



Canadian Association of Broadcasters
Association canadienne des radiodiffuseurs

December 23, 2008

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

Via Epass

Dear Mr. Morin:

Re: Small Market Local Programming Fund – 2007-2008 Annual Report

1. The Canadian Association of Broadcasters (CAB) is the national voice of Canada's private broadcasters, representing the vast majority of Canadian programming services, including private radio and television stations, networks, specialty, pay and pay-per-view services. The goal of the CAB is to represent and advance the interests of Canada's private broadcasters in the social, cultural and economic fabric of the country.
2. The CAB is pleased to provide the Commission with a report on the operational activities of the Small Market Local Programming Fund for the broadcast year ended August 31, 2008.
3. In Broadcasting Decisions CRTC 2003-257 and CRTC 2003-258, the Commission suspended conditions of licence relating to the program deletion obligations of Bell ExpressVu and Star Choice, provided that they implement a set of measures specified by the Commission as an alternative to program deletion.
4. One of the measures was that each DTH licensee contributes, annually, not less than 0.4% of its gross revenues derived from broadcasting activities to a new independently administered fund. This fund is intended to assist the 17 small market independently owned television stations identified by the Commission in Public Notice CRTC 2003-37 *Direct-to-home (DTH) broadcasting distribution undertakings – simultaneous and non-simultaneous program deletion and the carriage of local television signals in smaller markets* in meeting their commitments to local programming.

5. On December 9, 2003 the Commission certified the Small Market Local Programming Fund (SMLPF) as an independent production fund eligible to receive and administer contributions from broadcasting distribution undertakings under subsection 44(1)(b) of the *Broadcasting Distribution Regulations*. In its letter of certification, the Commission requested that the CAB file an annual report demonstrating compliance with the approved disbursement formula and the approved fee of 2% of contributions for the administration of the fund. In addition, the Commission requested that the annual report set out the contributions received by the fund during the broadcast year, and the amount of disbursements made to the respective small market, independently owned television stations.

Total funds received and total funds disbursed

6. The SMLPF received \$ 8,305,606.03 from Bell TV (formerly Bell ExpressVu) and Star Choice in relation to the twelve month period ending August 31, 2008.
7. For this same period, the SMLPF disbursed \$ 8,197,611.00 to the 17 small market independently owned television stations. A breakdown of the funds disbursed to each station is provided in Appendix A.

Disbursement formula and administrative fee

8. The CAB confirms that funds were disbursed to the 17 small market independently owned television stations in accordance with the approved disbursement formula. This formula requires that one third of the total amount disbursed be divided equally among the 17 stations; that one third of the monies be distributed on the basis of a DTH impact analysis; and that one third be distributed in proportion to each eligible station's percentage of total local programming expenditures calculated over the last five years.
9. Further, the CAB confirms that it has not exceeded the ceiling of 2% of contributions for the administration of the fund.

Compliance by Star Choice with respect to the requirement to contribute 0.4% of revenues derived from broadcasting activities

10. As noted above, in order to be relieved of the requirement to carry out program deletion, the DTH licensees are required, among other things, to contribute 0.4% of their gross revenues derived from broadcasting activities to the SMLPF. The basis for this calculation is the Commission's definition of "gross revenues derived from broadcasting activities", as set out in CRTC Circular 426 dated December 22, 1997.
11. CRTC Circular 426 states that:

"Gross revenues derived from broadcasting activities" means total revenues, before any deductions (including those for program fees), that are earned directly or indirectly for the distribution of any broadcasting service on an undertaking by the licensee or other entity, where the licensee and other entity are not dealing at arm's

length within the meaning of section 251 of the *Income Tax Act*. This includes, for example, but without limitation, gross revenues from basic and discretionary service subscriptions, additional outlets, installation and reconnections fees, decoder sales and rentals, commercial messages, as well as revenues from the operators of exempt programming undertakings such as home shopping and real estate services. Gross revenues derived from broadcasting activities exclude revenues earned from telecommunications services such as data delivery and services whose visual images consist predominantly of alphanumeric text, such as Broadcast News, that are regulated under the *Telecommunications Act*.

12. The CAB attempted to confirm that both Bell TV and Star Choice calculate their respective payments on “gross revenues from broadcasting activities” as defined by the Commission. To date, we have not received such confirmation from Star Choice.
13. The CAB continues to pursue this matter directly with Star Choice, so that we can verify the accuracy of its payments to the SMLPF. We will keep the Commission apprised of the results of our current discussions with Star Choice in this regard.
14. The CAB would be pleased to provide the Commission with additional information on the operational activities of the SMLPF upon request.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Pierre-Louis Smith', with a large, sweeping flourish extending to the left.

Pierre-Louis Smith
Vice-President, Policy &
Chief Regulatory Officer

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APPENDIX A

SMALL MARKET LOCAL PROGRAMMING FUND

Distribution of funds collected from September 1, 2007 to August 31, 2008

GROUP	STATION(S)	Total funds distributed
Jim Pattison Industries Ltd.	CHAT-TV, Medicine Hat	\$605,568.49
	CFJC-TV, Kamloops	\$755,694.20
	CKPG-TV, Prince George	\$565,108.35
	TOTAL JIM PATTISON INDUSTRIES	\$1,926,371.05
NewCap Radio Inc.	CKSA-TV & CITL-TV, Lloydminster	\$1,525,150.49
Norcom Telecommunications Limited	CJBN-TV, Kenora	\$383,641.49
Radio Nord Communications inc.	CKRN-TV, CFEM-TV, Rouyn-Noranda and CFVS-TV, Val d'Or	\$1,016,995.01
Télé Inter-Rives ltée	CIMT-TV, CFTF-TV, CKRT-TV, Rivière-du-Loup	\$1,034,882.04
	CHAU-TV, Carleton	\$423,811.55
	TOTAL TÉLÉ INTER-RIVES LTÉE	\$1,458,693.59
Astral Media Radio G.P.	CFTK, Terrace-Kitimat	\$327,692.67
	CJDC, Dawson Creek	\$370,044.41
	TOTAL ASTRAL MEDIA RADIO G.P.	\$697,737.07
Thunder Bay Electronics Limited	CKPR-TV, CHFD-TV, Thunder Bay	\$1,189,022.31
		\$8,197,611.00