



## Broadcasting Decision CRTC 2005-195

Ottawa, 12 May 2005

### **Star Choice Television Network Incorporated and Canadian Satellite Communications Inc.**

Across Canada

*Application 2004-0627-4*

*Broadcasting Public Notice CRTC 2004-73*

*28 September 2004*

### **Distribution of omnibus high definition channels by Star Choice and Cancom**

*In this decision, the Commission **allows** a complaint by CTV Inc. (CTV), and finds that Star Choice Television Network Incorporated (Star Choice) does not have authority to distribute omnibus channels consisting of compilations of high definition (HD) programming from several programming services (omnibus channels).*

*Further, the Commission **denies** an application by Star Choice and Canadian Satellite Communications Inc. (Cancom) for authorization to distribute omnibus channels on Star Choice's direct-to-home (DTH) satellite broadcasting distribution undertaking and on Cancom's satellite relay distribution undertaking.*

*The Commission considers that omnibus channels may, as a temporary measure, have the potential to address certain concerns during the transition to full HD services, but is of the view that omnibus channels should be developed with the consent and cooperation of programming services.*

### **Introduction**

1. In a complaint dated 1 June 2004, CTV Inc. (CTV) alleged that Star Choice Television Network Incorporated (Star Choice) was in breach of the *Broadcasting Distribution Regulations* (the Regulations) by compiling high-definition (HD) programming from various programming services and distributing it on omnibus HD channels (omnibus channels) on its direct-to-home (DTH) satellite broadcasting distribution undertaking (BDU). CTV requested that Star Choice be ordered to discontinue the distribution of these omnibus channels.

2. In reply to CTV's complaint, Star Choice did not contest that it was distributing omnibus channels, but argued that it had the requisite authority to distribute them. However, in case the Commission should decide that Star Choice did not have authority to distribute omnibus channels, Star Choice submitted an application to amend the licence of its DTH BDU to provide it with authority to distribute omnibus channels composed of HD and other programming taken from certain other programming services. A similar authority was requested for the satellite relay distribution undertaking (SRDU) operated by Canadian Satellite Communications Inc. (Cancom).
3. The Commission subsequently issued Broadcasting Public Notice CRTC 2004-73, 28 September 2004 (Public Notice 2004-73), in which it called for comment both with respect to both the complaint by CTV and the application by Star Choice and Cancom (Star Choice/Cancom).
4. This decision deals first with the complaint by CTV, then with the application submitted by Star Choice/Cancom.

## **The complaint by CTV**

### **Positions of parties**

#### **CTV**

5. CTV submitted that the distribution of omnibus channels by Star Choice is contrary to sections 3 and 7 of the Regulations.
6. Section 3 provides that a licensee shall not distribute programming services except as required or authorized under the Regulations or its licence. CTV submitted that, by compiling programming from various programming services on omnibus channels, Star Choice is creating new programming services that are not authorized for distribution under the Regulations or its conditions of licence.
7. Section 7 of the Regulations provides that a licensee shall not alter or delete a programming service except in specific circumstances noted in that section. CTV argued that, since the omnibus channels are compiled from programs taken from several different programming services, and these programming services are not distributed in their entirety on the omnibus channels, Star Choice has altered or deleted these programming services, contrary to the Regulations. CTV further submitted that, in *Star Choice – Licence Renewal*, Broadcasting Decision CRTC 2004-130, 31 March 2004 (Decision 2004-130), the Commission clearly stated that services providing HD programming are distinct services and must be distributed in their entirety on dedicated channels, unless otherwise authorized by the Commission.

## Star Choice

8. Star Choice did not contest that it was distributing omnibus channels in the manner described by CTV, but argued that it had the requisite authority to distribute the channels. According to a legal opinion filed by Star Choice (the Star Choice opinion), omnibus channels are partial simulcasts, “i.e. channels on which programming that is otherwise available on the distributor’s cable or DTH system is duplicated contemporaneously.”
9. The Star Choice opinion argued that Star Choice has authority to distribute simulcast HD channels since DTH distributors are authorized to:
  - determine the channel placement of programming services;
  - distribute an authorized or required signal on more than one channel; and
  - distribute an “upgraded version,” such as an HD version, of a signal on a separate channel.
10. The opinion further argued that DTH distributors have the authority to distribute a complete programming service on one channel and a portion or portions of the programming service, i.e., a partial simulcast, on a separate channel, since this activity does not prevent subscribers from receiving programming they would otherwise receive, or provide access to programming they would not otherwise receive. According to the Star Choice opinion, this practice does not constitute alteration or deletion of a programming service for two reasons.
11. First, the Star Choice opinion noted that the Commission has determined that distributors do not require separate authority to distribute the HD version of a programming service and, as such, from the distributor’s perspective, the low definition (LD) and HD signals of a programming service are a single service distributed in two formats. As a result, by distributing the service in its entirety on one channel and the HD portion on another, Star Choice is not altering or deleting but, rather, is “adding an additional window for a permitted programming service.”
12. Second, the Star Choice opinion noted that the definition of “programming service” contained in the Regulations states that a “programming service means a program that is distributed by a licensee” and, although a program is not defined in the Regulations, the *Broadcasting Act* (the Act) refers to a program as “sounds or visual images, or a combination of sounds and visual images ...” On this basis, the Star Choice opinion took the position that section 7 should be applied as a prohibition against altering or deleting individual programs, or television shows, offered on a programming service, rather than a prohibition against the alteration or deletion of the entire signal offered by the programming service.

13. The Star Choice opinion also took the view that it is immaterial whether or not partially simulcast programming from different services, such as an HD program from an ABC affiliate and an HD program from The Movie Network, are distributed on the same channel, since DTH distributors “have flexibility in the assignment of services to channel line-ups,” and digital channels are “somewhat dynamic and do not necessarily conform to specific transponder and cable frequencies.”

Comments received in response to Public Notice 2004-73

14. The Canadian Association of Broadcasters (CAB) submitted that the essential facts related to this complaint are not in dispute, and that Star Choice has been offering omnibus channels in spite of the Commission’s finding, in Decision 2004-130, that such channels require the Commission’s authorization.
15. Global Communications Limited (Global) agreed with the CAB’s position that Star Choice does not have authority to distribute omnibus channels and submitted that no BDU should have such authority “without prior and explicit consent from the Commission and the affected broadcasters.” Global further noted that the Star Choice opinion had been drafted before the Commission pronounced on the matter in Decision 2004-130. Global argued that for Star Choice “to continue to carry these six (6) services without authorization, and without support from the affected broadcasters is, in our opinion, an aggressive act that defies the Commission’s clear direction.”
16. Rogers Communications Inc. (Rogers) submitted that Star Choice and Cancom already have authority to offer omnibus channels, but did not provide any argument or evidence to support this contention.

CTV’s reply to parties submitting comments in response to Public Notice 2004-73

17. CTV agreed with the CAB’s comments, maintaining that the Commission had clearly stated in Decision 2004-130 that Star Choice must have prior authorization from the Commission before offering omnibus channels. CTV further noted that, since it had filed its original complaint, Star Choice had launched three more omnibus channels, and was now offering nine such channels.
18. CTV further submitted its own legal opinion (the CTV opinion), which noted that the Star Choice opinion had been provided prior to the issuance of Decision 2004-130. The CTV opinion stated that, in Decision 2004-130, the Commission had determined that:
- the distribution of HD programming services *using separate channels for each programming service* would not require specific approval or authorization; and
  - Canadian programming undertakings and authorized foreign services providing HD programming *are distinct services* and, like standard definition television services, *must be distributed in their entirety on dedicated channels, unless otherwise authorized by the Commission.* [emphasis in the original document]

19. The CTV opinion argued that, in arriving at the determinations set out in Decision 2004-130, the Commission had correctly concluded that the term “programming service,” as it appears in section 7 of the Regulations, means “the entirety of the signal of a programming undertaking or authorized foreign service.” The CTV opinion further argued that it was clear from the Commission’s determinations in Decision 2004-130 that “partial simulcasting” of individually excerpted programs on omnibus channels is not permitted as of right under the Regulations.
20. The CTV opinion concluded that Star Choice’s omnibus channels were not permitted under the Regulations without prior authorization by the Commission and that, until such time as such authorization is obtained, Star Choice is in breach of sections 3 and 7 of the Regulations by offering such channels.

**The Commission’s analysis and determination**

21. Section 3 of the Regulations states:

A licensee shall not distribute programming services except as required or authorized under its licence or these Regulations.

22. Section 7 states:

A licensee shall not alter or delete a programming service in the course of its distribution except

- (a) as required or authorized under a condition of its licence or these Regulations;
- (b) for the purpose of complying with subsection 328(1) of the *Canada Elections Act*;
- (c) for the purpose of deleting a programming service to comply with an order of a court prohibiting the distribution of the service to any part of the licensed area;
- (d) for the purpose of altering a programming service to insert an emergency alert message in accordance with an agreement entered into with the operator of the service or the network responsible for the service;
- (e) for the purpose of preventing the breach of programming or underlying rights of a third party, in accordance with an agreement entered into with the operator of the service or the network responsible for the service; or
- (f) for the purpose of deleting a subsidiary signal, unless the signal is, itself, a programming service or is related to the service being distributed.

23. The Commission addressed the issue of omnibus channels in Decision 2004-130, where it stated:

The Commission notes that Star Choice stated that it has been distributing the HDTV programming of programming services on separate channels rather than on omnibus channels, as suggested by the interveners. The distribution of HDTV programming using separate channels for each programming service would not require specific approval or authorization by the Commission. The Commission

nevertheless reminds Star Choice that section 7 of the Regulations prohibits a licensee from altering or deleting a programming service in a licensed area in the course of its distribution except as required or authorized under a condition of licence or the Regulations. Canadian programming undertakings and authorized foreign services providing HDTV programming are distinct services and, like standard definition television services, must be distributed in their entirety on dedicated channels, unless otherwise authorized by the Commission.

24. The Commission notes that, in the past, as required by section 7 of the Regulations and as described in Decision 2004-130 above, it has authorized a BDU to distribute more than one programming service on a single programming channel by a condition of licence that provides an exemption from the basic prohibition set out in section 7. Star Choice has not obtained such authorization from the Commission and has argued that the Commission has implicitly or indirectly provided authorization for the distribution of these services through the Regulations and other determinations.
25. The position of Star Choice that it has the authority to distribute, on its omnibus channels, particular programs taken from programming services distributed on other channels is based, in part, on an interpretation of the word “program” in the definition of “programming service” to the effect that a programming service consists solely of a program, in the colloquial sense – that is, a television show.
26. The Commission considers that it is incorrect to interpret this definition to mean that a programming service is only a single television show, or only a particular show broadcast at a given time.
27. The Act, in section 3(1)(t)(i), equates “programming services” to Canadian stations, that is, the entire broadcasting output of an undertaking. A similar use is found in section 3(1)(t)(iii).<sup>1</sup>
28. Further, the Commission notes that section 33(2) of the *Interpretation Act* states that, in any statute or regulation, “Words in the singular include the plural, and words in the plural include the singular.” Accordingly, the Commission considers that “programming service,” depending upon the context in which it is used, may be taken to include all programs, i.e., the entire output transmitted by the operator of a programming undertaking for reception by the public. “Programming service” is used in the same sense in section 6 of the Regulations, which requires BDUs to distribute a majority of Canadian programming services, and in section 17, which describes programming services that must be distributed, as well as in many other sections of the Regulations. Likewise, the Commission considers that the context in which the term “programming service” is used in section 7 makes it clear that the term refers to the entire output of an undertaking, and not part of it.

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<sup>1</sup> Section 3(1)(t)(i) provides that distribution undertakings “should give priority to the carriage of Canadian programming services and, in particular, to the carriage of local Canadian stations.” Section 3(1)(t)(iii) provides that distribution undertakings “should, where programming services are supplied to them by broadcasting undertakings pursuant to contractual arrangements, provide reasonable terms for the carriage, packaging and retailing of those programming services ...”

29. A contrary interpretation would defeat the Commission's intentions in making the Regulations, which have a long recognized history and have been the subject of various public examinations. The novel interpretation proposed by Star Choice would allow operators of BDUs to dismantle a broadcasting undertaking's broadcast day and create new channels that have little resemblance to the ones received. This would defeat the BDU's primary function in the Canadian broadcasting system as a receiver and distributor of broadcasting and undermine broadcasters' ability to promote their brands and program schedules.
30. Star Choice further contended that LD and HD programming services are not separate services, but, rather, a single service made available in two formats. The Commission does not agree. It has consistently required separate authorization, either by licence or licence amendment, for broadcasters wishing to offer HD versions of existing services.

#### **Conclusion**

31. Based on the foregoing analysis, the Commission finds that section 7 of the Regulations, which prohibits alteration or deletion of a programming service, pertains to the entire output transmitted by a programming service and includes all broadcasting material received by a BDU from that programming service, as received, for distribution to subscribers. The Commission therefore considers that, by distributing only HD or other programs and programming excerpts from a programming service on an omnibus channel, or HD programs from different programming services together, Star Choice is altering and deleting programming services, contrary to section 7 of the Regulations.
32. The Commission further finds that the omnibus channels may not be distributed without authorization by the Commission, as provided under sections 3 and 7 of the Regulations.
33. In light of the above, the Commission **allows** the complaint filed by CTV.

#### **Application by Star Choice/Cancom**

34. As noted above, in the event that the Commission should decide that Star Choice did not already have authority to distribute omnibus channels, Star Choice/Cancom submitted an application to amend the licences for Star Choice's DTH BDU and Cancom's SRDU to provide authority for these undertakings to distribute omnibus channels. Star Choice/Cancom further requested that the Commission's approval of the application be made retroactive to 31 March 2004, the date on which the Commission issued Decision 2004-130, which renewed Star Choice's broadcasting licence from 1 April 2004 to 31 August 2010.
35. Star Choice/Cancom indicated that it would offer, on the omnibus channels, the HD programs from any programming service that Star Choice is authorized, but not required, to distribute as part of the basic service. These programs would be taken from:

- over-the-air Canadian television stations, the signals of which are received at its Mississauga, Ontario, uplink centre;
- Canadian pay and specialty services uplinked in Mississauga, Ontario;
- over-the-air U.S. television stations that the applicant is authorized to distribute; and
- other non-Canadian services that the applicant is authorized to distribute and that are uplinked in Mississauga, Ontario.

36. The applicant indicated that it would offer at least six omnibus channels, and estimated that these channels would be sufficient to allow it to offer all of the HD programming available from as many as 14 programming services. Star Choice/Cancom indicated that HD programs, other than those of Canadian pay services, would be offered on the omnibus channels at the same time as they are broadcast by the originating programming service. In Star Choice/Cancom's view, six channels would provide more than enough capacity to provide all HD programming currently available and, in the "remote likelihood of more than six simultaneous sources of HDTV content ... Star Choice would resolve any such capacity limitations by preferring the distribution of HDTV programming from Canadian sources." According to the applicant, if an HD program were available to Star Choice/Cancom from both a Canadian and a non-Canadian source at the same time, it would distribute only the program from the Canadian source. In its view, this approach would provide Canadian programming services with essentially the same benefits as simultaneous substitution and program deletion.
37. Star Choice/Cancom submitted that omnibus channels would provide substantial benefits to subscribers. It argued that subscribers are frustrated by the limited amount of HD programming available and by the fact that HD programming services contain mainly LD programming. In its view, omnibus channels would generally provide a larger proportion of HD programming on each channel than would be available if separate channels were dedicated to each service.
38. Star Choice/Cancom further submitted that omnibus channels are appropriate in light of the costs and scarcity of satellite capacity. It argued that the Commission has consistently taken the scarcity and cost of satellite capacity into account in its determinations with respect to the carriage obligations of DTH distributors, and observed that concerns with respect to satellite capacity prompted the Commission to state that it would initiate a separate future proceeding to deal with the distribution of HD services by DTH BDUs. Star Choice/Cancom further submitted that omnibus channels provide an important service to smaller cable BDUs that do not have sufficient capacity to distribute all HD programming services in their entirety.

#### **Interventions**

39. In response to Public Notice 2004-73, the Commission received interventions from the Canadian Cable Telecommunications Association (CCTA) and Rogers Cable Communications Inc. (Rogers) that supported the application, and interventions from the CAB, CTV and Global that opposed it.



#### CCTA

40. The CCTA noted that many of its members, particularly smaller cable BDUs, rely entirely on Cancom for the delivery of HD services. It argued that it was essential that smaller cable BDUs be able to receive and distribute omnibus channels in order for them to compete with DTH BDUs, because smaller systems do not have sufficient capacity to distribute all HD services in their entirety. The CCTA submitted that approval of the application would facilitate greater competition in broadcasting distribution by enabling smaller cable BDUs to carry a broader range of HD programming. It was further of the view that omnibus channels, which limit duplication of programming, would improve the television viewing experience for subscribers who have purchased HD television receivers.

#### Rogers

41. Rogers echoed the CCTA's position that omnibus channels would allow smaller cable BDUs to distribute HD programming in a manner that would make efficient use of their capacity. It noted that, while its cable BDUs in Ontario generally distribute 19 HD programming services on dedicated channels, its Newfoundland BDUs rely on omnibus channels from Cancom. Rogers indicated that it distributes six of Cancom's omnibus channels in St. John's and three such channels on its smaller BDUs in the province of Newfoundland. Rogers suggested that omnibus channels could be used as an interim measure during the transition period from LD to HD programming while Canadian broadcasters increase the amount of HD programming that they provide.

#### CAB

42. The CAB argued that approval of the application would be contrary to the Commission's approach to HD programming, which is based on the premise that HD programming services are distinct from corresponding LD services and, as such, must be distributed in their entirety. The CAB considered that the Commission's approach is fundamental to the orderly development of HD broadcasting in Canada, and submitted that approval of the Star Choice/Cancom application would undermine this development.
43. The CAB was concerned that 10 of the 14 HD programming services identified by Star Choice/Cancom in its application as sources of programming for the omnibus channels are non-Canadian services. Since Star Choice does not offer any HD programming aside from the omnibus channels, the CAB suggested that this would place significant limits on the amount of HD programming distributed that was provided by Canadian programming services. The CAB submitted that this would be contrary to the policy objective set out in section 3(1)(t)(i) of the Act, which provides that distribution undertakings "should give priority to Canadian programming services and, in particular,

to the carriage of local Canadian stations.” The CAB further stated that all of the Canadian programming services from which Star Choice/Cancom indicated it would draw programming, with the exception of CITY-TV, are pay and specialty services, while the non-Canadian services are U.S. 4+1 services. As a result, the CAB submitted that there would be very little opportunity for Canadian broadcasters to request simultaneous substitution.

44. The CAB further argued that the application was inconsistent with the Commission’s policies with respect to the maintenance of programming rights, and effectively amounted to an expropriation of programming without compensation for rights holders.

#### CTV

45. CTV was of the view that Star Choice’s distribution, on its omnibus channels, of programming for which CTV holds the rights is a copyright infringement. CTV also submitted letters from seven U.S. rights holders of programming that Star Choice has offered on its omnibus channels, specifically, CBS, Fox, Metro Goldwyn Mayer (MGM), Paramount Pictures, Sony Pictures, Universal Pictures and Warner Brothers.<sup>2</sup> In each case, the U.S. rights holder indicated that it had not authorized Star Choice to compile or otherwise distribute its programming on omnibus channels. Three of these rights holders also demanded that Star Choice immediately cease and desist distributing their programming in this manner.
46. CTV further argued that much of the programming that Star Choice/Cancom offers on its omnibus channels is in LD format. CTV expressed concern that Cancom/Star Choice could program its omnibus channels as distinct programming services featuring compilations of the most attractive programs offered by several broadcasters.
47. CTV also submitted that, if the Commission did not consider the record of the proceeding sufficient to deny the application, it should consider the application at a public hearing.

#### Global

48. Global submitted that Star Choice/Cancom’s decision to offer HD programming on omnibus channels was a unilateral initiative designed to address their capacity limitations, and one that had never been explored with broadcasters. While recognizing that omnibus channels might be attractive to BDUs, Global argued that such channels remove control of programming from programming services and simultaneously expose those programming services to potential breaches of their contractual and regulatory obligations with respect to their programming.
49. Global shared the concerns expressed by the CAB and CTV with respect to copyright. It also argued that approval of the application would permit Star Choice/Cancom to act as a programming service without assuming the related obligations such as the broadcast of minimum levels of Canadian programming and adherence to broadcasting codes.

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<sup>2</sup> These letters were addressed to Star Choice and copied to CTV and the CAB.

### **Star Choice/Cancom's reply**

50. In reply to the concerns raised by interveners, Star Choice/Cancom argued that omnibus channels do not violate the program rights of Canadian programming services, but rather provide benefits to those services by providing another window for their programming. They emphasized the benefits that omnibus channels provide to smaller cable systems and submitted that approval of the application would be consistent with the goal of extending and improving access to broadcasting services in rural or remote communities. Star Choice/Cancom submitted that denial of the application would hinder the ability of both Star Choice and smaller cable BDUs that receive programming services from Cancom to compete with other distributors.
51. With respect to concerns that the omnibus channels would be similar to programming undertakings, Star Choice/Cancom submitted that it would neither exercise control over the content of programs broadcast on the omnibus channels, nor originate any of these programs. Further, since its programming guide indicates the service from which each program on the omnibus channels originates, and since it refers to the omnibus channels only as HD1, HD2, etc., the applicant argued that it does not brand the programs in any way. Star Choice/Cancom also argued that omnibus channels do not alter programming services, but merely provide a second window for their distribution.

### **The Commission's analysis and determination**

52. In the Commission's view, this application raises three significant concerns. First, and most importantly, the omnibus channels proposed in the application would grant the applicant an inappropriate level of control over the programming it receives from programming services for distribution. Star Choice/Cancom argued that, in compiling programming taken from the programming services it distributes, it would not exert any direct control over the content of the specific programs distributed. While this may be so, the Commission considers that Star/Choice/Cancom would nonetheless exercise considerable control over the presentation of programs, and that it would, in fact, exercise significantly more control than would normally be the case for a BDU.
53. Specifically, under its proposal, Star Choice/Cancom would be authorized to select any program from a wide range of programming services, and place it before or after programs from other programming services, at its discretion. In so doing, Star Choice/Cancom would be assuming many of the functions usually reserved for the broadcaster, and without the broadcaster's consent. The Commission notes that Star Choice/Cancom's decisions in such matters could have a considerable impact on the broadcaster, as well as on the viewer. Audience size and composition, for example, can be affected by the placement of programs within the broadcast schedule, as can the individual viewer's experience and perception of both the particular programs and the

channel on which they are presented. Further, where a program from one programming service is followed on the omnibus channel by a program from another programming service, deletion of advertising content surrounding one or both programs may occur. This could be of particular concern in cases where advertisers have paid a premium for the production of an HD commercial or for advertising in prime-time HD programs.

54. As indicated above, the Commission considers it inappropriate that distributors exercise this degree of control over the programs they distribute, particularly since they have not produced the programs or purchased the broadcast rights to them. To ensure that programming services are able to maintain control over their broadcast schedules and the programming that makes up those schedules, the Commission considers it necessary that affected programming services be involved in decisions relating to how omnibus channels will be programmed and, in fact, should consent to the particular use of their programming on any such channels. In this case, the evidence indicates that broadcasters are opposed to the distribution of their programming in the manner proposed in the application, and that a number of them have asked the applicant directly to cease and desist from its practice of distributing their programming on these channels.
55. Second, the Commission considers that Star Choice/Cancom has not adequately addressed the priority to be given to Canadian programming. The Commission notes that broadcasters are generally required to air minimum levels of Canadian programming. These requirements contribute to the production of Canadian programming. However, in order to be accessible to Canadians as well as financially viable, Canadian programming must receive widespread distribution.
56. In its application, Star Choice/Cancom has committed to offer a program from a Canadian source on its omnibus channels, where that program is available from both a Canadian and a non-Canadian source at the same time. However, it does not indicate whether any priority would be accorded to Canadian HD or other programming in other instances, i.e., when Canadian and non-Canadian networks are not airing the same programming; nor does it specify minimum levels of Canadian content.
57. In the Commission's view, given the substantial subscriber base of Star Choice's DTH service and the significant number of other BDUs that receive signals from Cancom's SRDU service, the lack of specific requirements with respect to the prioritization of Canadian programming on omnibus channels offered by the applicant's undertakings could have a significant negative impact on the availability of Canadian HD programming.
58. Finally, in addition to the above, the Commission is concerned that approval of this application would be inconsistent with its policies with respect to the transition to digital and HD broadcasting and distribution. The Commission notes that its approach has been that digital services, and ultimately HD services, will eventually replace analog services. Although the Commission has determined that this transition will be market-driven, it wishes to encourage and remove barriers to the transition.

59. The transition to digital and HD broadcasting requires large investments by both programmers and distributors. Over-the-air broadcasters, in particular, will be required to make substantial investments in new transmitters. As the transition proceeds, all broadcasters, including over-the-air, specialty and pay services, will also need to produce and purchase programming in upgraded and HD formats.
60. In the Commission's view, widespread distribution of full HD programming services, and, in particular, over-the-air services, provides an important incentive for broadcasters to make the transition to HD programming. The distribution of such services on a partial basis, or the distribution of only selected programs on omnibus channels, may lessen the incentive for these broadcasters to make the transition, as their licensed digital services would not be distributed in their entirety.

### **Conclusion**

61. In light of the above findings, the Commission **denies** the application by Star Choice/Cancom.
62. Further, the Commission directs Star Choice/Cancom to bring itself into compliance with the Regulations and this decision within 30 days of the date of this decision. In order to do so, Star Choice/Cancom will be obliged to cease its distribution of programming services using omnibus channels. Based on the information provided in this proceeding, it would appear that Star Choice/Cancom has been distributing programming from 12 programming services on 9 omnibus channels. In complying with the Regulations and this decision, Star Choice/Cancom will continue to be able to distribute at least nine of these programming services, in full, on the channels currently used for the distribution of omnibus HD channels, without the need to utilize any additional capacity. The Commission expects that, as capacity becomes available, Star Choice/Cancom will be able to distribute, in full, further programming services containing HD programming.
63. The Commission recognizes that BDUs will face challenges as a result of the transition to digital and, ultimately, to HD broadcasting. This is particularly so during the period when programming services will be distributed on both an analog and on a digital basis, and/or on both an LD digital and HD basis, since it is during this period that demands on capacity will be greatest. The Commission considers that omnibus channels may, as a temporary measure, have the potential to address short-term capacity concerns during the transition to full HD services. However, the Commission also considers that omnibus channels should be developed with the consent and cooperation of programming services.

Secretary General

*This decision is available in alternative format upon request, and may also be examined in PDF format or in HTML at the following Internet site: <http://www.crtc.gc.ca>*