

Mobile TV avoids regulation

By Etan Viessing

The CRTC decision to exempt mobile TV services from regulation marks a tipping point for Internet-based broadcasting in favor of the country's cable and phone giants.

In a landmark decision on April 12, the CRTC said mobile TV services offered by Bell Mobility, Rogers Wireless and Telus Communications fall within its new media exemption order" of 1999 because they are delivered and accessed through the Internet - rebuffing arguments from traditional broadcasters that cell phone TV services should be licensed.

The ruling signals the beginning of the end of regulated TV in Canada, says Mark Hayes, a partner and intellectual property lawyer at the firm of Blake, Cassels and Graydon.

"This is one of many decisions in a slippery slope where BDUs" - broadcast distribution undertakings, such as the cable companies - "increasingly place themselves as the sole gatekeepers in offering digital content," says Hayes.

The ruling is similar to the CRTC's stance on satellite radio that, Hayes notes, also put traditional broadcasters behind the eight ball.

The Canadian Association of Broadcasters, which opposed leaving mobile TV services unlicensed, had no comment on the decision although, privately, TV executives insist the matter will be re-fought during the CRTC's upcoming policy reviews.

The commission also sided with the wireless carriers in ruling mobile TV does not compete with, or impede, the deeply dug traditional broadcasters.

"It's a niche service," says Rogers spokesperson An Innes. "At the end of the day, if you want to watch a TV program, it's unlikely you will watch it on your telephone."

"People will not be watching TV for hours on end on their cell phones. It's about clips - high-impact, immediate content," adds Bell Canada spokesman Paolo Pasquini,

The CRTC further rebuffed critics of wireless carriers by saying Canadian content is already plentiful on existing mobile TV services. The ruling does not affect other mobile TV services, such as iTunes, or other TV available over the Internet, both of which are also currently unregulated.

Kaan Yigit, president of the Solutions Research Group consulting firm, says the decision gives mobile TV providers much-needed room to make early and mid-course corrections as they enter the TV market with bite-size video content for consumers on the go.

"It's still early days and they are experimenting to find out what will stick with the consumer in this area, so not having to deal with regulatory complexity should help keep their focus," says Yigit.

Rogers, Telus and Bell Mobility have launched their mobile TV offerings with bundled news, weather, sports and other short content available for between \$9 and \$25 a month.

Yigit argues that the mobile TV decision could even benefit traditional broadcasters. "There could be very interesting cross-platform possibilities, whether in the form of short bits promoting main TV properties or highlights packages or even testing new ideas in short form first," she says.

The U.S.-based MobiTV platform that drives the Rogers, Telus and Bell Mobility services already features a range of American content filling mobile TV offerings south of the border.

But that ample American content rankles ACTRA, which has come out against the CRTC's decision. Ken

Thompson, director of public policy and communications at the actors union, says the feds missed an opportunity to impose Canadian-content obligations on mobile that could have encouraged domestic talent.

"If it generates money, it should be generating some money to provide access to Canadian productions," says Thompson.

But Janet Yale, EVP of corporate affairs at Telus, defends the CRTC decision, saying a lack of red tape and cultural protections will "allow experimentation to continue and encourage new services for consumers."

The CRTC has maintained an almost entirely hands-off policy with regard to the net, the only recent exception being its May 2005 move to license VOIP telephone services.

That sits well with cable and phone giants.

"Everyone knows there's big issues with regulating the Internet because content can come from outside the country. But the commission is continuing with the tradition that the Internet is a space that they won't intervene in," Yale says.