



Broadcasting Public Notice CRTC 2006-47

Ottawa, 12 April 2006

Regulatory framework for mobile television broadcasting services

In this notice, the Commission announces its determination that the mobile television broadcasting services described herein and operated by Bell Mobility Inc., TELUS Mobility and Rogers Wireless Inc., in conjunction with MobiTV Inc., fall within the New Media Exemption Order because they are “delivered and accessed over the Internet.”

In a separate notice issued today, the Commission has also called for comments on a proposed new exemption order that will include mobile television broadcasting undertakings that provide mobile television services that are not delivered and accessed over the Internet.

Introduction

1. On 13 May 2005, the Commission sent letters to LOOK Communications Inc. (LOOK), Bell Mobility Inc. (Bell) and Rogers Wireless Inc. (Rogers) requesting that they provide detailed descriptions of proposed mobile television broadcasting services, the introduction of which had been the subject of public announcements by these companies. On 31 May 2005, the Commission sent a similar letter to TELUS Mobility (TELUS). According to descriptions provided by Bell, TELUS and Rogers, their three services are similar in that each provides wireless customers with real-time access to audio-visual content on their wireless handsets. In order to access a service, subscribers must be equipped with a compatible handset, subscribe to a data service plan provided by a wireless carrier, and pay a monthly subscription fee.
2. In their replies, Bell, TELUS and Rogers advised that they had partnered with a U.S.-based service known as MobiTV Inc. (MobiTV) for the provision of their respective services. Bell explained that the role of MobiTV is to convert the video content to a format compatible with mobile browsers and handsets. MobiTV also provides the servers, the connections to enable the video streams to travel through the Internet, and subscriber authentication processes.
3. All three wireless carriers were of the view that their respective services would fall within the definition of broadcasting set out in section 2 of the *Broadcasting Act* (the Act), but, at the same time, would qualify for exemption from licensing pursuant to the exemption order set out in the appendix to *Exemption Order for New Media Broadcasting Undertakings*, Public Notice CRTC 1999-197, 17 December 1999 (the New Media Exemption Order). The Commission notes that the New Media Exemption Order reads as follows:

... pursuant to subsection 9(4) of the Act, the Commission exempts persons who carry on, in whole or in part in Canada, broadcasting undertakings of the class consisting of new media broadcasting undertakings, from any or all of the requirements of Part II of the Act or of a regulation thereunder. New media broadcasting undertakings provide broadcasting services delivered and accessed over the Internet, in accordance with the interpretation of “broadcasting” set out in Broadcasting Public Notice CRTC 1999-84/ Telecom Public Notice CRTC 99-14, *Report on New Media*, 17 May 1999.

4. Bell distinguished its service from other new media services in that it would employ wireless transmission for the “last mile” of the transmission path and use wireless handsets as terminal devices. Bell noted, however, that many other Internet applications that fall within the New Media Exemption Order also rely on wireless connectivity as part of the transmission path, for example, services delivered to users who access the Internet via Wi-Fi hotspots.
5. Both Bell and TELUS submitted that their proposed services would not compete with traditional broadcasting services as a consequence of such factors as the small size of the viewing screens on wireless telephones, their low image resolution and audio quality, the memory and battery life limitations of mobile handsets, and the narrow range of programming choices that would be available to subscribers.
6. For its part, LOOK submitted that it would use its Multipoint Distribution System (MDS) broadcasting distribution undertaking (BDU) to transmit content to those of its customers equipped with a mobile receiving apparatus. LOOK noted that the service would distribute programming services that LOOK is authorized to distribute pursuant to its broadcasting licence, in a manner that conforms to the requirements of this licence, and to the requirements of the *Broadcasting Distribution Regulations* (the Regulations).
7. In *Call for comments on a regulatory framework for mobile broadcasting services*, Broadcasting Public Notice CRTC 2005-82, 11 August 2005 (Public Notice 2005-82), the Commission invited comments on a regulatory framework for mobile broadcasting services of the type proposed by Bell, TELUS, Rogers and LOOK. In its notice, the Commission requested that parties address the following questions:
 - Do the proposed services fall within the scope of the New Media Exemption Order?
 - If the proposed services do not fall within the scope of the New Media Exemption Order, should a new exemption order be issued covering these services?
 - If a new exemption order should be issued, what should be its scope?

8. The Commission received 22 comments in the first phase of the proceeding and 11 reply comments in the second phase. Parties included broadcasters, wireless providers, and a number of groups representing Canadian producers and artists.
9. The Commission notes that parties generally distinguished between the services proposed by Bell, TELUS and Rogers on the one hand, and that proposed by LOOK on the other. The following paragraphs deal with the former. The Commission's determination regarding the service proposed by LOOK is set out separately at paragraph 53 of this public notice.

Positions of parties

First phase comments

10. The Canadian Wireless Telecommunications Association (CWTA), Motorola Canada Limited, Saskatchewan Telecommunications (SaskTel) and MTS Allstream Inc. (MTS Allstream) argued that the mobile broadcasting services fall within the parameters of the New Media Exemption Order, as they would be "delivered and accessed over the Internet," in accordance with that exemption order.
11. The CWTA commissioned Lemay-Yates Associates (Lemay-Yates) to prepare an expert technical report describing the nature, design and function of the mobile broadcasting services. According to Lemay-Yates, its report was based on research that it conducted, including interviews with Bell, Rogers, TELUS and MobiTV. The Lemay-Yates report described the mobile system operation as follows:

MobiTV obtains the broadcast channels directly from a satellite reception dish. Broadcast signals are received in the same way as a local cable TV affiliate would. Content for TV channels comprised of video clips are being obtained via file transfers over the Internet.

From the satellite reception, the signals are then transported via local high capacity digital transport links to a MobiTV server farm, in this case located in Reston, Virginia, for digital encoding, compression and formatting to fit every type of mobile phone screen on which the service is being offered....

The MobiTV server farm in Reston, Virginia is interconnected to the public Internet via a high-speed digital link. Each unique digitally encoded video stream travels from the MobiTV server farm to the Internet gateway of the mobile carrier over the public Internet as IP packets.... From the mobile carriers' Internet gateway, the signal is routed by the mobile carrier on its mobile network to the appropriate tower and antenna where the signal is transmitted wirelessly for the last mile for reception on the end-user handset.

The mobile subscriber communicates directly with the MobiTV servers over the public Internet as is done in typical Internet client server applications. No additional hardware or software is required on the networks of the mobile carriers to offer the service.

12. The Lemay-Yates report also described the numerous technology issues facing mobile television services, including the low transmission bandwidth available on mobile networks, the requirement for high rates of compression, relatively low frame rates and the small size of the screen on mobile handsets. Lemay-Yates noted that the mobile TV user's experience would also be affected by the poor image resolution of the mobile screen, the poor sound quality on mobile handsets, and the reduced handset battery life resulting from use of the high bandwidth necessary for video applications.
13. Although the CWTA and SaskTel were of the view that mobile television broadcasting services fall within the New Media Exemption Order, they argued that, if the Commission were to conclude otherwise, it should issue a new exemption order, without conditions, for these services. The CWTA proposed that the Commission could define a new class of undertaking as follows: "Mobile Multimedia Broadcasting Undertakings' that provide video, audio, data and gaming delivered by means of radiocommunication networks accessed via mobile wireless handsets."
14. The Canadian Association of Broadcasters (CAB), various private broadcasters, several groups representing Canadian artists and producers, and the Commissioner of Official Languages generally saw no difference between the activities of the wireless carriers providing mobile broadcasting and those of a licensed broadcaster or BDU. They argued that mobile television broadcasting services would not fall under the New Media Exemption Order.
15. The CAB noted that these services make use of the Internet simply to push programming signals from one back-end provider to another, but that subscribers would not use the Internet to access these signals. More specifically, the CAB argued that, if a wireless carrier provides access to only a limited subset of video or audio signals, then the user is not actually accessing the Internet. The CAB submitted that, in such circumstances, the operator would not be acting as an Internet Service Provider (ISP), i.e., as a transparent carrier of content, but would be functioning as a BDU, which the CAB described as a gatekeeper and value-added reseller of broadcast signals.
16. The CAB submitted that, based on the descriptions provided, it is clear that these services do not operate on an open network, but employ a system having a closed, proprietary architecture at either end. Similarly, Pelmorex Communications Inc. (Pelmorex) submitted that the wireless carriers, while employing Internet technology and the World Wide Web to transport the signals of programming services to their "head ends", are using their own distinct wireless networks to deliver the service to subscribers. Pelmorex argued that the wireless carriers have essentially acknowledged that they inject the signals into their networks, authenticate use and perform all the same functions that BDUs perform.

17. The Association québécoise de l'industrie du disque, du spectacle et de la vidéo (ADISQ) submitted a legal opinion from Pierre Trudel, a lawyer and professor in the Faculty of Law at Université de Montréal, on the question of whether mobile broadcasting falls under the New Media Exemption Order. The following are his conclusions:

[TRANSLATION] The model proposed in Public Notice 2005-82 offers subscribers a set of broadcast programming services, not via the Internet, but rather via a dedicated receiver that is configured to the undertaking's specifications. It is a far cry from a model that would comply with the New Media Exemption Order, one which would provide a service that does not confine the user to a single bundle of services, as is the case now.

The fact that certain steps in the transmission of programs to subscribers use Internet-type protocols does not mean that these services are transmitted *and* received via the Internet. What we have here is a model for offering users a set of programs that they can view on their telephone handsets.

Users of the service proposed by the applicant undertakings are not connected to the Internet. Rather, they subscribe to programming services selected by the undertaking, and access to those services is clearly and fully controlled by the undertaking. Using protocols or processes that are also used in the Internet environment does not make this a broadcasting service that users can access via the Internet.

18. The majority of groups representing Canadian artists, Friends of Canadian Broadcasting, and the Commissioner of Official Languages were of the view that mobile television broadcasting services should be licensed by the Commission. These groups were generally concerned by the fact that Canadian content regulations would not apply to these services, if exempted, and the impact that this lack of regulation would have on Canadian drama programming and Canadian artists. The Commissioner of Official Languages, for instance, stated that it was critical that this advance in technology adhere strictly to the basic rules of the Canadian broadcasting system to ensure that subscribers are not "bombarded" with American content at the expense of Canadian cultural content and linguistic duality. The Society of Composers, Authors and Music Publishers of Canada argued that the decision to exempt many of these new technologies dilutes the Commission's effectiveness and creates two classes of broadcasters – those that are subject to Parliament's Canadian content policies and those that are not. The Alliance of Canadian Cinema Television and Radio Artists (ACTRA) considered that granting exemptions to mobile television broadcasting services "would likely contribute to a further decline in English-language television drama and, at the very least, perpetuate a series of negative precedents in which content obligations have been drastically reduced or altogether exempt for new technologies and media applications."

19. The CAB, Quebecor Media Inc. (Quebecor), other individual broadcasters, and groups representing Canadian artists, recommended that the Commission issue a new exemption order for mobile broadcasting services, with specific conditions attached. For instance, the CAB recommended that, as in the case of experimental video-on-demand services, the Commission implement a new two-year exemption order. It noted that this would allow the Commission and interested parties time to assess the impact of mobile broadcasting distribution services. The CAB added that this should be followed by a public policy process to determine the appropriate scope of a new class of “mobile broadcasting distribution” licence, and a subsequent process to hear applications from potential licensees.
20. The CAB also proposed that the new exemption order include the following exemption criteria:
 - The company offering the service must be owned and effectively controlled by Canadians.
 - The service received by each subscriber shall consist of a preponderance of Canadian signals.
 - The company must source its content only from licensed Canadian programming services, or from non-Canadian services previously authorized for distribution in Canada. That content must be related to content carried on the programming service in question.
 - The company must contribute 5% of its gross annual revenues derived from its mobile broadcasting service, including transmission or airtime charges for reception of the service, to an appropriate Canadian talent development fund.
21. The CAB also noted that the functions provided by MobiTV appear to be similar to those carried out by relay distribution undertakings, which are subject either to licensing by the Commission or to exemption under a relevant exemption order. The CAB urged the Commission to explore the role of MobiTV to determine whether further regulation would be appropriate.
22. Global Television Network Inc.¹(Global) did not endorse the CAB’s position that mobile broadcasting services should be permitted to source content from non-Canadian services already authorized for distribution in Canada. Rather, Global proposed that the content be derived strictly from licensed Canadian services. Global also recommended that the Commission incorporate in the exemption order a criterion that would prohibit undue preference or disadvantage to ensure maximum and diverse domestic participation.

¹ On 1 September 2005, Global Television Network Inc., Global Communications Limited, CanWest Media Inc. and certain other CanWest corporations amalgamated to continue as CanWest MediaWorks Inc.

23. The Association des producteurs de films et de télévision du Québec proposed a temporary exemption order having a fixed term of five years, and containing criteria similar to those proposed by the CAB, along with a further requirement that the services offer a minimum percentage of French-language channels. The Canadian Motion Picture Distributors Association (CMPDA) submitted that a criterion requiring mobile TV providers to obtain separate consents from terrestrial broadcasters for the transmission of their signals should be imposed.

Second phase reply comments

24. In its reply comments, the CAB argued that it was clear from the CWTA's description of the role of the wireless carriers that the carriers will make all of the decisions about which programming services will be offered, in what packages, for what price, and on which types of receiving apparatus. The CAB added that, based on the CWTA's description, the wireless carriers would then transmit their programming signals through proprietary networks, to customers whom they have equipped with proprietary hardware and software not generally available to all Internet users.
25. The CAB also noted that, while the data packets do make part of their journey to the subscriber over the public Internet and part of the journey over dedicated wireless transmission infrastructures, this makes no difference to the essentially closed nature of the transmission. The CAB emphasized that the transmissions can only be received by those users of the public Internet who are subscribers of the proprietary wireless systems that make up the last mile. The CAB added that only those having affiliation agreements with the wireless carriers can transmit programming signals via the MobiTV/carrier network, to the exclusion of all others.
26. With respect to the legal opinion prepared by Pierre Trudel and submitted by ADISQ, the CWTA noted that Mr. Trudel's arguments are based on the flawed assumption that the mobile handsets are not accessing the Internet. The CWTA added that the Lemay-Yates report clearly confirmed that the multimedia content available through the mobile broadcasting portal is accessed through the mobile handset's web browser, and the same web browser can be used to access a broad array of Internet addresses designed for viewing on the mobile browser. The CWTA stated that a person can access the Internet through a mobile handset browser without being a subscriber to the wireless carrier's mobile broadcasting portal. It added, however, that a person cannot access the carrier's mobile broadcasting portal without accessing the Internet through the mobile browser.
27. The CWTA also submitted that licensing wireless carriers as BDUs would stifle the development of such services. It claimed that time and regulatory flexibility is needed to allow these services to find their market niche and for the wireless carriers to justify their investments. The CWTA further argued that the conditions suggested by the CAB for a new exemption order would be inappropriate and impossible to implement. For instance, according to the CWTA, a requirement for a preponderance of Canadian services would be impracticable because the wireless carriers, like ISPs, allow subscribers to access any site in the world that offers content formatted for viewing on multimedia browser software.

28. The CWTA also noted that the CAB's proposal that wireless carriers be required to contribute 5% of their gross annual revenues to a Canadian talent development fund would be a significant precedent, as no other distributor of programming delivered and accessed over the Internet is required to make such contributions. The CWTA added that, given the flat rate that the wireless carriers charge for use of the mobile browser, it would not be possible to determine what proportion was used to view a video service. The CWTA also submitted that, in the early stages of development, the revenues and margins of mobile broadcasting services are likely to be very low, and that the carriers should therefore not be further burdened with contribution obligations.

Commission's analysis and determinations

Inclusion under the New Media Exemption Order

29. Under the New Media Exemption Order, the mobile broadcasting services in question would only be exempted if they are both "delivered and accessed" over the Internet. The Commission notes that the phrase "broadcasting services delivered and accessed over the Internet", as used in the New Media Exemption Order, describes services that are available over the public Internet to Internet users through an ISP (albeit, in some cases, for a fee). Such services are delivered through the public Internet, rather than simply using Internet protocol (IP) for their delivery and/or relying on the use of dedicated networks for a portion or the entirety of their delivery.² Generally, users will access the service in a manner that requires the use of a web browser and the entry of a Uniform Resource Locator (URL).
30. Based on the descriptions of the technology filed as part of the record of this proceeding, the Commission is of the view that the mobile broadcasting services in question are delivered and accessed over the Internet. The Commission concludes that the television signals are sent by MobiTV via the public Internet to the Internet gateway of the mobile carrier in question. From there, they are routed to the appropriate tower and transmitted wirelessly for the last mile to the user's handset. To access the signals, the user must connect to the Internet using a web browser. The wireless carrier may provide the user with a separate icon to facilitate activation of the service rather than requiring it to type in a URL.
31. In the Commission's view, this would not differ from how an ISP would usually provide its subscribers with Internet access, i.e., through use of dial-up or high-speed access for the last mile. The evidence presented by the CWTA does not indicate, as some parties argued, that the wireless carriers have established a dedicated connection to MobiTV or

² Internet Protocol Television (IPTV) that makes use of the Internet Protocol, but is delivered over a private, managed network, does not fall under the New Media Exemption Order.

that the Internet is used for only part of the journey of the data. The Commission considers that the carriers' wireless networks function only to establish a connection to the Internet, just as any ISP, be it a cable or digital subscriber line ISP, would connect subscribers to the Internet.

32. Parties also argued that the mobile broadcasting services offered by the wireless providers confine the user to "a single bundle of services" and that the wireless operator offers only "a limited subset of video or audio signals" rather than full Internet access. Based on the record of this proceeding, the Commission concludes that, while the wireless carriers do provide Internet access, this access is constrained by the limitations of the wireless technology. Web sites must be specifically designed and formatted to display on the small screen of a cellular telephone. As a result, while wireless users can go to any website on the Internet, the handset will only be able to read the content if the website provider offers a wireless version of the site. The Commission notes that, currently, only a small proportion of web sites on the Internet provide any content formatted to display on wireless handsets. It is because MobiTV's content is so formatted that it is only accessible to those equipped with wireless handsets, and not to all Internet users.
33. In the Commission's view, it would be incorrect to conclude, based on these circumstances, that these services are not delivered and accessed over the Internet. The Commission notes in this regard that the New Media Exemption Order does not draw any distinction among the various technologies that may be used to access the Internet, despite what their differences may be. For example, many web site creators now design both a dial-up and high-speed version of their web sites; dial-up customers are generally unable, for technological reasons, to access the content that is designed specifically for high-speed connections.
34. With respect to the role of MobiTV, since the mobile television broadcasting services in question fall under the New Media Exemption Order, the Commission finds that the activities of MobiTV described above in providing programming services to the wireless carriers would also fall under the scope of the New Media Exemption Order.

Review of the New Media Exemption Order

35. Some parties argued that the Commission should review the New Media Exemption Order in light of the advent of mobile broadcasting services, as well in light of as of other significant technological advances affecting the Internet since 1999.
36. The Commission based its 1999 decision to exempt new media broadcasting undertakings from licensing on several factors. One of these factors was that new media were making a positive contribution to the attainment of the objectives of the Act by enhancing opportunities for Canadian expression. The Commission also found that a significant amount of Canadian content was present on the Internet and that this content was being created and made available in the absence of regulation. Further, the Commission found that local Canadian content was important to the development of Canadian new media businesses.

37. One of the issues raised by the Commission in the proceeding that led to the issuance of the New Media Exemption Order was whether and to what extent new media either were, or were likely to become, substitutes for existing broadcasting services and their distribution systems. Some parties had argued in that proceeding that a high degree of substitutability could threaten the revenue sources of regulated broadcasters and significantly impede their ability to fulfil their obligations under the Act. The vast majority of participants agreed that, in the short term, traditional media and new media services should be considered to be complementary rather than substitutive services.
38. The Commission also looked closely at the potential impact of new media on existing broadcasting licensees and their ability to fulfil their obligations under the Act. In *New Media*, Broadcasting Public Notice CRTC 1999-84 / Telecom Public Notice CRTC 99-14, 17 May 1999 (the Report), the Commission reached the following conclusion:

While views vary considerably, the Commission agrees with most participants that key technological developments must take place before new media services and distribution systems compete more directly with traditional media. Should broadcast quality video and audio services become available, other factors need to be considered before new media services and distribution systems can be considered to be substitutes. Such factors include the cost of exhibition devices, the general appeal of the service offerings, customers' willingness to pay, as well as PC and Internet access penetration rates.
39. In the Report, the Commission generally concluded that "to impose licensing on new media would not contribute in any way to its development or to the benefits that it has brought to Canadian users, consumers and businesses."
40. The Commission acknowledges that the Internet has developed significantly since the New Media Exemption Order was issued in 1999. The Commission notes, in particular, that there have been several high-profile announcements in the last year involving the delivery of television programming over the Internet. However, in the Commission's view, there is nothing on the record of this proceeding to indicate that the use of the Internet to deliver and access programming has increased to the point that the ability of traditional broadcasters to fulfil their obligations under the Act has been impeded. Specifically, the Commission finds that parties provided no evidence in this proceeding to indicate that new media broadcasters have been responsible for any significant loss in television audiences for licensed Canadian broadcasters.
41. With regard to mobile television broadcasting services in particular, in the Commission's view, these services share many of the same characteristics discussed in the Report. For instance, the Commission finds persuasive the arguments put forth by parties that the mobile broadcasting services, as described, are unlikely to compete significantly with traditional broadcasting services due to the limitations of the wireless technology

employed, the battery life and screen size of the handset, the poor image and audio quality and the type and range of programming choices offered by the mobile broadcasters.

42. Further, the Commission is of the view that the market for mobile television broadcasting services, while still in its early stages of development, will likely differ from the market for conventional broadcasting services. The CWTA noted in its reply comments that mobile broadcasting services are primarily aimed at people who are away from their homes, perhaps riding a bus or waiting in a doctor's office or at an airport, and who are interested in viewing programming in short segments lasting only a few minutes at a time.
43. The Commission agrees that users will likely watch mobile television at times and in circumstances when they would normally not be watching conventional television. Accordingly, the Commission considers that mobile television broadcasting services 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. The Commission notes that customized content is currently being developed for wireless handsets.
44. With respect to Canadian content, MTS Allstream noted in its comments that broadcasting services delivered over mobile phones "are likely to develop into distinct formats that have a high local and Canadian character, and may include programming that complements other interactive services available on mobile phones, such as alpha-numeric text information providing road conditions, weather forecasts and local events listings." The Commission notes that, at present, Bell, TELUS and Rogers offer predominantly Canadian channels on their services.
45. Therefore, the Commission concludes that, given the current technical challenges associated with the wireless technology noted above, the mobile television broadcasting services are unlikely in the near future to become substitutes for conventional broadcasting services or impede the ability of traditional broadcasters to fulfil their obligations under the Act. Further, based on their channel line-ups, the Commission notes that the services are distributing a number of Canadian services to subscribers.
46. In light of all the above, the Commission considers that there is no need to review the New Media Exemption Order at this time. However, the Commission will continue to monitor the broadcast of television programming over the Internet, and the impact, if any, that it might have on the Canadian broadcasting industry, and on licensed broadcasters in particular.

Proposed exemption order for mobile television broadcasting undertakings

47. The Commission is of the view that there may be compelling reasons why, in the future, mobile providers might seek alternatives to the Internet for the purpose of distributing these mobile television broadcasting services. Internet delivery of these services will have a limiting impact on the quality of service, and there can be no quality-of-service assurances as long as such services are accessed and delivered via the public Internet. As a result, wireless carriers may wish to establish a managed network or dedicated link with MobiTV (or an alternative content provider) to deliver these services. The Commission also recognizes that other similar mobile television broadcasting services may be developed that do not make use of the Internet to deliver and provide access to programming. In either case, these services would not fall within the scope of the New Media Exemption Order since they would not be “delivered and accessed over the Internet.”
48. The Commission considers that a new exemption order should be established that will pertain to mobile television broadcasting undertakings more generally, regardless of how they deliver their services. Whether or not these services are delivered and accessed over the Internet, the Commission remains of the view, for the reasons detailed above pertaining to the similarities between new media and mobile television broadcasting, that such mobile television broadcasting services are unlikely to become substitutes for conventional broadcasting services or to interfere with the abilities of conventional broadcasters to meet their obligations under the Act. Accordingly, in *Call for comments on a proposed exemption order for mobile television broadcasting undertakings*, Broadcasting Public Notice CRTC 2006-48, 12 April 2006, the Commission has called for comments on a proposed exemption order in respect of mobile television broadcasting undertakings whose services are of the type or similar to those that were the subject of this proceeding, but are not necessarily “delivered and accessed over the Internet.”
49. The Commission is not persuaded that most of the exemption criteria proposed by parties to this proceeding, such as a requirement that content be sourced only from licensed Canadian programming services, should be included in an exemption order in respect of mobile television broadcasting services. Some parties, however, expressed concern about the potential use by mobile broadcasters of broadcast signals without permission. For instance, as noted above, the CMPDA submitted that mobile TV providers should be required to obtain the consent of a terrestrial broadcaster for the retransmission of its signal.
50. While the wireless carriers appear to be negotiating with broadcasters for the rights to retransmit their signals and have committed to do so, the Commission considers that the exemption criteria contained in the proposed new exemption order should include a requirement that they obtain such consent.

LOOK's proposed mobile broadcasting service

51. Parties were generally of the view that LOOK's proposed service is that of a BDU that delivers content to mobile devices, under the terms of its existing BDU licence. However, CHUM Limited, Quebecor and the CAB considered that LOOK would require an amendment to its licence in order to provide this service. The CAB, for example, noted that the definition of "subscriber" in the Regulations is limited to "a household of one or more persons ..." and does not permit LOOK to distribute programming services to mobile devices.
52. In reply, LOOK argued that these parties are confusing a licence necessary to provide a service with the consumer's choice of appliance over which it receives that service. LOOK noted that, if these parties were right, "then a licence amendment would be required to accommodate most developments in receiving apparatus technology – an unworkable proposition in light of today's fast-paced development of consumer technologies".
53. The Commission notes that LOOK did not provide a level of detail about its proposed service comparable to that provided by the three wireless carriers. The Commission considers that a service such as that proposed by LOOK would be authorized under LOOK's existing licence as long as the service is in fact distributed using MDS technology and in the manner described by LOOK, and that all necessary certifications from the Department of Industry have been obtained.

Accessibility for disabled persons

54. The Canadian Association of the Deaf (CAD) requested that the operators of mobile broadcasting services explain in detail their plans to ensure that their services will be fully accessible to Canadians with disabilities, in particular, to those who are deaf or hard of hearing. The CAD also requested that the Commission, in its determinations arising from this proceeding, establish a strong and enforceable policy to protect the rights of deaf and disabled Canadians to full and equal access to mobile broadcasting initiatives, technologies and services.
55. The Commission encourages the industry to explore creative and innovative means to deliver new services, such as mobile television broadcasting services, to people with disabilities, and to address the practical difficulties that can be associated with providing related features such as closed captioning.

Secretary General

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