Canadians have access to a full range of high quality Canadian choices, regardless of how the content is created or distributed. We further argued that the Commission has the responsibility and the authority under



the *Broadcasting Act* to achieve this objective, although the mechanisms the Commission will need to use to accomplish the objective would undoubtedly change as new applications of technology bring more individual consumer choice.

13. While it may be happening more quickly than many believed, the convergence of telecom, information technology, the Internet, media and entertainment are already here.
14. Despite the Commission's decision that the Exemption Order for New Media Broadcasting Undertakings, Public Notice CRTC 1999-197, (the New Media Exemption Order) would apply to mobile broadcasting services that involve use of the public Internet, the Unions believe that the mobile broadcasting services proposed by TELUS, Bell and Rogers should have been subject to the application of appropriate regulatory conditions to ensure that a range of Canadian choices is fully integrated into the program offerings and that the companies distributing the programs make a reasonable contribution to the production of the Canadian programs for mobile broadcasting, thus giving something back to the broadcasting system. The Commission's exemption order in respect of mobile broadcasting undertakings attached no such conditions to the mobile broadcasting services.
15. In theory, Canada's broadcast regulatory system is to be technology neutral, but the Unions believe an exemption order without Canadian content conditions works against that principle by singling out particular technologies for special treatment, as is the case with mobile broadcasting.
16. It is useful to consider the state of technology when the Commission made its new media decision in 1999. The Internet was primarily about the exchange of written text and documents, with little commercial activity. Music exchange, for example, was taking place, but video streaming via the Internet was in its infancy, and there was little broadband connectivity. Broadcasters' use of the Internet was primarily for promotional purposes, with information about scheduling, weather, sports scores and similar informational programming. While there was some transmission of radio programs and excerpts from audiovisual programs as streamed video, this was slow and of poor quality. The purpose of the New Media exemption order was, according to the Commission, to permit these types of uses to develop without regulatory impediments, particularly because they represented only a small amount of Internet activity.
17. The Commission was told by many interested stakeholders that technology would quickly develop beyond that rudimentary level, but these views were largely ignored as speculative. Now, however, many people have broadband connections that can be wireless or landlines, the technology permits transmission of digital quality audio and video, and many people purchase goods and services on the Internet. In addition, the computer is expected soon to become an integral part of the home entertainment system, moving us rapidly into an era in which there is complete interconnectivity and the "Internet" becomes indistinguishable from broadcasting.



18. The Commission is now proposing that all mobile broadcasters, irrespective of whether they deliver their services using the Internet, should be exempt from licensing under a new and broader exemption order that would, for all intents and purposes, extend the new media exemption order to non-Internet uses, again without conditions relating to programming content.
19. In its new media exemption order, the Commission said that the potential impact of the Internet on broadcasting and content distribution would be that “anyone can place their product or program on a server and immediately gain access to a global audience” However, the Commission’s Exemption Order did not acknowledge that the Internet would be not only an open and public system, but would also in some cases accessed through a closed system where individuals subscribe to services, including broadcasting services.
20. It should be evident that any vision of a wide-open Internet simply does not apply to mobile broadcasting services that offer “pre-packaged programming” available only to those who choose to subscribe to these services, nor to such services using non-Internet means of broadcast. Any conception of an open, borderless system does not hold true in respect of the mobile broadcasting systems that are under consideration in this Public Notice, and there is thus no justification for an exemption order or for resigned acceptance that such services cannot be required to fulfil obligations with respect to Canadian content.
21. The mobile broadcasting services proposed by TELUS, Bell and Rogers should not have been subject to the new media exemption order, and the Unions note again that the Commission said there would be a review of exemption orders, in its policy regarding the use of exemption orders Public Notice CRTC 1996-59: “Accordingly, all new exemption orders will be reviewed. Such reviews will normally take place five years from the date of issuance of the order and will be subject to the Commission’s normal public process.
22. A review of the new media exemption order is due as it was created seven years ago and needs to be updated for relevance to the current state of broadcasting technology.
23. The Unions submit that the Commission must first review the scope and examine the need for such a broad exemption as the new media exemption order, before creating any further exemption orders. However, if this current proceeding does result in a new exemption order, it should be limited to two years at the most, by which time the Commission should complete a review of both it and the new media exemption order.

Programming on Mobile TV should be Predominantly Canadian

24. The *Broadcasting Act* requires that the Commission impose requirements to contribute in a material manner to the implementation of the broadcasting policy including those specific requirements to contribute to and use Canadian creative resources in sections 3(1)(e) and (f) as follows:



- (e) each element of the Canadian broadcasting system shall contribute in an appropriate manner to the creation and presentation of Canadian programming;
 - (f) each broadcasting undertaking shall make maximum use, and in no case less than predominant use, of Canadian creative and other resources in the creation and presentation of programming, unless the nature of the service provided by the undertaking, such as specialized content or format or the use of languages other than French and English, renders that use impracticable, in which case the undertaking shall make the greatest practicable use of those resources.
25. The Unions note that the Public Notice in this proceeding did not include a request for comments with respect to the level of Canadian content these mobile services will broadcast to mobile subscribers under a new exemption order. We fear that such services using a U.S. or other foreign programming aggregator will result in little or no Canadian Content available for their Canadian subscribers.
26. In Public Notice 2006-47 the Commission said that, without regulation, mobile television broadcasting undertakings currently provide a predominance of Canadian channels on their services. The Commission also concluded that mobile broadcasting television undertakings can offer additional benefits to Canadian broadcasters by expanding the audiences for Canadian programming, and to Canadian producers by expanding the opportunities to create and license new content. We acknowledge that mobile broadcasting could have the potential to do all that, but with respect, we disagree that this is what the future will hold if left to market forces.
27. Mobitv.com is the facilitator for mobile broadcasting for Bell, Telus and Rogers, as well as carriers around the world. Rogers has, for example, fifteen broadcast channels on its mobile service; Bell and Telus have seventeen channels each on their respective services. The Rogers channels include seven that are Canadian (CBC Newsworld in both languages, The Weather Network in both languages, Treehouse, YTV and US spin off G4Tech TV) the remaining eight channels are foreign produced. Bell and Telus channels also have seven Canadian channels (the same as Rogers with the addition of the The Shopping Channel). These Canadian channels are primarily news and weather reporting, a very narrow range of programming. Respectfully, if less than half of the channels are Canadian the service offering is not 'predominantly' Canadian as described by the Commission.
28. This does not meet the definition of 'predominant use of Canadian creative and other resources' and, given the make up of the channels, does not offer promise of benefits to Canadian producers. It is clear that if mobile broadcasting undertakings are left unregulated, the marketplace will not take into consideration the desires of the Canadian audience or the policies of the *Broadcasting Act*.
29. Rather than encouraging the creation of new Canadian programming, a broad exemption order, without conditions requiring mobile broadcasters to observe the broadcasting policy set out in subsection 3(1) of the *Broadcasting Act*, would have the opposite effect.



30. The mobile broadcasting BDUs that would be subject to the exemption order will have no obligation to source their programming needs from Canadian creative and other sources. Instead of becoming a portal for newly developed Canadian-made drama shorts, among other Canadian programming that could be produced for mobile broadcasting, these mobile broadcasting BDU's will seek to fill their programming with ready-made and advertising-tested mobile broadcasting programming originating in the United States and other foreign territories that have existing and growing mobile broadcasting markets able to leverage economies of scale. While we appreciate that the Commission is attempting to, in effect, level the playing field for mobile broadcasters by creating a non-Internet mobile broadcasting exemption order, the result is to expose the Canadian creative and other sources to the effects of a very un-level playing field where there is little hope of fair competition for new Canadian programming content.
31. We agree with the Commission that the means by which mobile broadcasting signals are delivered should be irrelevant. However all mobile broadcaster BDU's should be required to observe appropriate Canadian content regulations and should be responsible to contribute financially to the production of Canadian programs, similar to all other BDUs. Rather than creating a new exemption order, the Commission should re-examine the new media decision and the New Media Exemption Order.
32. Whether mobile TV is described as being delivered over the Internet or not, a mobile user only has access to mobile TV programming if the user subscribes to the service. In this regard, mobile TV is directly analogous to cable television service. Moreover, the user only receives access to the programming services which the wireless provider has chosen to make available to its subscribers; again, just like cable television. Based on these facts, it is clear that regulation of a wireless carrier's mobile TV services should be treated in the same manner as regulation of cable television services.
33. Such regulation of mobile broadcasting services in Canada would be consistent with other national regimes that have regulated broadcasting. For example, the European Commission proposed a modernised Television Without Frontiers directive that would distinguish between "linear" services (such as scheduled broadcasting via traditional TV, the Internet or mobile phones) that "push" content to viewers) and "non-linear" ones (such as on-demand films or news) that the viewer "pulls" from a network.
34. In addition because mobile broadcasting, even via internet transmission, is in effect in a closed system, the Commission would be able to effectively monitor the development of mobile services and, thus, would be able to ensure that they make the contributions to the system expected of them and adhere to the relevant industry codes. It would not be difficult to enforce any registration or reporting requirement for these undertakings.
35. We are at the early end of the curve on mobile broadcasting, but it is developing too rapidly to be left to market forces alone. Those forces will fill the vacuum of consumer demand for programming with foreign programming, unless the Commission steps in and regulates this new broadcasting platform at the early stages.



Mobile broadcasting could have an impact on the Broadcasting System

36. As noted by the Commission in Public Notice 1996-59... "Exemption orders issued by the Commission since the promulgation of the *Broadcasting Act* in 1991 have been for classes of undertakings whose services have minimal impact on the broadcasting system or are of limited capacity to contribute to the attainment of the broadcasting policy set out in the Act".
37. The Commission clarified what was considered necessary to qualify as an exempted service: "such as those providing coverage of the proceedings of the House of Commons or of a provincial or territorial legislature, offer clearly important services, but have been exempted based on the Commission's determination that licensing them was not required in order to further the implementation of the *Broadcasting Act* objectives."
38. It is clear that the channels available on the Bell, Rogers and Telus services, for example, do not offer services so important to the public that exempting them from licensing furthers the implementation of the *Broadcasting Act* objectives. The programming available on the mobile services, in fact, largely mimics programming that is already easily accessible on over-the-air television and via cable. The only distinction is that mobile broadcasting services are just that - mobile.
39. There are instances where the Commission's exemption orders have not met with broad acceptance by the industry and the general public. In respect of the exemption orders respecting direct-to-home (DTH) satellite distribution undertakings (Public Notice CRTC 1994-111), video games programming undertakings (Public Notice CRTC 1995-5) and teleshopping programming service undertakings (Public Notice CRTC 1995-14), the Commission's decisions resulted in significant debate and controversy. These services were examples of new types of broadcasting services, not dissimilar to mobile broadcasting, that could have a significant future impact on the broadcasting system.
40. The nature and extent of mobile phone use in other developed countries suggests that mobile television will have an impact on conventional broadcasting in Canada. For example, as of June 2005, there were approximately 191.3 million mobile telephony lines in service in the U.S., according to the latest data released by the FCC. More than 2 million people in the U.S. pay a monthly fee to receive television on their mobile phones, according to performance measurement specialist Telephia, with at least a million more having watched mobile video without a subscription. In the UK, Mike Short, Vice President R & D at O2, speaking at the Cable & Satellite International event "The Multi-Channel TV To Handhelds Conference", remarked that the UK now has more active UK mobile subscriptions than the total population (62 Million).
41. Hardware receivers such as digital mobile phones are changing daily, with early adopters upgrading their phones on a quarterly basis. Screen resolution, battery life, screen size, image and audio quality, all cited by the Commission as reasons that this technology is not a threat to conventional Television, are all improving radically and swiftly.



42. Mobile broadcasting is likely to have an impact on the broadcasting system sooner than anticipated. It is now appropriate to regulate and licence mobile broadcasting services and to impose Canadian programming requirements on them, regardless of how they are delivered. Any exemption order arising out of this proceeding should include requirements that mobile broadcasters fulfill their responsibilities regarding Canadian programming. It would be appropriate, for example, to require that mobile broadcasters contribute 5% of their gross annual revenues to assist the creation of original Canadian programming for mobile TV, as well as to require that they broadcast adequate amounts of under-represented categories of programming, including drama.
43. Should the Commission consider that it is still too early to regulate mobile broadcasting and wish to observe the development of the mobile broadcasting industry further, then any general exemption should coincide with and be limited to the same time frame as the New Media Exemption order, which is overdue for review by the Commission, as noted above. We thank you for this opportunity to provide you with our comments. We look forward to participating in the second stage of this inquiry. We would be pleased to appear before the Commission at a public hearing for the Mobile TV services and welcome the opportunity to participate in a new media policy review.

Yours truly,

A handwritten signature in cursive script that reads "Pamela Brand".

Pamela Brand
National Executive Director
Directors Guild of Canada

A handwritten signature in cursive script that reads "Maureen Parker".

Maureen Parker
National Executive Director
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A handwritten signature in cursive script that reads "Stephen Waddell".

Stephen Waddell
National Executive Director
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