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August 1, 2003

Secretary General  
CRTC  
Ottawa, Ontario  
K1A 0N2

Dear Secretary General:

**RE: Broadcasting Public Notice CRTC 2003-36**

1. This is in support of an application by the Canadian Cable Television Association to include Al Jazeera on its member's digital-cable service for broadcasting in Canada.
2. The Muslim Canadian Congress is a grassroots organization that provides a voice to Muslims who take the *Canadian Charter of Rights and Freedoms* and the *Canadian Human Rights Act* as their guiding principles. We consider Islam a progressive, liberal, pluralistic, and democratic religion, but believe in the separation of religion and state in all matters of public policy.
3. Our support for Al Jazeera's inclusion is based on several aspects of Canadian democracy and the notion of a free and just society as it has evolved in the last half century. This is entrenched in the *Constitution*, the *Charter of Rights and Freedoms*, the *Canadian Bill of Rights*, the *Multiculturalism Act* and embodied by international law and our common-law that prohibits the exclusion of racial and religious minorities from full and equal participation in all aspects of Canadian society as repugnant to public policy in Canada.
4. In addition, our support for the within application is based, *inter alia*, on the following facts:
  - Al Jazeera is an established, independent, and popular media outlet. It has approximately 70 correspondents in 35 bureaus overseas;
  - Al Jazeera engages in investigative journalism;
  - Al Jazeera's current broadcast reaches an audience of over 55 million globally, with approximately 200,000 viewers in North America;
  - Al Jazeera broadcasts to approximately 10 million viewers outside the Middle East;
  - Al Jazeera is committed to freedom of expression and freedom of the press and has been the recipient of awards on this basis;
  - Al Jazeera is widely referred to and quoted from by existing television networks;
  - Various members of the White House executive and members of the US congress appeared on Al Jazeera and none had the concerns of the groups opposing Al Jazeera; and
  - Al Jazeera is in the process of developing an English language channel.

5. Conversely, CRTC's denial of CCTA's application to include Al Jazeera on its members' digital cable service would have the purpose and effect of restricting freedom of expression and would constitute a *prima facie* and unjustifiable infringement of section 2(b) and s. 15 of the *Charter*.
6. Freedom of expression was entrenched in our Constitution to ensure that everyone can manifest thoughts, opinions, and beliefs, however unpopular, distasteful or contrary to the mainstream, in order to promote principles and values such as seeking and attaining truth in order to ensure a free, pluralistic and democratic society as articulated by the Supreme Court of Canada in its 1989 decision *Irwin Toy*.
7. The right to free expression has been interpreted, by domestic and international law, to include the freedom to seek, *receive* and impart information and ideas of all kinds subject only to necessary restrictions provided by law. As such, the limit on freedom of expression being proposed by certain lobby groups in their opposition to the inclusion of Al Jazeera in CCTA's application is dangerous, offensive and poses a grave risk to our democracy.
8. The whimpering from a couple of lobby groups that permitting a Canadian cable firm to offer an Arabic news station *could* incite violence, hate or hostility and *could* contravene Canadian law is a disguised and dreadful form of censorship and a discernible and deplorable attempt to shut down any newspaper or TV station that it dislikes or disagrees with. The current application before the CRTC must *not* be determined in accordance with or influenced by these opinions for at least three reasons.
  - 8.1. First, the allegations by these groups that the network is "anti-semitic" and propagates hate are *inaccurate* and have proven unsubstantiated on numerous occasions by editorials and newspaper articles. (See, for example, Rick Salutin's article in the July 18<sup>th</sup>, 2003 edition of the *Globe and Mail*). The notion of effectively banning an entire network from reaching its audience based on ill-defined notions of "hate propaganda" is both unreasonable and unlawfully vague. Regardless, the content of what is broadcast by *any* channel is subject to and regulated by Canadian law, the final arbitrator of which is the judiciary. Legal mechanisms for addressing such concerns are already in place and both civil and criminal courts provide for recourse and sanctions, should it be necessary.
  - 8.2. Second, the opposition to the application is based on the opinion that some of the content of the information conveyed is critical of Israel and to that extent, it is distasteful and disagreeable to these groups. Expression that may be disagreeable or distasteful does *not, a priori*, render it hateful or less deserving of *Charter* protection. Indeed, Supreme Court jurisprudence confirms that the guarantee under s. 2(b) of the *Charter* extends not only to that which is pleasing and agreeable, but also to that which to many may be distasteful or morally offensive.
  - 8.3. Third, the opinion that the network should be prohibited because of suspicions and allegations that it *may*, in the *future*, convey "anti-semitic" content represents an egregious form of *prior restraint* in that it seeks to limit expression before it has even occurred and as such is wholly unconstitutional, undemocratic and illegal based on race. Short of criminal activity, a decision cannot and must not seek to regulate or restrict expression in advance and without due process. In its 1984 decision *New Brunswick Broadcasting Co. v. CRTC* the Supreme Court affirmed that the freedom guaranteed by s. 2 (b) of the *Charter* is the freedom to express and communicate ideas *without prior restraint*.
9. Furthermore, a denial of CCTA's application to include Al Jazeera would also be tantamount to an infringement of ss. 15 and 27 of the *Charter* regarding equality and the promotion of multiculturalism. It would also be contrary to the purpose and spirit of the *Multiculturalism Act*. The *Act*, applies to all federal government departments, Crown corporations, agencies, boards and councils and states that all are responsible for fulfilling their respective obligations and mandate in accordance with the policy of multiculturalism as embodied by the *Act*.

10. Section 3 of the *Act* requires that all policies, programs and practices must “respond to the needs of all Canadians” and ensures the right of members of minority groups to equal access and opportunity, in accordance with Canada’s constitutional standards embodied in the *Charter* and the nature of our international obligations. Therefore, pursuant to section 3 of the *Act* the CRTC must “promote programs and practices” that reflect the cultural, racial and religious diversity of society and pledge assistance for minority groups in overcoming discriminatory barriers, particularly those based on race, nationality, ethnicity or religion. Considering the post September 11<sup>th</sup> backlash against Muslims, denying a license to the most watched media outlet in the Middle East (and elsewhere for that matter) would negate the spirit of the *Act*.
11. Finally, the CRTC is without jurisdiction under its own enabling legislation to deny the carriage of Al Jazeera. To do so would be repugnant to public policy at common law as it would constitute a denial in the full participation of Canadian society on an equal basis for Arabs and Muslims, which exclusion is repugnantly based on race and religion. To do so would equally be a breach of the *Canadian Bill of Rights*, which would similarly deprive the CRTC of jurisdiction to deny the application.
12. Therefore, we respectfully request that CRTC grant the application by CCTA to include Al Jazeera on its member’s digital-cable service. A decision prohibiting the inclusion of Al Jazeera from CCTA would be unconstitutional, illegal and contrary to the values and principles of a free and democratic and multicultural society.

We would be pleased to respond to any questions with respect to our request and welcome an opportunity to make further submissions.

Yours truly,

Amina Sherazee  
Barrister & Solicitor  
On behalf of,  
Muslim Canadian Congress

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cc:  
Minister of Canadian Heritage  
CCTA  
Press without Borders  
Canadian Civil Liberties Association