



Broadcasting Public Notice CRTC 2008-100

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Regulatory policy

Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services

Table of contents	Paragraph
<i>Summary</i>	
Introduction	1
Background	5
The Canadian broadcasting system	11
Need for a new regulatory framework	27
Calibrating the role of broadcasting distribution undertakings and the programming sector	30
Key elements of the Call for comments	34
Regulatory framework for broadcasting distribution undertakings	35
Basic service – Terrestrial broadcasting distribution undertakings	36
Basic service – Direct-to-home undertakings	46
Access rules for Canadian programming services	60
Access rules for high definition pay and specialty services	74
Access rules for minority-language services	80
Access rules for unrelated Category B, exempt and pay audio services	87
Preponderance of Canadian programming services	95
Packaging requirements	103
Third-language services distributed by broadcasting distribution undertakings	129
New forms of advertising available to broadcasting distribution undertakings	139
Advertising in local availabilities of non-Canadian services	144
Issues relating to dispute resolution	154
Signal sourcing and transport	169
Licence classes and exemptions for broadcasting distribution undertakings	187
Other issues relating to broadcasting distribution undertakings	202
Regulatory framework for pay and specialty programming undertakings	235
Authorization of non-Canadian services	239
Genre exclusivity – Canadian services	250

Advertising limits for specialty services	281
Processing of Category B applications	287
Policies relating to over-the-air television undertakings	290
Distant Signals	291
Fee for carriage	322
Support for local programming in smaller markets	335
Conclusion	385
Appendix 1 – All discretionary services by year of licensing and major ownership groups / owners	
Appendix 2 – Major Canadian broadcasting distribution undertakings – Revenues from broadcasting and telecommunication activities – 2007	
Appendix 3 – Revised Morin Model	
Appendix 4 – Follow-up and related proceedings	
Dissenting opinion of Commissioner Peter Menzies	
Dissenting opinion of Commissioner Michel Morin	

In this public notice, the Commission sets out its determinations regarding its review of the regulatory frameworks for broadcasting distribution undertakings (BDUs) and discretionary programming services, which was announced in Review of the regulatory frameworks for broadcasting distribution undertakings and discretionary programming services, Broadcasting Notice of Public Hearing CRTC 2007-10, 5 July 2007. The key areas addressed include the following:

- *Regulatory framework for BDUs*
 - *packaging and access rules for Canadian programming services*
 - *new forms of advertising*
 - *issues relating to dispute resolution*
 - *licensing of and exemptions for BDUs*
- *Regulatory framework for pay and specialty services*
 - *authorization of non-Canadian services*
 - *genre exclusivity and programming flexibility for Canadian services*
- *Policies relating to over-the-air television undertakings*
 - *distant signals*
 - *fee for carriage*
 - *support for local programming in smaller markets*

Unless otherwise specified, the proposed amendments to the Broadcasting Distribution Regulations will be implemented 31 August 2011 in order to coincide with the transition from analog to digital.

Within the context of this review, the Commission has also issued today calls for comments on the following:

- *a proposed framework for the sale of commercial advertising in the local availabilities of non-Canadian satellite services;*
- *a proposed regulatory framework for video-on-demand undertakings; and*
- *proposed conditions of licence for competitive Canadian specialty services operating in the genres of mainstream sports and mainstream national news.*

The details of these new proceedings and other activities related to the implementation of the Commission's new policies are set out in Appendix 4 to this public notice.

Dissenting opinions by Commissioners Peter Menzies and Michel Morin are attached.

Introduction

1. In the call for comments announced in Broadcasting Notice of Public Hearing 2007-10 (the Call for comments), the Commission announced that it would hold a public hearing commencing 28 January 2008 in the National Capital Region to consider the matters addressed in that notice as part of a review of the regulatory frameworks for broadcasting distribution undertakings (BDUs) and discretionary programming services.¹ The Commission invited written comments and proposals, along with supporting evidence, on the matters for consideration set out in that notice. In Broadcasting Notice of Public Hearing 2007-10-5, the Commission announced that the public hearing would commence on 8 April 2008.
2. The written record and the oral public hearing (the Proceeding) provided an opportunity to review the unique, complex structure governing the relationship between Canadian BDUs and programming undertakings. Since 1968, this structure has been constructed through successive waves of new technologies and industry consolidations. Now, however, a new reality must be faced. New media and the rapid evolution of related digital technologies require the Canadian broadcasting system to be regulated in a more flexible way to permit it to continue achieving the objectives set out in the *Broadcasting Act* (the Act) and to retain its relevance for and connection to Canadians.

¹ The term "discretionary programming services" includes pay and specialty services (analog, Category 1 and Category 2), as well as pay-per-view and video-on-demand services. A table listing all discretionary services by year of licensing and major ownership group is provided in Appendix 1 to this public notice.

3. The overarching principles of the Act require that Canadian content be fostered by the Canadian broadcasting system in both official languages. Equally important, access to this content must be assured so that broadcasters may deliver those programs through all parts of the system and so that viewers may select the content that is relevant to them.
4. To accomplish these goals and to ensure that the Canadian broadcasting system can effectively face a future where new media is a dramatically growing force, the regulatory environment for broadcasting must ensure that:
 - any regulation be as flexible and responsive as possible;
 - necessary regulation be as targeted as possible and impose the least burdensome constraints;
 - industry solutions, wherever possible, be preferred to regulatory intervention; and
 - the broadcasting system, as a whole, be calibrated such that no single player or group of players can exercise undue influence.

Background

5. In the 1960s and 1970s, cable BDUs emerged as new parts of the Canadian broadcasting system. From their origins as twelve channel analog systems to their status as fixtures in today's world of digital, optical fibre and satellite transmission, BDUs have grown to offer hundreds of broadcast channels as well as high-speed connections to the Internet. Cable BDUs continue to be the primary access point to the Canadian broadcasting system for nearly two-thirds of Canadians. More recently, direct-to-home (DTH) undertakings have become a pervasive competitive force, first introduced through the licensing of these undertakings in 1995 and 1996. An estimated 90% of Canadian households now rely on BDUs of one kind or another to access television programming.²
6. In 1976, the Commission made public the first cable television regulations. These were subsequently replaced by the *Cable Television Regulations, 1986*, which, in 1998, were repealed and replaced by the *Broadcasting Distribution Regulations* (the BDU Regulations).
7. Since that time, fundamental changes have taken place with respect to new technologies, consumer expectations and the ownership structure of the Canadian broadcasting system, as discussed in the Call for comments. Notable amongst the developments in the sector has been the huge increase in the variety and diversity of programming services, both Canadian and non-Canadian, being made available to Canadians today. The regulations and policies governing these services were originally developed in the 1980s and have evolved to include the policies relating to digital distribution of programming services, announced in 2000 and 2006.³ These fundamental changes and the complexity of the

² Source: 2008 CRTC Communications Monitoring Report, p. iii.

³ See Public Notices 2000-6 and 2000-171, and Broadcasting Public Notices 2006-23 and 2006-74.

current regulatory environment led the Commission to conclude that it was timely to review the frameworks for BDUs and discretionary programming services and thus issue the Call for comments.

8. The public process leading up to this public notice included an oral public hearing, held from 8-24 April 2008 in the National Capital Region. That hearing was preceded by three rounds of written comments. Oral submissions were received at the hearing and final written comments were subsequently submitted. A total of 67 parties appeared at the oral public hearing. The public record of this proceeding is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings."
9. In the Call for comments, the Commission indicated that, relying on market forces wherever possible, it sought to:
 - develop forward-looking regulatory frameworks that are strategic, straightforward, flexible and equitable;
 - ensure a strong Canadian presence in the broadcasting system in the form of distinct and diverse Canadian programming and services; and
 - recognize the increasing autonomy of audiences and consumers, providing them with the greatest possible choice of services at affordable prices.
10. Following the issuance of the Call for comments, the Commission expanded the scope of the Proceeding to include issues related to a possible fee for the distribution by BDUs of over-the-air television (OTA) services. The Commission further expanded the scope of the Proceeding to include issues related to the distribution by BDUs of distant signals, that is, OTA signals distributed by BDUs to subscribers outside the markets in which the OTA services originate.

The Canadian broadcasting system

11. The Proceeding provided the Commission with an opportunity to review key components of the Canadian broadcasting system and examine how that system is positioned to face the changes in technology and consumer expectations that are already occurring and that are expected to intensify over the next five years. The Proceeding also provided the opportunity to reflect on how the Canadian broadcasting system has developed and on the reasons for the successes it has achieved.
12. According to section 3(1)(d)(ii) of the Act,

the Canadian broadcasting system should [...] encourage the development of Canadian expression by providing a wide range of programming that reflects Canadian attitudes, opinions, ideas, values and artistic creativity, by displaying Canadian talent in entertainment programming and by offering information and analysis concerning Canada and other countries from a Canadian point of view.

The Commission has sought to achieve these central objectives of the Act primarily through the licensing of Canadian broadcasting services that provide distinctively Canadian information and entertainment programming. In television, these services include OTA public and private stations, pay and specialty services (including analog, Category 1 and 2 digital services), pay-per-view (PPV) and video-on-demand (VOD) services, and community programming undertakings.

13. As noted in the Call for comments, the Commission's approach to analog pay and specialty services and digital Category 1 services has been to provide a supportive and structured environment in which the services can maximize their contributions to achieving the objectives of the Act. Digital Category 2 services have been licensed on a more open-entry basis characterized by greater risk and competition.
14. The Act does not leave the operation of BDUs solely to the general principles of the broadcasting policy for Canada articulated in section 3, but also specifies in section 3(1)(t) the specific criteria for distribution undertakings. Specifically, distribution undertakings
 - (i) should give priority to the carriage of Canadian programming services and, in particular, to the carriage of local Canadian stations,
 - (ii) should provide efficient delivery of programming at affordable rates, using the most effective technologies available at reasonable cost,
 - (iii) 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, and
 - (iv) may, where the Commission considers it appropriate, originate programming, including local programming, on such terms as are conducive to the achievement of the objectives of the broadcasting policy set out in this subsection, and in particular provide access for underserved linguistic and cultural minority communities.
15. As noted in the Call for comments, most Canadians now have a choice from among two or more licensed distributors. Moreover, BDUs generally offer, in addition to a wide range of Canadian and non-Canadian programming services, wireless and wireline telephony as well as broadband Internet access. Since the last review of the BDU Regulations, competition in the sector has increased and, at the same time, ownership has become more consolidated.
16. Based on evidence collected during the Proceeding, the Commission is of the view that most subscribers are satisfied with the wide range of Canadian and non-Canadian programming services offered by most BDUs.

17. The Canadian broadcasting system faces many challenges – not least, a small population spread over a very large territory. At the public hearing, the Commission was reminded that the population of English Canada is less than that of the state of California, whereas the population of French Canada is less than that of the city of San Francisco. Nevertheless, the variety of domestic services available to Canadian viewers is greater than that of any other country except the U.S.
18. In order to ensure a distinct Canadian presence in Canadian broadcasting, regulation – sometimes detailed regulation – has been considered necessary. There has been a concern that, without regulation, broadcasters might not find it in their economic interest to provide a full range of Canadian programming and might seek to enhance their profits primarily through the importation of large quantities of very popular U.S. programming. Since U.S. programs generally recoup their costs in the U.S. market, Canadian rights to these programs are available at relatively low cost.
19. Canadian broadcasting is significantly concentrated. In distribution, the six largest companies account for over 90% of all cable and DTH subscribers.⁴
20. BDUs are also permitted to control programming services, including VOD undertakings. The evolution of large and profitable distribution undertakings has allowed these companies to raise the capital required to enable them to provide subscribers with the necessary technologies to take advantage of high definition (HD), VOD and interactive programming opportunities. A chart outlining the regulated sources of revenue for the major distribution companies is set out in Appendix 2 to this public notice.
21. Similar concentrations are seen in audiences for Canadian private OTA and discretionary programming services. For English-language television, two companies account for more than 60% of all viewing to Canadian services and stations; for French-language television, the two largest companies account for over 55% of all viewing to Canadian services and stations.
22. This ownership concentration has taken place within the ongoing fragmentation of television audiences and revenues between OTA television and pay and specialty television, and new digital platforms. Canadian private broadcasters have argued that, to make an appropriate contribution to the creation of quality Canadian programming, they must be able to acquire the resources to fund that programming. However, reasonable limits to ownership concentration are also necessary to preserve a diversity of voices in the system. The Commission has recently set out its policies in this area in Broadcasting Public Notice 2008-4.
23. The objectives of Canadian broadcasting policy are found in the Act and have been implemented in various Commission policies. In summary, those policies have been designed to foster a system that provides Canadians with high quality Canadian content and access to the programming services that provide this content.

⁴ Bell TV (formerly known as Bell ExpressVu), Cogeco, Quebecor (Videotron), Rogers, and Shaw and Star Choice.

24. Fulfilling these objectives, as well as many other objectives set out in the Act, has always required regulatory intervention, and the Commission anticipates that some regulation will continue to be necessary.
25. At the same time, in reviewing its regulatory framework for BDUs and discretionary programming services, the Commission has been guided by the need, as articulated in the Call for comments, to eliminate regulation where possible and to ensure that the regulation that is retained is not unduly burdensome.
26. Corus Entertainment Inc. (Corus), in its final written comments, set out a position that reflects the Commission's views:

The existing regulatory framework for discretionary services, although complicated in some of its detailed measures, has been tremendously successful in creating a vibrant specialty and pay sector that provides an abundance of choice at reasonable cost to viewers. The Canadian distribution system is also first-class. Corus urges the Commission, in undertaking a simplification and streamlining of the current system, to adopt a measured approach that supports the continued success of the broadcasting sector and its contributions to the goals of the Act.

Need for a new regulatory framework

27. The Canadian broadcasting system, like other broadcasting systems throughout the world, is currently adapting to new, multi-platform, digital technologies. While traditional linear television channels⁵ still command the largest audiences and revenues, there is no denying the growing impact of VOD and new media platforms.
28. The Commission is studying the impact of new media on traditional media, and recently issued Broadcasting Notice of Public Hearing 2008-11, in which it sought responses to a series of questions concerning broadcasting in new media. The Canadian broadcasting system – if it is to be attractive and competitive in the evolving environment – must operate under a regulatory framework that is flexible and supports the transition from analog mass media to personal and interactive digital media. The framework must be responsive to Canadian consumers and recognize their demand for quality content that is available through multiple platforms, including on demand. Such a framework should encourage the use of new revenue sources such as those derived from advanced advertising techniques. The framework must also support the objectives of the Act through ensuring that all participants contribute appropriately to the creation of new Canadian programming suitable for all platforms.
29. In order to make a successful transition and ensure a wide range of programming, the regulator must ensure that no single undertaking or sector of the system is in a position to dominate either the creation of Canadian programming or access to it. In this regard, the

⁵ "Linear television" refers to scheduled television services that offer programs at specific times rather than on-demand content services, which permit subscribers to choose their viewing time.

Commission recognizes the key role played by terrestrial and satellite BDUs in providing Canadians with access to the diverse programming that enables the Canadian broadcasting system to function effectively.

Calibrating the role of broadcasting distribution undertakings and the programming sector

30. Evidence presented in the Proceeding reinforced for the Commission the fact that Canadian BDUs possess very significant market power in the broadcasting system. This power stems in part from the fact that over 90% of Canadian households receive their television programming through BDUs and also from the fact that most large BDUs are now vertically integrated with programming undertakings. The powerful position of BDUs in the Canadian broadcasting system potentially enables them to determine the range of services offered to their subscribers, while vertical integration raises legitimate concerns about whether BDUs might unduly favour their own affiliates in the packaging and marketing of television services.⁶
31. In the Commission's view, a regulatory framework that will carry the system through this transitional period must not allow any one sector to exercise unreasonable power over the services available to subscribers. Because Canadian programming services and the Canadian programs they broadcast are central to the Canadian broadcasting system, the Commission considers that it has the obligation to ensure that these services are made available on a reasonable basis to BDU subscribers.
32. The Proceeding also demonstrated the important role that conventional, OTA services continue to play. Although their audience share may be declining and the advertising revenue of these undertakings, on average, has ceased to grow, OTA services continue to be the cornerstone of the Canadian broadcasting system. For most Canadians, it is the local OTA station that provides their window on the world through the local, national and international news it provides. This function, provided by public and private stations, is an essential part of a successful broadcasting system that provides Canadians with a diversity of editorial points of view on matters of public concern. It is the OTA services that continue to be able to apply the resources necessary to acquire new Canadian priority programming – particularly drama.
33. The Commission therefore considers that any new regulatory framework must recognize and support the important role played by the OTA sector and, in particular, its role in providing Canadian programming, including local and regional news.

⁶ The Commission formally permitted cable ownership of analog discretionary services in 2001, following a public process. In Public Notice 2001-66-1, the Commission sets out the history of its previous policies restricting cable ownership, the rationale for its change in policy, and a set of principles that should apply in light of the new policy. The Commission had already permitted BDU ownership of digital services in Public Notice 2000-6.

Key elements of the Call for comments

34. In the sections that follow, the Commission sets out its determinations with respect to revised policy frameworks for both BDUs and discretionary programming services, as well as its policies relating to the distribution by BDUs of distant OTA signals and the issue of a fee for carriage by BDUs of OTA stations. Unless otherwise noted, the new policies are applicable to digital services and will take effect on 31 August 2011, to be consistent with the date OTA television in Canada must switch from analog to digital transmission.⁷ Many of the new policies will require changes to the relevant Commission regulations. Others will be implemented through appropriate conditions of licence. In some cases, the Commission has proposed new policies for further public comment prior to a final decision.

Regulatory framework for broadcasting distribution undertakings

35. In this section, the Commission sets out its policies for BDUs under the following headings:
- basic service – terrestrial BDUs;
 - basic service – DTH undertakings;
 - access rules for Canadian programming services;
 - access rules for HD pay and specialty services;
 - access rules for minority-language services;
 - access rules for unrelated Category B, exempt and pay audio services;
 - preponderance of Canadian programming services;
 - packaging requirements;
 - third-language services distributed by BDUs;
 - new forms of advertising available to BDUs;
 - advertising in local availabilities of non-Canadian services;
 - issues relating to dispute resolution;
 - signal sourcing and transport;

⁷ See Broadcasting Public Notice 2007-53.

- licence classes and exemptions for BDUs; and
- other issues relating to BDUs.

Basic service – Terrestrial broadcasting distribution undertakings

Issues

36. The basic service comprises those programming services that a BDU distributes to all its subscribers. Section 17 of the BDU Regulations sets out the services that are currently required to be distributed as part of the basic service on larger terrestrial systems. Currently, the Commission has de-regulated the price of the basic service for over 95% of terrestrial BDUs.
37. In the Call for comments, the Commission considered that a requirement to offer a basic service was still appropriate, but raised a number of questions regarding its composition. At the public hearing, discussion focused on the desirability of requiring BDUs to offer a small, affordable, all-Canadian basic service. The Canadian Broadcasting Corporation (CBC) and other parties argued that such a requirement would be in the interest of subscribers – particularly those who could not afford the cost of the larger basic service currently offered by most BDUs.
38. Most BDUs, on the other hand, submitted that there was no evidence that subscribers wanted a small basic service, and argued that the BDU operator was in the best position to assess the needs of its customers. BDUs also noted that approximately 95% of their customers subscribe to packages over and above the basic service, which they considered to be an indication that affordability is not a significant issue for subscribers. Bell TV (formerly Bell ExpressVu) submitted that it had offered a small, low-cost basic service in the past but found that customer acceptance was not strong.

Commission's determinations

39. Although the re-regulation of basic service rates and regulated limits on the size and structure of basic services would assure a small, low-cost, all-Canadian basic service, the Commission considers that such a course of action would be contrary to its approach of relying on market forces wherever possible. The Commission considers that BDU competition will be sufficient to ensure that rates are affordable. Further, in light of discussions at the public hearing, the Commission considers that there is insufficient evidence to suggest that BDU subscribers are interested in a small basic service.
40. Accordingly, the Commission determines that it will not introduce a requirement that BDUs distribute a small, all-Canadian basic service.

41. Most parties agreed that BDUs should be required to distribute, on the basic service, local OTA stations (including the CBC) as well as services that must be distributed on basic pursuant to an order under section 9(1)(h) of the Act (the 9(1)(h) services).⁸ Broadcasters also advocated the distribution of provincial educational services and regional stations. BDUs generally argued for a smaller basic service and reasonable parity in the requirements between cable and DTH undertakings.
42. The Commission considers that, while BDUs should have the flexibility to offer the most attractive and competitive basic service possible, it is essential to the fulfilment of the objectives of the Act that all Canadians have access to those OTA stations licensed as local or regional, public or private. Canadians should also have access to the community channel and the provincial legislature when either is offered by a BDU. The 9(1)(h) services must also continue to be offered on the basic service.
43. Accordingly, the Commission will amend the BDU Regulations so as to require terrestrial BDUs to distribute the following priority services on the basic service (the order of services establishes priority for simultaneous substitution purposes, where applicable):
- locally-owned and operated English- and French-language CBC television stations broadcasting in the market served;
 - the educational television programming service, the operation of which is the responsibility of an educational authority designated by the province in which the licensed area of the undertaking is located (provincial educational programming service);
 - all other local television stations;
 - regional stations owned and operated by the CBC, if no local CBC stations are already carried;
 - all other regional stations, other than those regional stations affiliated with local stations of the same network already carried;
 - at least one owned and operated or affiliate CBC English-language television station and one owned and operated or affiliate CBC French-language television station, if not already carried; and
 - services mandated for distribution on the basic service pursuant to an order under section 9(1)(h) of the Act.

⁸ As of the date of this public notice, the 9(1)(h) services are the following: The Accessible Channel, CBC Newsworld (in francophone markets), Le Réseau de l'information (in anglophone markets) and Avis de Recherche (subscribers in Quebec only) (see Broadcasting Decision 2007-246); the English- and French-language services of Cable Public Affairs Channel Inc. (CPAC) (see Broadcasting Decision 2002-377); VoicePrint (see Decision 2000-380); Aboriginal Peoples Television Network (see Public Notice 1999-70); and TVA (see Public Notice 1999-27).

44. The basic service must also include:
- the community channel, if offered by the BDU; and
 - the relevant provincial legislature service, if offered by the BDU, unless the service agrees otherwise.
45. As proposed in the Call for comments, the current obligation to distribute the House of Commons service will be removed from the BDU Regulations. Instead, this obligation will be incorporated into the distribution order for the English- and French-language wrap-around services of Cable Public Affairs Channel Inc. (CPAC).

Basic service – Direct-to-home undertakings

Issues

46. The basic service requirements for DTH undertakings were set at the time these undertakings were first licensed in 1995 and 1996. At that time, the Commission established a policy framework that both recognized the national service area of DTH undertakings and minimized distribution requirements in order to encourage viable competitors to terrestrial BDUs. Accordingly, as set out in section 37 of the BDU Regulations, DTH undertakings are required to distribute one English- and one French-language service of the CBC, and one service of each national network. DTH undertakings must also distribute the 9(1)(h) services.
47. Sections 42 and 43 of the BDU Regulations also require DTH undertakings, upon request by a Canadian broadcaster, to delete programming distributed by a non-Canadian or distant Canadian service that is the same as programming distributed by the requesting broadcaster within its Grade B contour.
48. Currently, in lieu of broadcasters exercising their rights to program deletion, Canada's two DTH licensees are required to distribute an equitable number of local OTA stations from each major ownership group (i.e., CBC, CTV, TVA, Canwest, TQS and Rogers) and at least 13 small market OTA stations. In addition, DTH licensees have conditions of licence requiring them to distribute at least one English-language and one French-language CBC television station from each time zone. While the various requirements above are minimum requirements, DTH licensees in fact offer a much larger number of public and private stations as well as all of the provincial educational programming services.
49. With respect to the distribution of local television stations, positions of parties varied widely. The Canadian Association of Broadcasters (CAB) argued that DTH licensees should be required to distribute all Canadian television stations that originate programming, so as to ensure that local and regional programming from each station is available to all DTH subscribers. CTVglobemedia Inc. (CTVgm) and Canwest Media Inc. (Canwest) jointly proposed, as an alternative, that

DTH undertakings be required to distribute all television stations from those local markets where DTH undertakings have a 30% or greater market penetration.

50. DTH licensees, on the other hand, strongly opposed any requirement to distribute all local stations – including the CTVgm/Canwest variant. They argued that regulatory flexibility is necessary to ensure that they can continue to compete with terrestrial BDUs and manage their limited capacity in the face of increasing demand for HD services.
51. Other BDUs pointed out that the current Commission regulations impose more onerous requirements on terrestrial BDUs than on DTH undertakings with respect to the distribution of local television stations. They emphasized the importance of addressing this competitive disparity by increasing the requirements for DTH undertakings to distribute local television stations.

Commission's determinations

52. The Commission acknowledges the difference between DTH services, which are distributed on a national basis, and terrestrial BDU services, which operate local or regional distribution undertakings. DTH operators also have significantly less flexibility in expanding their capacity to accommodate new services and high bandwidth HD television. These differences mean that perfect regulatory symmetry between terrestrial and DTH undertakings is not reasonable. Nevertheless, the Commission recognizes that DTH undertakings have now become a strong competitor to terrestrial BDUs and that an equitable regulatory framework providing subscribers across the country with access to important Canadian services should be implemented.
53. The Commission considers that the proposal to require distribution of all of Canada's 148 local television stations is not a reasonable request to make of DTH undertakings. Having reviewed planned capacity upgrades, the Commission considers that such a requirement would consume an unreasonable proportion of the satellite capacity available to Bell TV and Star Choice. Given the importance of allocating capacity for the delivery of Canadian HD services, a requirement for the delivery of local signals that have, in some cases, minimal amounts of local programming and largely duplicative non-local programming would not be in the public interest.
54. However, the Commission also considers that DTH subscribers should have a reasonable diversity of regional and local television services that reflect the issues and concerns relevant to their places of residence. In the Commission's view, a reasonable approach would be to require distribution, on the basic service within each province, of a selection of provincially-based local television stations, including educational services. Specifically, DTH undertakings would be required to distribute one television station per province, where such a station exists, from each of the major broadcast ownership groups: CBC English, CBC French, Canwest, CTV, Rogers, TQS and TVA. This is similar to the proposal by the CBC that DTH undertakings be required to distribute one station from each broadcast ownership group per province. Such an approach would result in a significant increase in the regulatory requirements of DTH undertakings with respect to regional and local television services, yet would not require the distribution of as many local stations as are distributed by the DTH undertakings at the present time.

55. With respect to independently-owned local stations, that is, stations not owned by one of the major ownership groups, the Commission considers that DTH licensees should be required to distribute at least one such station from each province where such stations have been licensed. This requirement would replace the current obligation to distribute 13 independent stations. In this regard, the Commission notes that part of its new framework for distant signals, set out later in this public notice, is to maintain the existing small market local programming fund. This fund compensates independently-owned, small market local stations for the harm caused by viewer migration to DTH services, which is especially significant in rural and remote areas of Canada.
56. With respect to the four Atlantic provinces, the Commission considers that the provincial approach for regional and local television services and for independently-owned local television stations may place too great a burden on DTH undertakings in light of increasing demands for bandwidth. Further, viewers in these provinces could be served appropriately through a regional approach, for example, through an obligation to distribute at least two stations per ownership group in the region. Accordingly, DTH licensees are required to file with the Commission up-to-date information outlining their projected capacity levels as of 31 August 2011. Such information, to be filed no later than 31 December 2008, will enable the Commission to determine whether special rules for the Atlantic provinces are necessary.
57. With respect to the provincial educational programming services, Bell Canada (Bell) suggested that the distribution of such services continue to be optional. Shaw Communications Inc. (Shaw)⁹ did not address this issue specifically. The Commission considers that DTH licensees, like other BDUs, should be required to offer these services to subscribers within the applicable jurisdiction.
58. Subject to the Commission's final determination with respect to the Atlantic provinces, the Commission will amend the BDU Regulations so as to require DTH undertakings to distribute the following on the basic service within each province, where stations are licensed (the specific stations to be distributed will ultimately be determined by the DTH undertakings):
- one television station per province from each of the following major ownership groups: CBC English, CBC French, Canwest, CTV, Rogers, TQS and TVA;
 - one independently-owned local television station per province;¹⁰
 - the provincial educational programming service, within the appropriate jurisdiction; and
 - services mandated for distribution on the basic service pursuant to an order under section 9(1)(h) of the Act.

⁹ On behalf of Shaw Cablesystems Limited and Star Choice Television Network Incorporated.

¹⁰ An "independently-owned local television station" means a licensed OTA local television station not owned by one of the major ownership groups identified immediately above and that provides, in one of the official languages, local programming, including local news, to the community it is licensed to serve.

In regard to the Territories, each subscriber should receive a basic service that consists of at least one signal from the CBC Northern Television Service as well as the most appropriate set of television stations from one of the provinces.

59. As noted above, the current obligation to distribute the House of Commons service will be incorporated into the distribution order for CPAC's English- and French-language wrap-around services.

Access rules for Canadian programming services

Issues

60. The question of what, if any, access rights should be granted to Canadian services – other than those that must be carried on the basic service – was a major topic of discussion during the Proceeding. Under the BDU Regulations, the access requirements are based on factors such as the BDU's size, capacity and distribution technology, and on the language of the market for the BDU. For instance, Class 1 BDUs¹¹ are generally required to distribute all analog Canadian specialty and pay television services as well as all Category 1 digital specialty services appropriate to the linguistic market served. Terrestrial BDUs must carry at least one Canadian PPV service appropriate to the linguistic market and DTH undertakings must carry all analog and Category 1 pay and specialty services as well as at least one English- and one French-language PPV service. The access requirements for digital terrestrial BDUs are, in part, based upon the bandwidth of the system. There are also special access requirements in regard to minority-language services and third-language services, which will be discussed later in this public notice.
61. The Commission notes that it also licenses Category 2 pay and specialty services, which do not have any access rights and must negotiate with BDUs to gain distribution.
62. In the Call for comments, the Commission proposed that it was timely to consider the elimination of most, if not all, existing access requirements and rely instead on an overall requirement that BDUs distribute a preponderance (i.e., 50% plus one) of Canadian broadcasting services. This requirement would ensure that the majority of services received by subscribers from their BDUs are Canadian services.
63. The majority of BDUs supported such an approach, arguing that the existing access rules have become increasingly prescriptive, complex and onerous. They argued that the elimination of access rules would provide BDUs with more flexibility to respond quickly to changing consumer demands and would allow BDUs to better differentiate their services. TELUS Communications Company (Telus), however, took the position that the access requirements are a reasonable means of ensuring that the Canadian broadcasting system remains Canadian, and that they pose no significant problems for distributors or consumers.

¹¹ Class 1 BDUs are BDUs with more than 6,000 subscribers.

64. Programming services and cultural organizations were strongly in favour of maintaining the existing access rules – in some cases with minor modifications. These parties argued that the elimination of guaranteed access for Canadian services – even with a preponderance requirement – would place too much power in the hands of the BDUs. According to many broadcasters, negotiations with certain BDUs over fees, packaging and marketing are already extremely difficult, even with guaranteed access. This is particularly true if the programming service is independent of a major ownership group. These parties also noted that their existing high Canadian programming contributions were set on the basis of guaranteed access. Without such a guarantee, contribution levels would have to be re-calibrated with an inevitable reduction in the overall support for Canadian programs.

Commission's determinations

65. The Commission considers that the issue of access rights is fundamental to any regulatory framework for the digital world. Removing most access requirements would unquestionably result in a simpler, more flexible and more market-oriented approach. However, such a market-oriented approach must not come at the expense of other objectives, in particular those that foster diverse programming choices and support Canadian services through the production and acquisition of Canadian programming.
66. One of the contributing factors to the success of Canadian analog and Category 1 services has been their ability to develop a unique genre of programming and present that programming to Canadian viewers. Many such services that are now considered successful might have never had the chance to succeed if BDUs had not been obliged to distribute them. Guaranteed access has not only allowed mass-appeal Canadian services in genres such as news and sports to thrive, but has also made it possible for services in more specialized genres such as history, food and travel to find sufficient audiences and revenues to become profitable. The Commission is concerned that the wholesale elimination of access requirements could result in the removal of certain more specialized Canadian services, with the consequent loss of diversity from the system as a whole.
67. Equally important is the impact that the elimination of access would have on the contributions that analog and Category 1 services make to the creation of Canadian programming. While Canadian content obligations vary according to genre, specialty services, as a group, spend approximately 40% of their total revenues on the acquisition and production of Canadian programs. This spending is critical to the creation of Canadian programs in all genres. It also supports an independent Canadian production sector and provides viewers with a broadcasting system that reflects Canadian needs, concerns and values.
68. In light of the above, the Commission considers that it would be appropriate to retain access rights, in the digital environment, for Canadian analog and Category 1 pay and specialty services. In the amended BDU Regulations, services with access rights will be referred to as Category A services. The existing Category 2 services and any new

services that the Commission may choose to license without access rights will be referred to as Category B services. This terminology will be employed in the balance of this public notice.

69. As of 31 August 2011, licensed BDUs will only be required to distribute Category A services on a digital basis; as of that date, BDUs will no longer be required to distribute Category A services on an analog basis. To the extent that BDUs wish to continue providing their subscribers with an analog offering, the Commission will propose rules to cover such offerings when it issues its proposed amendments to the BDU Regulations.
70. The Commission considers that the current range of Category A services provides Canadians with a diverse array of program genres, whereas Category B services provide the opportunity to address more niche-oriented genres. Nevertheless, the Commission notes that tastes in programming change and as such does not consider it necessary or appropriate to freeze Category A services at their present number.
71. Accordingly, the Commission will be prepared to entertain applications for new Category A services filed on or before 1 April 2010, with a view to issuing decisions (either approvals or denials) in advance of 31 August 2011. The Commission notes that, for guaranteed access to be granted, applicants will have to clearly demonstrate that the proposed service is both unique and of sufficient importance to subscribers.
72. At the public hearing, Commissioner Michel Morin presented a model (the Morin model) that would serve to determine those services that should be granted basic distribution and those that should not be granted guaranteed access. The Morin model consisted of a mathematical calculation using an extrapolation from the sum of the licensee's Canadian content level and Canadian programming expenditure percentage, less any wholesale fee received from a BDU. In order to determine the services that would be granted basic distribution, the resulting value ascribed to a particular service would be measured against a pre-determined numeric threshold, which would be set by the Commission, with services exceeding the threshold being granted basic distribution, and all others not being granted guaranteed access. To qualify for inclusion under the Morin model, the service would also have to derive at least one third of its revenue from sources other than subscription revenue.
73. In retaining an access right for Category A services, the Commission is cognizant of the potential impact that the licensing of new Category A services could have on BDU capacity, particularly as services change their format to HD. In this regard, in its examination of applications for new Category A services, the Commission will assess how such a service will contribute to the objectives of the Act, including the significant contribution to the diversity of the range of genres available to Canadians. This will be complemented by a second, objective evaluation test, based upon the Morin model. An example of this tool is set out in Appendix 3 to this public notice. The revised Morin model will also be a factor in the Commission's consideration of applications for mandatory distribution on digital basic via distribution orders under section 9(1)(h) of the Act.

Access rules for high definition pay and specialty services

74. Under the framework for the licensing and distribution of HD pay and specialty services, set out in Broadcasting Public Notice 2006-74, the Commission adopted a hybrid approach under which it would grant access rights to new HD licensees, provided that they made specific commitments to minimum levels of HD programming, or permit, for a period of time, existing services to offer an HD version of their services via condition of licence. Such HD services have no access rights.
75. The Commission notes that, at this time, no services have applied for an HD licence that would oblige them to air minimum amounts of HD content in exchange for continued genre exclusivity and access rights. However, many services have applied for the authority to offer an HD version via condition of licence and are in operation. The Commission also notes that, according to the 2006/2007 Canadian Television Fund (CTF) annual report, Canadian HD production increased from 7% in 2003/2004 to 30% in 2006/2007. English-language HD production represented 44% of all English-language production in 2006/2007.
76. In light of the significant growth in the production of Canadian HD programming, the Commission considers that market forces will be effective in ensuring that Canadian viewers have access to HD services. Further, considering that BDUs will have to expand their bandwidth capacity significantly to accommodate the demand for HD services, the Commission is of the view that a change to the HD framework is appropriate.
77. Accordingly, the Commission determines that the requirement for BDUs to distribute Category A services on a digital basis will apply to either a standard definition (SD) or HD version of the service. The Commission is of the view that this will be sufficient to ensure distribution of Canadian HD services where such services are made available to BDUs. As a result, the relevant policies respecting HD transitional licences set out in Broadcasting Public Notice 2006-74 will not be included in the amended BDU Regulations. Licensees will continue to be permitted to offer HD versions of their services via condition of licence.
78. The Commission expects that BDUs will treat Canadian HD services and non-Canadian HD services equitably.
79. The Commission intends to amend the *Pay Television Regulations, 1990* and the *Specialty Services Regulations, 1990* in order to require explicitly that Category A services provide their signals to BDUs.

Access rules for minority-language services

Issues

80. Each market served by a terrestrial BDU is referred to as either a French-language or an English-language market. In French-language markets, English-language services are considered to be minority-language services; in English-language markets, French-language services are considered to be minority-language services.
81. The existing minority-language rules for terrestrial BDUs vary according to their size and digital capacity, and depending on whether they offer a digital service. Generally, the BDUs with large digital capacity must distribute all minority-language analog and Category 1 specialty services. Smaller BDUs must distribute one specialty service in the minority language for each ten services that they distribute in the majority language (the 1:10 rule).¹² The smallest BDUs are not required to distribute any minority-language services. In English-language markets, the larger BDUs must continue to distribute the same number of French-language services on an analog basis as they did on 10 March 2000.
82. DTH undertakings are required to distribute all English- and French-language pay and specialty services, other than Category 2 services.
83. In the Proceeding, a number of BDUs, including Shaw, Telus and Access Communications Co-operative Limited (Access), proposed to eliminate all minority-language access rules. Others, such as Rogers Communications Inc. (Rogers), Quebecor Media Inc. (QMI), Cogeco Cable Inc. (Cogeco) and Bragg Communications Inc. (Bragg) proposed retaining variations of the 1:10 rule. Most BDUs considered that the rule related to the analog distribution of French-language services in English-language markets was unnecessary in a digital environment.
84. Most broadcasters did not address minority-language access rules specifically, although both TV5 Québec Canada (TV5) and Astral Media inc. (Astral) proposed that BDUs be required to distribute all French-language specialty services, and this, as part of the same package.

Commission's determinations

85. The Commission considers that the existing minority-language access rules are complex. Nevertheless, a reasonable assurance that minority-language communities across the country will continue to receive Canadian services in their language remains a fundamental objective for the Canadian broadcasting system. In the Call for comments, the Commission proposed that applying the 1:10 rule to all terrestrial BDUs would both simplify the BDU Regulations and result in the distribution of a comparable number of services in the language of the minority as compared to the number of such services that are currently distributed.

¹² The Commission first set out this rule in Public Notice 2001-26.

86. Accordingly, the Commission determines that, as of 31 August 2011, the existing minority-language access rules for terrestrial BDUs will be replaced with a single rule stipulating that all licensed terrestrial BDUs be required to distribute one (1) minority-language Category A or Category B service, where licensed,¹³ for every ten (10) majority-language services they distribute. DTH undertakings will continue to be required to distribute all Category A services.

Access rules for unrelated Category B, exempt and pay audio services

Issues

87. The BDU Regulations require BDUs to distribute at least five unrelated Category 2 services¹⁴ for each Category 2 service of a “related programming undertaking” that it distributes. A “related programming undertaking” means a programming undertaking of which the licensee or an affiliate, or both, controls more than 10% of the total shares issued and outstanding.
88. The BDUs that commented on this rule were generally of the view that it was unnecessary and that instances of preferential treatment for related programming services could be addressed through the application of the undue preference provision of the BDU Regulations.
89. Broadcasters – and especially the Canadian Independent Programming Services (CIPS), which represent several smaller, independent discretionary programming services – were in favour of specific rules to protect independently-owned services. The CAB recommended that the existing rule could be eliminated if the Commission maintained access rules and a strengthened preponderance rule. Astral noted that the current rule is not language specific and recommended that the rule be applied on an official-language basis.

Commission's determinations

90. The Commission recognizes that BDUs currently offer more Category B services than the current rule requires. However, it also understands that the undue preference regulations alone may not be enough to ensure that unrelated Category B services receive adequate distribution in the system. Many interveners noted that programmers are frequently reluctant to launch undue preference complaints due to fear of retaliation; they also noted that not all such complaints result in a finding of undue preference. Furthermore, the processing of such complaints can be time-consuming and resource intensive.

¹³ The Commission does not intend for this rule to limit the number of majority-language services that may ultimately be distributed.

¹⁴ For the purposes of this requirement, Category 2 services include exempt third-language services, as set out in Broadcasting Public Notice 2007-33.

91. On the other hand, while the existing rule is simple and effective, it could raise capacity concerns for some BDUs – especially since more capacity is required for HD versions of Canadian and non-Canadian services. In the Commission’s view, a ratio of three unrelated Category B services for every one related service would give BDUs greater flexibility while still ensuring the distribution of a range of unrelated Category B services within the system.
92. In addition, the Commission agrees that the current rule would be improved by requiring that, with respect to French-language services, the unrelated Category B services be in the French language. Further, the ratio can be less with respect to French-language services since there are relatively fewer French-language Category B services.
93. Accordingly, the Commission’s determines that BDUs must distribute, regardless of language, three (3) unrelated Category B services for every one (1) related Category B service they distribute. Further, where a BDU is carrying a related French-language Category B service, two (2) of the three (3) unrelated Category B services must be French-language Category B services. For the purpose of these requirements, Category B services will include exempt third-language services.
94. The Commission will apply the existing access rules for unrelated exempt services and for unaffiliated pay audio and specialty audio services. However, the Commission determines that, for these services to be considered unrelated, the ownership threshold for these services should be reduced to 10% from the existing 15% for exempt services and from the existing 30% for pay audio services. Any BDU that carries an unrelated service of which it owns more than 10% as of the date of this public notice will be permitted to continue to carry that service as an unrelated service.

Preponderance of Canadian programming services

Issues

95. The BDU Regulations require BDUs to ensure, in respect of each of analog and digital technology, that a majority of the video and audio channels received by a subscriber are devoted to the distribution of Canadian programming services other than the programming distributed on program repeat channels. For the purpose of preponderance, Canadian programming services include both licensed and exempt Canadian video and audio programming services.
96. In the Proceeding, BDUs generally took the position that a simple preponderance rule at the level of the subscriber should replace detailed access requirements.
97. Several broadcasters and cultural groups advocated that, in addition to access requirements, the Commission should apply a “double preponderance” rule to BDUs. According to that rule, BDUs would be required to distribute a preponderance of Canadian services overall, in addition to ensuring that each subscriber receives a preponderance of Canadian services.

98. The CAB submitted that it would be inappropriate to include, in the preponderance calculation, Canadian services that must be carried on the basic service, arguing that, “as subscribers must already take these services, including them in the [preponderance] test does nothing to incent their subscriber take up.”

Commission's determinations

99. The Commission notes that, under the current model, which includes access requirements as well as a preponderance of services received, most BDUs offer far more Canadian services than non-Canadian services. For example, Canwest noted at the public hearing that, of all the services currently distributed by Rogers in Toronto, approximately 75% are Canadian services.
100. The introduction of a new regulation that would also require a preponderance of Canadian services offered, in addition to the existing rule requiring that a majority of the channels received by a subscriber are devoted to Canadian programming services, would, in the Commission's view, not address a demonstrated problem and may very well unnecessarily restrict the diversity of services available to subscribers. The existing combination of access requirements and preponderance at the subscriber level has worked well to ensure that Canadian programming services have an opportunity to reach audiences and that Canadian subscribers can choose the services they wish to watch from an offering that is predominantly Canadian.
101. Similarly, in regard to excluding, in the calculation of preponderance, a count of the services required to be carried on the basic service, the Commission has not received any evidence that this more restrictive approach would be required.
102. In the Commission's view, the existing preponderance rule is both simple and effective. It serves to ensure that Canadian subscribers have access to a Canadian broadcasting system with minimal limitations on consumer choice. Accordingly, the Commission determines that the existing preponderance rule set out in paragraph 95 of this public notice will be included in the amended BDU Regulations.

Packaging requirements

Issues

103. In the Call for comments, the Commission stated its intention to generally leave the matter of the packaging of programming services as one for negotiation between programmers and distributors. Accordingly, it proposed to eliminate most of the existing packaging rules, with the exception of those pertaining to adult services and those pertaining to the packaging of single-point-of-view religious services.
104. The current distribution and linkage rules,¹⁵ which were originally adopted to support Canadian services, set out a wide range of packaging rules for various types of BDUs. Among other things, these rules specify that, for every non-Canadian specialty service

¹⁵ See Broadcasting Public Notices 2007-51 and 2007-52.

offered in a package, there must be one Canadian specialty service (the 1:1 rule), and, for every five non-Canadian pay services offered in a package, there must be one Canadian pay service (the 5:1 rule). In addition, there are more detailed rules regarding the distribution of French-language services in French-language markets as well as rules related to third-language services.

105. In Broadcasting Public Notice 2006-23, the Commission set out its policies with regard to the digital migration of pay and specialty services. Among other things, these included a requirement that BDUs offer analog and Category 1 digital services in a package before offering them on a stand-alone basis. In addition, BDUs must “mirror” the analog tiers on digital; that is, the existing analog tiers must also be offered on a digital basis until at least January 2010, and thereafter until the earlier of January 2013 or the time at which the BDU has achieved 85% digital penetration.
106. At the public hearing, most parties agreed that the various detailed packaging rules should be eliminated or, at least, reduced to a minimum. However, some parties proposed that there should be a predominance of Canadian services in each tier offered by a BDU, or that tiers consisting uniquely of non-Canadian services should be prohibited.

Commission's analysis

Preponderance in packages

107. A rule requiring BDUs to ensure that each discretionary package of services offered to subscribers contain more Canadian services than non-Canadian services would be more onerous than the current 1:1 rule for specialty services and the current 5:1 rule for pay services. Should a rule for preponderance in packages be combined with the overall preponderance requirement and the access rules, there would be less flexibility for BDUs than currently exists.
108. The Commission notes that no parties filed compelling evidence that a significant problem would arise from the absence of a preponderance rule for individual packages. On the contrary, it seems clear that most subscribers prefer thematically-organized packages. Further, it is in the interest of BDUs to offer both Canadian and non-Canadian services so that subscribers have the widest range of services within the relevant theme package.

Non-Canadian packages

109. The current rules restrict BDUs from offering a package consisting only of non-Canadian services. At the public hearing, CTVgm argued that this rule should be maintained because non-Canadian packages could be detrimental to Canadian discretionary programming services and to the Canadian broadcasting system as a whole.

110. MTS Allstream Inc. (MTS), on the other hand, opposed this rule, arguing that there could be circumstances where a non-Canadian package was appropriate, and that an overall preponderance requirement was sufficient to both prevent harm to discretionary programming services and ensure the Canadian character of the system as a whole.
111. The Commission finds no evidence that maintaining the prohibition against non-Canadian packages is necessary in order to support Canadian services or to fulfil the objectives of the Act. The Commission considers that the combination of must-carry Canadian services on the basic service, access rights for Category A services and an overall preponderance requirement is sufficient to ensure that subscribers will receive a distinctively Canadian offering and that any non-Canadian packages that may be offered will not harm Canadian discretionary programming services. Again, the evidence is that most packages will be thematically oriented and will include the relevant Canadian services. Certain non-Canadian packages, such as international news packages, could add to the diversity of services offered to subscribers.

Digital migration framework: Distribution in packages and on a stand-alone basis

112. The current packaging rules require BDUs to offer all Category 1 digital services in a package before offering them on a stand-alone basis. As part of its digital migration framework, the Commission extended this requirement to include analog specialty services as well. This rule prevents BDUs from effectively “stranding” certain specialty services by making them available only on a stand-alone basis, often at a higher cost.
113. Broadcasters, including the CAB, Alliance Atlantis Communications Inc. (Alliance Atlantis) and Corus, proposed maintaining the rule and extending it to all specialty services.
114. Rogers and Telus opposed this proposal, arguing that it could be more onerous for distributors than the current rules. However, neither party provided reasons for opposing the proposal.
115. The Commission notes that this rule itself does not force BDUs to distribute any specific service, nor are subscribers limited to receiving services in one particular way under this rule. However, it does provide some support for specialty services by ensuring that they receive the benefits of packaging with other services.

Digital migration: All-in-one French-language specialty package

116. The digital migration framework also requires cable BDUs operating in French-language markets to offer their digital subscribers a package that includes all of the French-language specialty services approved prior to the 2000 digital licensing framework. These services can also be offered in other smaller packages as well as on a stand-alone basis.

117. Most broadcasters who commented on this provision supported the retention of the rule; furthermore, BDUs did not object.
118. Going forward, the Commission considers that this rule may provide significant benefits to subscribers as well as to Canadian French-language specialty services. Further, the Commission is of the view that the rules should be extended in order to include the three existing digital French-language Category 1 services (Mystère, Argent and Réseau Info Sport) and should be applied to all licensed BDUs operating in French-language markets. Applying this rule to all Category A services imposes no unreasonable limitations on the flexibility of BDUs since, in a digital environment, in addition to offering this package, they will also be able to offer these services in other packages and on a stand-alone basis.

Digital migration: Mirroring rules

119. The Canadian Cable Systems Alliance (CCSA), QMI, Rogers and Cogeco all opposed the mirroring rules, which are set out in Broadcasting Public Notice 2006-23, primarily on the basis that they impose requirements on cable services that are not imposed on DTH or digital subscriber line (DSL) undertakings.
120. Few broadcasters commented on the mirroring rules. The CAB made no specific proposal but suggested that the digital migration of pay and specialty services should take place within a “reasonable period of time, for example, two years [after the conversion of OTA television stations].”
121. The Commission considers that the existing mirroring requirements are unnecessarily complex for the new regulatory environment. The new rules related to the basic service, access and preponderance will, in the Commission’s view, provide sufficient protection for programming services. The Commission also notes that it is retaining rules that require BDUs to provide programming services with prior notice of any packaging changes.
122. Finally, the Commission notes that the current rules were intended as a temporary measure to assist programming services during the transition from analog to digital. The course of that transition is now clearer, permitting the policies set out as a result of this proceeding to be designed more appropriately for the emerging environment. Accordingly, the Commission considers that there will be no need for mirroring requirements following the implementation of the amended BDU Regulations on 31 August 2011.
123. In regard to the above-mentioned suggestion by the CAB, the Commission notes that programming licensees will have more than two years to prepare for the digital transition between the issuance of this public notice and the date at which these changes come into effect in August 2011.

Adult services

124. The current rules prohibit the packaging of an adult service in such a way that subscribers are obliged to purchase the service in order to purchase other programming services. This prevents subscribers from being forced to receive adult services as a by-product of ordering other programming services. The Commission considers that this rule is an important way to manage the distribution of adult services and therefore considers it appropriate to retain it as part of the amended BDU Regulations.

Account stacking

125. The current packaging rules require BDUs to pay wholesale fees to pay and specialty services for each residence served, including where multiple residences are served as part of the same account. The Commission notes that no parties submitted interventions in opposition. The Commission therefore considers it appropriate to retain this rule as part of the amended BDU Regulations.

Single-point-of-view religious services

126. The current rules prohibit the packaging of single-point-of-view religious services with programming services of other types. The Commission notes that, consistent with Public Notice 1993-78, this rule is intended to ensure that subscribers are not forced to receive a service promoting a specific religious faith as a by-product of ordering other programming services.
127. Parties to the Proceeding did not propose changing this rule and the Commission considers it appropriate to retain it for the time being. However, the Commission is of the view that its religious policy framework may benefit from a review and that the relevance of this rule should be considered in the context of any such a review.

Commission's determinations

128. In light of the above, as of 31 August 2011, the Commission will eliminate the 1:1 and 5:1 packaging rules. The new rules will consist of the following packaging requirements:
- BDUs shall offer Category A services as part of a package before offering them on a stand-alone basis.
 - BDUs licensed to serve French-language markets shall offer a discretionary package containing all French-language Category A services (with the exception of French-language services that may be mandated for distribution on basic).
 - Adult services shall not be packaged in such a way that subscribers are obliged to purchase the service in order to purchase other programming services.
 - BDUs shall pay wholesale fees to pay and specialty services for each residence served, including where multiple residences are served as part of the same account.

- Single-point-of-view religious services shall not be packaged with other types of services.

Third-language services distributed by broadcasting distribution undertakings

Issues

129. There are currently five Canadian ethnic services licensed for analog distribution (now Category A) and numerous Category 2 (now Category B) third-language services, the latter having no access rights. The Commission generally defines a third-language service as a service that offers at least 90% of its programming in a language other than English or French.
130. In Broadcasting Public Notice 2004-96, the Commission set out a new framework for the authorization of non-Canadian third-language services. In order to expand the diversity and choice available to under-served third-language communities, the Commission adopted a more liberalized approach to the addition of non-Canadian, general interest third-language services, stating that they would generally be approved. In order to continue supporting Canadian third-language services, the Commission adopted specific packaging rules requiring that any third-language non-Canadian service in the same language as one of the five ethnic services must be offered in a package with the relevant Canadian service.
131. All DTH services must distribute the five ethnic services, absent a condition of licence to the contrary. Licensees of Class 1 BDUs must distribute those services under the following conditions:
- the licensee was distributing the service on 16 December 2004, or
 - 10% of the population in the service area is of the ethnic origin to which the service is intended to appeal.
132. In the Proceeding, third-language broadcasters were generally in favour of maintaining the existing rules. Some parties proposed adding measures to protect Canadian third-language services, such as the imposition of a 1:1 Canadian versus non-Canadian packaging rule.

Commission's determinations

133. The Commission notes that the market for third-language services in Canada, although relatively small, is growing, and that these services make a valuable contribution towards ensuring that a Canadian perspective is offered in the languages of various ethnic communities. For that reason, the Commission considers that continued regulatory support for third-language Canadian services remains warranted.

134. Nevertheless, the Commission considers that the existing rules could be streamlined and that a better balance could be struck between support for these services and regulatory simplicity.
135. In the Commission's view, the relevant date to identify those ethnic Category A services that are to be distributed should be the date of this public notice, and not 16 December 2004. As well, a simplified packaging rule for third-language services would benefit both Canadian distributors and programmers. On the first point, establishing the date of this public notice will ensure that these services see no reduction in their current distribution. On the second point, since BDUs distributing these services have an incentive to package them as attractively as possible, these services will likely be included in a package with attractive non-Canadian services relevant to the viewers in question.
136. The Commission considers that a simple packaging requirement of one Canadian ethnic/third-language service, if one exists, with up to three non-Canadian third-language services in the same language(s) would provide BDUs with an incentive to create attractive packages including popular non-Canadian services and the appropriate Canadian services. This would increase the revenue potential for both the BDUs and the Canadian programming services.
137. In striving to simplify its rules, the Commission will amend its current policy with respect to niche non-Canadian third-language services. The simple packaging requirement of one Canadian third-language service to three non-Canadian services will apply to all non-Canadian third-language services, whether they are niche or general interest services. Further, niche non-Canadian third-language services will be subject to the same approach for authorization as general interest non-Canadian third-language services.
138. In summary, the amended rules for ethnic/third-language services will consist of the following:
- All BDUs distributing any of the following ethnic services – Telelatino, Odyssey, Talentvision, Fairchild and Asian TV Network – as of the date of this public notice will be required to continue distributing them.
 - Terrestrial BDUs will be required to distribute the appropriate above-noted ethnic service(s) when 10% of the population in the service area of the terrestrial BDU is of the ethnic origin targeted by the service(s).
 - Non-Canadian third-language services can only be offered in a package with Canadian ethnic/third-language services in the same language(s) if one exists, in a ratio of one (1) Canadian service to up to three (3) non-Canadian services.

New forms of advertising available to broadcasting distribution undertakings

139. Discussions at the public hearing made it clear that new forms of digitally-based advertising represent a significant new revenue opportunity for all sectors in the Canadian broadcasting system. In most cases, the use of these new forms of advertising will require cooperation between the broadcasters – who control the programming – and the distributors – who have the addressable digital networks that reach subscribers/viewers.
140. New forms of advertising, such as targeted advertising that allows advertisers to address different audience segments, will require an amendment to section 7 of the BDU Regulations so as to enable BDUs to make the necessary changes to the programming supplied by the programming undertaking.
141. The BDU Regulations state that a BDU “shall not alter or delete a programming service.” At the public hearing, Bell, Cogeco and Rogers proposed wording that would enable a BDU to make the necessary changes, with the agreement of programming undertakings.
142. The Commission agrees that such an amendment is an important step in permitting BDUs and broadcasters to work cooperatively so as to manage and exploit the possibilities of new forms of advertising. Accordingly, the Commission will amend section 7 of the BDU Regulations by adding a provision similar to the following:
 7. A licensee shall not alter or delete a programming service in a licensed area in the course of its distribution except
 - (g) for the purpose of inserting a commercial message in the programming service in accordance with an agreement entered into with the operator of the service or the network responsible for the service.
143. Given that new forms of advertising represent new revenue opportunities for all parties and the Canadian broadcasting system in general, and will require, in most cases, cooperation between broadcasters and BDUs, the Commission is of the view that it may be appropriate to convene an industry working group that would be responsible for developing best practices to guide arrangements between broadcasters and BDUs regarding various matters. Such matters would include, among others, those relating to determining the party that would be responsible for selling the advertising inventory and the appropriate sharing of costs and revenues. The Commission considers that the appropriate time to establish such a working group may be following the establishment of the framework for VOD undertakings, in regard to which it has today issued a call for comments in Broadcasting Public Notice 2008-101.

Advertising in local availabilities of non-Canadian services

Issues

144. In the Call for comments, the Commission sought public comment on proposals for various new revenue streams for distributors and programmers, including the possibility of advertising in the local availabilities in U.S. specialty services. These local availabilities are periods of advertising time (normally two minutes per hour) which are available in non-Canadian (U.S.) specialty services. This advertising time can be sold by U.S. cable and satellite distributors. In Canada, when the same services are distributed by Canadian BDUs, the Commission's policy has been to permit BDUs to use this time for the promotion of Canadian programming services and other services offered by BDUs.
145. At the public hearing, BDUs argued that they have already paid the U.S. programming services for the right to insert commercial advertising in the time provided by those services for local availabilities. These BDUs submitted that the Commission should therefore change its policy in order to permit them to insert such commercial advertising.
146. Most BDUs accepted that, if they were granted the right to advertise in local availabilities, a specific contribution should be made to support Canadian programming. For example, Rogers proposed that 50% of net revenues be contributed to the CTF; Bragg proposed that 30% of gross revenues be contributed to the BDU's community channel; and Cogeco proposed that 50% of the local availabilities be reserved for the promotion of independently-owned Canadian programming services.
147. Broadcasters generally opposed any change to the existing policy, arguing that the additional advertising inventory represented by the local availabilities would dilute the value of advertising on their services. They noted the decline in advertising growth on most linear services and the fact that, for OTA services, advertising is the only source of revenue.

Commission's determinations

148. The Commission considers that, in certain circumstances, revenues from the sale of advertising in the local availabilities of non-Canadian specialty services could provide a net benefit to the Canadian broadcasting system.
149. The Commission considers that any additional advertising inventory made available through local availabilities should encourage the development of new forms of advertising content that utilize the potential of digital platforms. Such targeted advertising should provide additional value to advertisers and result in new sources of revenue for the system. The Commission considers that BDUs are in the best position to exploit these new forms of advertising.
150. Nevertheless, any new source of revenue should result in a net benefit to the Canadian broadcasting system, including a contribution to the Canadian programming sector, and should increase the funds available for the creation of new Canadian programming.

151. The Commission considers, however, that it does not have a sufficient record in order to accurately assess the likely costs and potential revenues associated with the exploitation of new forms of advertising. In particular, the Commission requires up-to-date information with respect to the time lines for the development of the technological infrastructure to support new forms of advertising, the anticipated reach of these new platforms, and the potential business case for their exploitation.
152. Accordingly, the Commission considers it appropriate to explore these issues before determining how local availabilities should be used for advertising, the extent to which the new digital platforms should be used, and how to ensure a net benefit to the Canadian broadcasting system in order to further the objectives of the Act.
153. In Broadcasting Public Notice 2008-102, also released today, the Commission seeks comment from interested parties with respect to the Commission's objectives for the use of local availabilities and the best means to fulfil these objectives, as well as detailed information regarding licensees' plans with respect to developing and exploiting new forms of advertising. Following the Commission's consideration of any comments received, it will make a final decision on the use of local availabilities so that the system can benefit from this new source of revenues as quickly as possible.

Issues relating to dispute resolution

Issues

154. In the Call for comments, the Commission sought public comment on the appropriate role of dispute resolution in an environment of reduced regulation and on any changes that may be required to the applicable sections of the BDU Regulations and related policies.
155. At the same time, the Commission also proposed that, in regard to disputes relating to undue preference, it may be appropriate to incorporate a reverse onus provision into the regulations that are applicable to BDU, pay (including PPV and VOD) and specialty licensees. Such a provision would be similar to that set out in section 27(4) of the *Telecommunications Act*.
156. In the Proceeding, a number of parties called for increased rigour in the Commission's approach to dispute resolution, including the establishment of relatively short deadlines. Astral, in a study attached to its intervention,¹⁶ proposed an approach, based on final offer arbitration, that uses third-party arbitrators rather than Commission resources. In making its determination on this issue, the Commission has taken careful consideration of that study.

¹⁶*Dispute Resolution between Broadcast Distribution Undertakings and Programming Undertakings in a Less-regulated Environment.*

157. In regard to the proposed reverse onus provision, most parties either supported the amendment or at least did not oppose it. Shaw nevertheless warned that shifting the onus could result in a flurry of frivolous complaints. Bell suggested that the difficulties associated with undue preference could be addressed through an explicit disclosure process for relevant documents.

Commission's determinations

158. The Commission notes that most allegations to date regarding undue preference have been filed by programming undertakings against BDUs. The Commission recognizes that, in most cases, BDUs are in sole possession of key information without which complainants cannot fully argue their cases. The Commission therefore considers that a reverse onus provision similar to that set out in the *Telecommunications Act* would be appropriate with respect to BDUs. A reverse onus provision would specify that a complainant must demonstrate that a preference and/or disadvantage exists, at which point the BDU would then be required to demonstrate that its actions are not undue.
159. Therefore, the Commission will issue proposed amendments to the BDU Regulations, relating to reversal of onus, as soon as possible.
160. On the basis of the record of this proceeding, the Commission is not satisfied that the same problem exists concerning allegations of undue preference against programming undertakings, and is therefore not prepared to impose a reverse onus provision on them at this time.
161. The Commission also intends to insert undue preference provisions into the *Television Broadcasting Regulations, 1987*.
162. The Commission recognizes its responsibility in resolving disputes that arise between BDUs and programming undertakings, where those disputes are relevant to the regulation and supervision of the Canadian broadcasting system.
163. Three distinct methods by which such disputes can be resolved in a timely manner, with the assistance of the Commission, are set out below. The Commission notes the uniqueness of each method, and that the choice of method to be pursued lies with the parties involved. The Commission also notes that parties may, under current regulatory provisions, negotiate directly or use third-party arbitrators to resolve disputes, without Commission involvement.
164. The first method, which currently exists and which will continue to be made available to the parties involved, consists of Commission staff-assisted mediation. This process may be requested by any one of the parties to a dispute and involves Commission staff assisting the disputants in arriving at a consensual resolution of their dispute. Participation in the process by both parties is mandatory, unless both parties have an agreed upon statement of facts and both request one of the two other methods set out below. In Commission staff-assisted mediation, the proposed resolution is not binding. Further, time limitations may be placed upon the mediation process by the mediator.

165. The second method, which may be used when the parties involved fail to resolve the dispute through negotiation, and only when the issue is monetary, consists of final offer arbitration. In this case, the Commission will act as arbitrator. Each side to the dispute will put forward its position as a “final offer”; the Commission, as arbitrator, may not impose a solution other than that put forward by one of the parties. As such, the result should lead each party to suggest a moderate position for fear that an extreme position would lead to that of the other side being selected by the arbitrator. This method may be sought by either party, and will result in a binding determination.
166. The third method consists of one party applying to the Commission for an expedited Commission hearing. This method may be used where the nature of the dispute is not exclusively monetary. The Commission will award the relief requested, in whole or in part, if finding in the applicant’s favour.
167. Should the Commission so determine, any information filed relating to the resolution of a dispute through Commission staff-assisted mediation, final offer arbitration or an expedited Commission hearing, along with the proceeding and decision of the Commission, may be kept confidential.
168. No later than 1 April 2009, the Commission will issue an information bulletin setting out in detail the procedural steps to be followed and the time limitations that will apply to each of the three methods described above.

Signal sourcing and transport

169. In the Call for comments, the Commission sought public comment on the need for changes to its current policies relating to satellite relay distribution undertakings (SRDUs) and terrestrial relay distribution undertakings (TRDUs). These undertakings generally function as wholesalers by transporting broadcasting services and making those services available to BDUs, which then offer them to subscribers. Currently, the relay distribution sector in Canada is dominated by one undertaking, Shaw Broadcast Services (previously Cancom).
170. The record of this proceeding raised five issues with respect to the sourcing and transport of broadcast signals:
 - the current Commission requirement to receive services from a licensed SRDU;
 - the possibility of exempting SRDUs;
 - the need to incorporate the transport of Canadian pay and specialty services into the SRDU licences;
 - the relevance of existing restrictions on TRDUs; and
 - the responsibility for the cost and transport of pay and specialty services.

Current Commission requirement to receive services from a licensed satellite relay distribution undertaking

171. Licensed BDUs are generally prohibited from distributing certain services¹⁷ to their subscribers unless those services are received from a licensed SRDU. Those services include the signals that provide the programming of the four U.S. commercial networks (CBS, NBC, ABC, FOX) and of the non-commercial PBS network (collectively, the U.S. 4+1 signals), U.S. super stations and distant Canadian signals.
172. The Commission has granted exceptions to this requirement for a number of BDUs that wished to use their own facilities to receive and transport these signals. Furthermore, all parties that commented on this rule, advocated its removal. Accordingly, the Commission will remove this requirement from the BDU Regulations by amending the *Lists of eligible satellite services* (the Lists) as soon as is practicable.

Possibility of exempting satellite relay distribution undertakings

173. Currently, SRDUs are licensed undertakings and their regulatory requirements are set out in conditions of licence. These requirements include the following:
- distributing a preponderance of Canadian services;
 - carrying minimum levels of French-language programming services (Shaw Broadcast Services only);
 - providing service to any BDU, under agreed-to terms;
 - no undue preference;
 - submitting to Commission dispute resolution; and
 - contributing 5% of gross annual revenues to Canadian production.
174. SRDUs argued that the regulation of SRDUs does not contribute materially to the objectives of the Act and that they should be exempted from licensing. They proposed instead that they be subject to an exemption order similar to the existing TRDU exemption order.
175. As noted above, the SRDU sector is dominated by one undertaking, Shaw Broadcast Services. Until more effective competition has emerged, the Commission considers that exemption of SRDUs would not benefit the Canadian broadcasting system. Further, the Commission notes that SRDUs currently contribute approximately \$900,000 annually to production funds. This amount, in the Commission's view, is material to the attainment of the objectives of the Act.

¹⁷ These services are marked with an asterisk on the *Lists of eligible satellite services*, which can be found on the Commission's website under "Industries at a Glance."

176. Accordingly, the Commission will continue to license SRDUs. However, at the next renewals of the SRDU licences, the Commission is prepared to review evidence that addresses its concerns and consider whether exemption would constitute an appropriate course of action at that time.

Need to incorporate the transport of Canadian pay and specialty services into the satellite relay distribution undertaking licences

177. Currently, SRDU licences encompass the reception and delivery of OTA stations and non-Canadian programming services to terrestrial BDUs, but not the transport of Canadian pay and specialty services. Over time, the need for an efficient means of transporting these signals to distributors across Canada (i.e., their uplink to satellite and downlink to terrestrial BDUs) has resulted in them using the SRDU facilities in a way that is practically indistinguishable from OTA and non-Canadian services.

178. While parties did not comment on this issue during the Proceeding, the Commission is of the view that the satellite transport of Canadian pay and specialty services by SRDUs should be incorporated into SRDU licences. Accordingly, as part of the next renewals of SRDU licences, the Commission will review evidence and consider whether incorporating the satellite transport of pay and specialty services into SRDU licences or an SRDU exemption order would constitute an appropriate course of action at that time.

Relevance of existing restrictions on terrestrial relay distribution undertakings

179. Currently, the exemption order for TRDUs¹⁸ places four conditions on these undertakings:

- they cannot employ satellite technology;
- they cannot alter or delete programming;
- they must be local or regional; and
- they must be affiliated with the BDU to which they transport programming services (i.e., they must deliver signals pursuant to an agreement with the BDU).

180. BDUs, which generally operate TRDUs, submitted that all limitations on their ability to source and transport signals should be removed. The CCSA and MTS requested that BDUs be authorized to transport services to other BDUs, without limitations.

181. The Commission proposes to eliminate the requirements that TRDUs be local or regional and that they be affiliated with the BDUs to which they provide service. In the Commission's view, removal of these restrictions would encourage greater competition

¹⁸ See Public Notice 2000-10.

in the signal transport sector. The Commission will also subject TRDUs to the Commission's requirements with respect to dispute resolution. Finally, for clarification purposes, the Commission notes that BDUs, or other parties, may transport programming services to other BDUs under the TRDU exemption order. The Commission will publish a revised exemption order for public comment by no later than 1 April 2009.

Responsibility for the cost and transport of pay and specialty services

182. The Commission has generally taken the view that it is reasonable to expect pay and specialty services with guarantees of access to be responsible for (and generally pay for) the transport of their services to distributors. Although this is not a formal requirement, it has become a Commission policy and an industry practice.
183. The costs associated with transporting pay and specialty services have become a greater concern due to the increased costs of transporting HD versions of these services.
184. Most BDUs proposed that services with access rights should continue to pay all of the costs of transport, while the transport costs for services with no access rights should remain subject to negotiation between distributors and the programming services. The CCSA proposed that pay and specialty services be required to provide both SD and HD versions of their services to all BDUs on the same basis.
185. The Commission notes that, as part of this review, it has decided to retain access rights for Category A programming services. The Commission considers that it is reasonable to require Category A services to bear the responsibility with respect to the costs of transporting either SD or HD signals to a BDU's head end or uplink centre, and will amend the relevant regulations accordingly.
186. At the Proceeding, it was noted that the DTH undertaking Bell TV sometimes charges a fee to pay and specialty services in regard to the alleged cross-subsidization of Star Choice by the SRDU of the Shaw Broadcasting Service. The Commission considers that, since this fee is established through the individual affiliation agreements reached between Bell TV and these pay and specialty services, this matter would be best addressed through its dispute resolution process.

Licence classes and exemptions for broadcasting distribution undertakings

Issues

187. Currently, terrestrial BDU licences are divided into three classes, based primarily upon the number of subscribers that the BDU serves within a local service area. The classes are generally as follows:
 - Class 1 – more than 6,000 subscribers;
 - Class 2 – between 2,000 and 6,000 subscribers; and
 - Class 3 – fewer than 2,000 subscribers.

188. Where a new terrestrial BDU chooses to operate within the service area of an incumbent and competes with that incumbent, the Commission grants the same class of licence to the new entrant as it has to the incumbent, regardless of the number of subscribers the new entrant actually serves. This policy is to ensure that competition between terrestrial BDUs is fair and that competitors have the same regulatory obligations.
189. The Commission has also issued two BDU exemption orders,¹⁹ one for BDUs that serve fewer than 2,000 subscribers and one for BDUs that serve between 2,000 and 6,000 subscribers. The exemption order for BDUs serving fewer than 2,000 subscribers has minimal conditions. The exemption order for BDUs serving between 2,000 and 6,000 subscribers includes more extensive conditions that are similar to the regulatory requirements for Class 2 BDUs. It is estimated that approximately 420,000 subscribers are served by exempt BDUs.
190. In the Call for comments, the Commission sought public comment on whether it should simplify the current three licence classes for terrestrial BDUs and whether changes should be made to the existing exemption orders.
191. In general, BDUs proposed reducing the number of classes of licence but provided few specific suggestions. Terrestrial BDUs made the point that they should not be placed at a competitive disadvantage vis-à-vis DTH undertakings by virtue of the regulatory requirements of a particular licence class. The CCSA, representing small cable companies, initially proposed that all BDUs with fewer than 20,000 subscribers be exempted. It subsequently revised this position to argue that all systems not affiliated with one of the four largest multiple system operators (Rogers, Shaw, Cogeco and Videotron) should be exempted.
192. BDUs also made a variety of proposals to expand and simplify the existing exemption orders.

Commission's determinations

193. The Commission considers that the existing licensing regime can be streamlined, and that a greater number of smaller BDUs can be exempted from regulation, without detracting in a material manner from the implementation of Canadian broadcasting policy. Further, this will substantially streamline the Commission's regulatory activities with respect to BDUs.
194. Accordingly, the Commission determines to exempt, under a single exemption order, all terrestrial BDUs serving fewer than 20,000 subscribers, including cable, DSL and multipoint distribution system (MDS) undertakings, and to introduce a single class of licence for those BDUs that are not eligible for exemption.

¹⁹ See Broadcasting Public Notices 2007-125 and 2002-74.

195. The Commission's policy for exemption eligibility will be based on the following principles:
- terrestrial BDUs that serve fewer than 20,000 subscribers in a market will be eligible for exemption;
 - terrestrial BDUs that serve 20,000 or more subscribers or that compete in a market with another BDU that serves 20,000 or more subscribers will continue to have to be licensed;
 - exempt BDUs will not be subject to licensing should a licensed BDU from an adjacent area extend its service area and thereby enter into the small market of the exempt BDU in order to compete with that exempt BDU; and
 - BDUs that operate in both small and large markets under a single regional licence will be permitted to determine whether there would be greater benefits to continuing to operate in all markets as a single undertaking under a single licence, or to conduct their operations in smaller markets in such a way that those operations would constitute a discrete operation that would be eligible for exemption.
196. With respect to the last of these principles, BDUs operating under regional licences may apply to remove certain service areas from their licences so that they may operate in those areas as exempt undertakings. To be eligible for such a "carve-out," two conditions must apply: a) all or part of the service area removed from the regional licence must already be served by a competing exempt BDU; and b) the regionally licensed BDU must be operating as a discrete operation in that service area. The term "discrete operation" will be defined in the proceeding referenced below.
197. By 1 April 2009, the Commission will issue for comment a proposed revised exemption order that will contain what it considers to be the minimum necessary terms and conditions for BDUs with fewer than 20,000 subscribers, based on the policy described above. As part of its consideration of the terms and conditions for exempt BDUs, the Commission will also request comment on the specific criteria to be used in determining what constitutes a "discrete operation."
198. Exempt BDUs may request documentation from the Commission indicating that they are operating an authorized BDU under the Commission's exemption order. Prior to issuing such documentation, the Commission will require BDUs to provide assurances that they are in fact operating in compliance with the terms of the exemption order.
199. In order for the Commission to receive basic information that it considers necessary,²⁰ exempt BDUs will be required to file certain minimal information annually with the

²⁰ This information is necessary to ensure that the Commission has accurate and current data as to the identity, location and size of distribution undertakings so as to establish appropriate policies for the Canadian broadcasting system as a

Commission. The required information will be set out in the proposed new exemption order to be released for comment.

200. Finally, the Commission is of the view that exempt BDUs should be required to submit to dispute resolution and be eligible to refer disputes to the Commission for resolution.
201. The adoption of a single class of terrestrial BDU licence will be reflected in the amended BDU Regulations. As indicated above, the Commission will issue for comment a revised exemption order by 1 April 2009.

Other issues relating to broadcasting distribution undertakings

202. In the Call for comments, the Commission requested comments in regard to a number of secondary issues. In many cases, the Commission proposed to eliminate or streamline regulations where they were no longer relevant; in some cases, issues were raised during the public process; and, in other cases, the Commission is making changes in order to be consistent with the new policy directions set out in this public notice. The Commission's determinations in regard to these secondary issues are set out below.

Elimination of the basic band requirement

203. BDUs are currently required to distribute priority signals beginning with the basic band – i.e., analog channels 2 through 13. The Commission considers that this requirement is no longer necessary in the multi-channel digital environment. Further, BDUs will continue to be required to carry priority signals as part of their basic service and will have every motivation to design that service so that subscribers can readily find the services they wish to view.
204. None of the parties who argued for the retention of the basic band requirement provided any substantial evidence linking the channel placement of a particular service on the basic band to increases or decreases in viewing to that service.
205. Accordingly, the amended BDU Regulations will eliminate the basic band requirement.

Basic service buy-through provisions

206. As set out in section 5 of the BDU Regulations, licensees must provide subscribers with the basic service before providing any other programming services, with the exception of PPV, VOD and exempt services. That is, a subscriber may currently subscribe to a PPV or VOD service without receiving the basic service. In light of the growing importance of VOD, it was argued that these exceptions should be removed so that all subscribers receive the basic service before subscribing to VOD or PPV services.

207. The Commission will retain the current exceptions for exempt services. With respect to VOD and PPV, the Commission considers that it would be more appropriate to rule on this issue following its consideration of the comments to be filed regarding its proposed VOD policy framework.

Elimination of section 17(5) of the Broadcasting Distribution Regulations

208. Section 17(5) of the BDU Regulations requires a BDU to distribute, on its basic service, services that the Commission determines are in the national public interest. However, the Commission notes that this section of the BDU Regulations has never been used, and that it has preferred to rely upon section 9(1)(h) of the Act to ensure that services that warrant mandatory distribution on basic are so distributed. Accordingly, the Commission will eliminate section 17(5) of the BDU Regulations and include in the amended BDU Regulations a section that will make it imperative for BDUs to comply with orders to distribute 9(1)(h) services.

Customer service standards

209. Noting the dissolution of the Cable Television Standards Council (CTSC), the Commission sought comment on whether regulatory intervention was necessary to address such matters as the following: the availability of billing in alternative formats, privacy concerns, clarity of billing, and other customer service standards.
210. The Commission considers that, consistent with a more market-driven approach, the establishment of an industry body to oversee and apply customer service standards is not necessary.

Distribution of audio services

211. In the Call for comments, the Commission proposed to delete sections 22, 23(1)(b), 23(2) and 34(b) of the BDU Regulations, all of which pertain to the distribution of various audio services. Few parties commented on this proposal; of those who did comment, none raised objections. Accordingly, the Commission will eliminate the above-noted sections of the BDU Regulations.
212. The Commission notes, as indicated above, that BDUs will remain subject to a requirement to ensure that the majority of audio channels received by the subscriber are devoted to the distribution of Canadian programming services.

Elimination of sections 18(8) to 18(10) of the Broadcasting Distribution Regulations

213. In the Call for comments, the Commission proposed the elimination of sections 18(8) to 18(10) of the BDU Regulations, which relate to the distribution of specialty services approved in 1996. Given that they are all now distributed, these sections are no longer necessary or relevant.

Elimination of Part 5 of the Broadcasting Distribution Regulations

214. Part 5 of the BDU Regulations relates to fees for and provision of basic service. In light of the fact that the competitive environment has resulted in the de-regulation of basic service rates for over 95% of terrestrial BDUs, the Commission proposed the elimination of Part 5 of the BDU Regulations. The Commission notes that BDUs were in favour of this proposal and that no opposing comments were received. Accordingly, the Commission determines that it will not include provisions for the rate regulation and provision of basic service in the amended BDU Regulations.

Direct-to-home community channels

215. During the proceeding, DTH undertakings proposed that they be permitted to offer community channels under similar terms and conditions as terrestrial BDUs.
216. The Commission recognizes the advantages of harmonizing, as much as possible, the rules for DTH undertakings and terrestrial BDUs. Nevertheless, it considers that the question of DTH undertakings operating a “community” channel should be considered in the broader context of the Commission’s community media policy. The Commission will therefore consider this proposal as part of its review of community media policies.

Distribution of community media undertakings

217. The Commission considers that issues relating to the distribution, on a digital basis, of community-based low-power television stations and digital undertakings would be more appropriately considered as part of its review of community media policies.

Withholding of signals during a dispute

218. BDUs are generally required, by regulation, to distribute pay and specialty services that operate in the market that they serve. However, currently there is no similar regulatory requirement for the programming services to provide their signals to distributors. In the event of a dispute, the Commission has indicated that, as a matter of policy, programmers should not withhold their signals from distributors during the dispute. The Commission has now decided to strengthen this policy and will amend the *Pay Television Regulations, 1990* and the *Specialty Services Regulations, 1990* to provide that programming undertakings not withhold their signals from BDUs in the event of a dispute.

Commercial relationships – Affiliation agreements

219. Affiliation agreements are contracts between distributors and programming services that establish the terms and conditions for the distribution of these services. These agreements include rates and any other issues that the parties consider relevant to their commercial relationship. The Commission has generally not involved itself in establishing rules or policies on affiliation agreements, allowing parties to negotiate these agreements between themselves.

220. A number of programming services suggested that the Commission should involve itself in matters related to the negotiation of affiliation agreements, including requiring parties to enter into written affiliation agreements (including a “default agreement” that would set out terms, carriage, packaging, channel placement, notice requirements and audit rights) and/or specifying particular terms in these agreements, including most favoured nations (MFN) clauses.
221. In the Commission’s view, such an approach would be administratively burdensome and unnecessarily intrusive in the commercial relationship between distributors and programmers. Further, the Commission considers that the imposition of specific terms and conditions in all affiliation agreements would result in the Commission intervening in a large number of existing agreements which have been negotiated between the parties. Accordingly, the Commission does not intend to impose any rules with respect to specific terms in affiliation agreements. However, the Commission notes that parties may avail themselves of the Commission’s dispute resolution processes to resolve matters related to affiliation agreements.

Commercial relationships – Audit rights

222. In Broadcasting Public Notice 2005-34, the Commission set out guidelines related to the auditing of BDU subscriber information by pay and specialty services. Those guidelines established principles with respect to the selection of auditors, the scope of the audit, the timeframe for commencing audits and confidentiality. The Commission stated that those guidelines would be used in its dispute resolution processes and were intended to aid in the development of appropriate audit provisions for inclusion in future affiliation agreements. The Commission did not find it appropriate, however, to introduce specific audit provisions into the BDU Regulations at that time.
223. A number of programmers submitted that audit rights are a fundamental part of the commercial relationship between programmers and BDUs and suggested that incorporating an audit requirement into the amended BDU Regulations would remove the need for parties to negotiate audit terms as part of affiliation agreements. Distributors, on the other hand, argued that it is not necessary to incorporate the existing guidelines into the amended BDU Regulations, since audit requirements are already a common part of negotiated affiliation agreements.
224. The Commission considers that the right of a programming service to perform an audit on BDU subscriber information is essential to ensure that programmers receive the correct compensation from BDUs. Despite the Commission’s determinations set out in Broadcasting Public Notice 2005-34 in this regard, programming services have continued to raise a number of concerns with respect to audits. In an effort to reduce ongoing problems with respect to obtaining audit access to BDU information, the Commission intends to amend the BDU Regulations to require BDUs to permit audit access by programming services.

Commercial relationships – Notice of channel realignment

225. Under the BDU Regulations, Class 1 and Class 2 terrestrial BDUs are required to provide notice to Canadian programming services if the BDU intends to change the channel on which the service is being distributed, 60 days prior to the change. This requirement does not currently apply to DTH undertakings.
226. In Broadcasting Public Notice 2005-35, the Commission determined that BDUs should provide more detailed notice to programming services of proposed changes in terms of their distribution, packaging or retailing. In that public notice, the Commission stated that BDUs should provide this information to programming services 60 days in advance of the change period.
227. In the Proceeding, parties did not provide extensive comments on this matter. However, programmers indicated that BDUs have not been consistently observing the notification requirements set out in Broadcasting Public Notice 2005-35, and submitted that BDUs often move services with little or no notice. Several programmers recommended that these more detailed requirements be incorporated into the BDU Regulations.
228. The Commission determines that it is appropriate to continue to require terrestrial BDUs to provide programmers with notice of modifications to channel line-ups, including the removal of channels, in accordance with the rule currently set out in the BDU Regulations. The Commission also intends to amend the BDU Regulations to apply this rule to DTH licensees. However, the Commission does not intend to add the more extensive notice requirements set out in Broadcasting Public Notice 2005-35 to the BDU Regulations at this time, although they will continue to apply.

Inside wire

229. In response to the questions raised in the Call for comments in regard to the use of “inside wire” owned by a licensee, most parties generally supported the Commission’s existing policy. Accordingly, the Commission will not make substantive changes to its policy with respect to inside wire. However, in the proposed amendments to the BDU Regulations, the Commission will propose wording to clarify that the regulations and related definitions apply to externally wired multi-unit buildings.

Elimination of section 25 of the Broadcasting Distribution Regulations

230. Section 25 of the BDU Regulations prohibits the distribution of certain services on restricted channels.²¹ The Canadian Film and Television Production Association (CFTPA) opposed eliminating this regulation, but did not provide any reasons in support of its position.
231. In the Commission’s view, this provision is no longer necessary and, to the extent that impaired channels may exist in a digital environment, the market will ensure that viewers are not disadvantaged. Accordingly, the Commission will exclude the existing section 25 from the amended BDU Regulations.

²¹ “Restricted channels” are channels that suffer from interference from OTA radio or television services.

Standard authorizations

232. In the Call for comments, the Commission proposed to reduce the necessity for duplicative applications by more than one BDU on the same issue through the use of standard authorizations. These would be used where the Commission approves a request from a BDU to do something not contemplated by the current BDU Regulations. Such a request could result in the issuance of a standard authorization, which would be incorporated by reference into the licences of all BDUs by way of a standard condition of licence.
233. This proposal received general support from those parties that addressed it.
234. Accordingly, the Commission will proceed with this proposal and will set out specific wording that will be incorporated into the conditions of licence of BDUs, as well as into the new exemption order for BDUs as appropriate. The Commission will implement this change as soon as is practicable.

Regulatory framework for pay and specialty programming undertakings

235. In the Call for comments, the Commission sought comment on several policy issues related to discretionary programming services. These issues related to the following:
- authorization of non-Canadian services;
 - genre exclusivity – Canadian services;
 - a policy framework for VOD programming services;
 - the appropriate programming obligations for discretionary services;
 - advertising limits for specialty services; and
 - the processing of applications for Category B services.
236. The issue that received the most attention during the Proceeding was the long-standing policy of genre exclusivity for discretionary services. However, questions were also raised relating to the appropriate programming obligations for discretionary services in light of any changes to the BDU regulatory framework, as well as the most appropriate policy framework for VOD programming services.
237. The Commission has issued today Broadcasting Public Notice 2008-101, which sets out for public comment detailed questions as well as the Commission's preliminary positions with respect to a comprehensive policy framework for VOD programming service.

238. With respect to the programming obligations for pay and specialty services, the Commission considers it more appropriate to discuss these in detail at their licence renewals. This will give the licensees an opportunity to assess the impact of the new policies and regulations contained in this public notice and formulate their commitments accordingly.

Authorization of non-Canadian services

Issues

239. In the Call for comments, the Commission sought comment on whether changes needed to be made to its current policy of not authorizing, for distribution in Canada, non-Canadian services that are directly competitive with any English- or French-language Canadian pay or specialty services, including Category 2 services that may not have launched.
240. The majority of broadcasters and cultural organizations opposed any relaxation of the Commission's current approach. They took the view that an important reason for the diversity of Canadian services now available to viewers is that these services have had an opportunity to grow without facing direct competition from non-Canadian, largely U.S., services in the same genre. It was also noted that the Commission's current policy encourages Canadian services to make agreements with their U.S. counterparts in order to access popular non-Canadian programming. In this way, Canadian viewers are not deprived of non-Canadian programs, and are also assured of Canadian programming that reflects their needs and interests.
241. Most BDUs recognized that a fully open-entry approach for non-Canadian services would not be consistent with the objectives of the Act. Bell and Telus indicated that the current test for competitiveness was generally effective. Rogers proposed that the test focus on the impact that a non-Canadian service would have on the viability of a Canadian service, and Cogeco suggested that the focus should be on whether the non-Canadian service would have a detrimental impact on the Canadian program rights market. On the other hand, both Shaw and MTS supported a fully open-entry approach.
242. In regard to the Commission's consideration of unlaunched Category 2 services, various parties expressed the concern that this policy permits unlaunched Canadian services to "squat" on a genre and thus prevent Canadian subscribers from accessing new non-Canadian services in that genre.

Commission's determinations

243. The Commission considers that its current approach to authorizing non-Canadian, English- or French-language services remains effective and as such proposes no substantial change to that approach. Accordingly, the Commission will retain a competitiveness test, based primarily on overlap between non-Canadian and Canadian pay and specialty services. By doing so, the Commission will take into account both the extent and the significance of any overlap between a proposed non-Canadian service and any existing Canadian service. In the Commission's view, this approach reflects the

objectives of the Act in that it gives priority to the distribution of Canadian services while recognizing the choice, diversity and alternative perspectives that can be added to the system by the availability of non-Canadian programming and programming services.

244. The Commission also considers that the current approach recognizes the importance to Canadian services of a separate Canadian rights market and assists those services by encouraging direct partnerships with non-Canadian services or by the licensing of specific programs.
245. With respect to non-Canadian news services, however, the Commission considers that a more open-entry approach would be consistent with the importance it places on a diversity of editorial points of view. Over the years, the Commission has authorized a wide variety of non-Canadian news services in English and French. Canadian news services have generally not opposed the entry of these non-Canadian services, and there is no evidence that their presence in the system has had a negative impact on the Canadian services.
246. Accordingly, absent clear evidence, as determined by the Commission, that a non-Canadian news service will violate Canadian regulations, such as those regarding abusive comment, the Commission will be predisposed to authorize non-Canadian news services for distribution in Canada. This change will be effective as of the date of this public notice.
247. With respect to its current approach to unlaunched Canadian Category 2 (now Category B) services, the Commission considers that, generally, it should no longer take into consideration unlaunched services when assessing the competitiveness of English- or French-language non-Canadian services, unless such a service presents evidence that launch is imminent.
248. The Commission has also decided to simplify and consolidate the Lists to result in a single list for services authorized for either analog or digital distribution by all BDUs.
249. Finally, the Commission will immediately harmonize the information requirements that sponsors must satisfy when making requests for the addition of non-Canadian third-language, and French- and English-language services to that list.

Genre exclusivity – Canadian services

Issues

250. Currently, analog and Category 1 services (Category A) are licensed on a one-per-genre basis. The Commission generally requires that these pay and specialty services be complementary and not compete directly with one another. However, in 2006, the Commission determined that an exception to the one-per-genre policy was appropriate in the English-language pay sector. The exception was granted in light of the health of the existing pay licensees and the increase in support for Canadian programming that would result from licensing a competitor.

251. In the Call for comments, the Commission noted that its objectives with respect to its genre policy are to ensure a diversity of programming genres and to enable Category 1 and analog services to meet their programming obligations. It also acknowledged that the increased number of discretionary services has resulted in a certain amount of overlap – particularly in the genres of news and sports. In light of the above, the Commission sought comment on what ongoing public purpose is served by maintaining genre exclusivity for pay and specialty services and on whether direct competition between services in the same genre should be permitted.
252. The majority of BDUs supported the elimination of genre exclusivity, arguing that it is no longer required as the industry has matured, and that the removal of that policy would allow competition among Canadian services. BDUs also argued that the number of genres recognized by the Commission has been expanded and fragmented, to the point where it is sometimes difficult to ascertain where one programming genre begins and another ends. Moreover, BDUs submitted that maintaining genre definitions – even broad ones – would be artificial and counterproductive and that there is no evidence to suggest that genre definitions are “essential” to the achievement of the objectives of the Act.
253. Some existing Category 2 services also favoured the elimination of genre exclusivity, arguing that it would allow for choice among programming services within a given genre and would permit services to tailor their overall programming schedules to meet viewers’ demands.
254. The majority of broadcasters and cultural organizations favoured maintaining genre exclusivity, arguing that it has been crucial to the Canadian broadcasting system in the past by helping discretionary services to meet their obligations and provide a broad diversity of programming formats. Some argued that the elimination of this policy would result in broadcasters “morphing” their existing services into the most profitable genres and effectively abandoning less profitable ones. It was also submitted that eliminating genre exclusivity would lead to increased competition among Canadian services for U.S. programming, driving up the costs of acquiring such programming and reducing the resources available for Canadian programming.
255. The CAB and several broadcasters, however, were of the opinion that the Commission needs to adopt a practical approach to genre exclusivity. Such an approach would, in their view, take into account the nature of each genre licensed to date and the ability of a particular genre to support the licensing of multiple Canadian services without unduly impacting the existing services’ ability to meet their regulatory obligations.
256. During the Proceeding, the CAB proposed a simplification of the rules that would result in services no longer being limited to certain program categories. In the CAB model, however, existing limitations on certain categories would be maintained.

257. CTVgm and Canwest proposed a variation of the CAB model. In the CTVgm/Canwest model, there would be no prohibition on certain program categories and no limits on any categories. The only regulatory tool to ensure that services maintained the genre for which they were licensed would be the narrative description in the nature of service condition of licence.
258. Currently, each discretionary service has a condition of licence relating to its nature of service. This condition of licence generally includes three elements: a narrative description of the nature of service, a list of program categories from which the service may draw programming, and, in many cases, additional conditions limiting the broadcast of certain program categories or otherwise tailoring the nature of service. The narrative description describes the type of programming that will be scheduled, the audience to be addressed and the specific focus that distinguishes the service from other services.
259. In addition to the narrative description, the Commission has imposed limits on the program categories from which the service may draw programming.²² For some services, certain categories may be prohibited; for others, certain categories may be limited in terms of the amount of the schedule that they can occupy. For example, Men TV, which is “dedicated to men’s lifestyle,” is prohibited from scheduling programming in the news, sports and music program categories (see Decision 2000-464); Discovery Channel may not do drama programming (see Decision 2001-733); and MTV (formerly Talk TV), which is “devoted to talk programming,” may not do music programming (see Broadcasting Decision 2004-26).
260. Examples of cases where thresholds have been placed on certain program categories include Canal D, which must broadcast 50% documentaries (see Broadcasting Decision 2005-441); MuchMusic, which must broadcast 50% music videos (see Broadcasting Decision 2006-380); TVTropolis (formerly Prime TV), which can only program drama that is at least 10 years old (see Broadcasting Decision 2004-18); and The Score, which cannot broadcast more than 15% live sports programming (see Broadcasting Decision 2004-10).
261. The above-noted limitations are designed to ensure that discretionary services stick to the genres for which they were licensed and do not morph into a genre that is directly competitive with other Canadian Category A services.
262. With respect to introducing greater competition among Canadian services, the Commission heard a number of proposals.
263. Rogers proposed that the Commission drop genre exclusivity among Canadian services, but retain it with respect to non-Canadian services. It recommended that the Commission establish five broad genres (news, sports, general interest, music and drama), each with common exhibition and spending requirements.

²² See Public Notice 1999-205.

264. Corus also recommended the identification of a limited number of broadly defined genres, with broad definitions permitting the grouping of services according to similar themes and/or target audience. Each service within a given genre would be free to adjust programming content and strategies so as to best serve the needs of its audience. Provided the service remained within the broad confines of its defined genre, there would be no need to apply to the Commission for prior approval of such adjustments.
265. Pelmorex Communications Inc. proposed that the criteria that would be used to evaluate the degree of genre exclusivity that would be warranted could be established based on broad policy considerations. Those criteria might include the following:
- Would a proposed new service be a substitute for or simply be competitive with the existing licensee operating in the genre? (i.e., Would consumption of one eliminate the need for the other or would a consumer consider buying both?)
 - If a new genre is being proposed, would the market support such a service? (This would require the consideration of market size, taking into account, for example, whether it relates to an English-language market or a French-language market.)
 - Could the market support multiple services within a genre without unduly affecting the ability of the existing licensee to meet its regulatory obligations?
 - Would a decision to license more than one service in a given genre add to, or detract from, the diversity of Canadian voices?
 - Are there unintended consequences from relaxing genre exclusivity? For example, does exclusivity enjoyed in the English-language market act to support services in the French-language market?

Commission's determinations

Competition

266. The Commission has carefully examined the various proposals for changes to its genre exclusivity policy. It recognizes that, in certain popular genres such as news and sports, there is already considerable competition between Canadian services despite differences in the nature of service set out in their respective conditions of licence. Further, as the system evolves, it may be possible to introduce greater competition into other genres.
267. Nevertheless, the Commission is concerned that a wholesale move away from genre exclusivity could have significant negative consequences on the diversity of Canadian services offered to viewers. In the Commission's view, this diversity has two major benefits for Canadians:
- it provides viewers with a wide range of Canadian programming choices; and
 - it ensures the maximum contribution to the creation of Canadian programming.

268. As noted by a number of parties, an open-market approach could encourage the competitors in a given genre to acquire the most popular and profitable programs. This could reduce the diversity of programming offered to viewers and, to the extent that this programming is non-Canadian, would reduce the resources available to support new Canadian programming.
269. Accordingly, the Commission will introduce competition in those genres where it is convinced that a competitive environment will not significantly reduce either the diversity of services available to viewers or their contribution to the creation of Canadian programming.
270. In order to determine the ability of a programming genre to sustain competition, the Commission will consider the following criteria:
- economic health of the services in a genre – includes profitability and revenue over a period of time, which will serve in determining the financial capacity of the service(s) within that genre to withstand competition and continue meeting programming commitments;
 - popularity – includes audience and subscriber information and degree of brand recognition, which will serve in identifying genres that are most popular with viewers and that would arguably attract more viewers, rather than fragment existing viewing;
 - programming availability – relates to the availability of programming within a genre – to the extent that there are large libraries of programming in that genre (Canadian and non-Canadian); it is possible that more services could be supported by that programming, without undue program duplication or competition for program rights;
 - diversity that exists within a genre – includes the extent to which the genre is already open to a degree of competition and the risk that, without some genre exclusivity, services might “rush to the middle,” seeking programming with the highest margins, rather than maintaining a specific nature of service and/or serving a specific audience; and
 - other consequences that might result from relaxing genre exclusivity – for example, whether exclusivity enjoyed in one language cross-subsidizes programming in the other.
271. Based on these criteria, the Commission has examined the current environment and determines that it would be appropriate to immediately introduce competition between Canadian services operating in the genres of mainstream sports and mainstream national news. The services operating in these genres – The Sports Network (TSN), Sportsnet, Le Réseau des sports (RDS), CBC Newsworld, Newsnet, Le Réseau de l’information

(RDI) and Le Canal Nouvelles (LCN) – are strong, healthy, highly popular, and highly competitive.

272. At this time, the Commission is of the view that only these genres are ripe for competition and that the objective of diversity would not be served by immediately opening other genres to broad competition. However, the Commission is prepared to consider competitive applications in other genres should an applicant demonstrate that the genre met the criteria elaborated above. Upon approval of any such competitive application, the genre would then be considered open for competition.
273. Once a genre has been opened for competition, the following rules will apply to all services within the genre:
- a common and standard nature of service definition;
 - common Canadian programming exhibition and spending obligations, as well as original programming obligations, where appropriate; these would be set at levels consistent with conditions that currently apply to the incumbent service(s);
 - no access rights (except where the service benefits from a mandatory distribution order under section 9(1)(h) of the Act²³), although undue preference provisions (including the new reverse onus provision) would continue to apply (i.e., BDUs that dropped unaffiliated services in favour of affiliated services could be found to be conferring an undue preference);
 - no regulated wholesale fee (except where a rate is specified in a 9(1)(h) order²⁴); and
 - continued genre exclusivity from non-Canadian and Category B services.
274. With respect to mainstream Canadian sports and mainstream Canadian national news services, the Commission has set out proposed nature of service and contribution requirements in Broadcasting Public Notice 2008-103, also issued today. Applications for competitive news and sports services, as well as applications from the existing licensees (listed above) to amend their licences will be accepted once the Commission has approved final conditions of licence for such services.
275. With respect to services proposing competition in other genres, the onus will be on new applicants to demonstrate that the criteria set out in paragraph 270 to this public notice have been met. New applicants will have to demonstrate that they are prepared to meet contribution levels that are comparable to those of the incumbent(s), including appropriate contributions to first-run original programming. The incumbent service(s)

²³ In Broadcasting Decision 2007-246, the Commission issued mandatory orders requiring the distribution of CBC Newsworld and RDI in minority-language markets.

²⁴ In Broadcasting Public Notice 2006-23, the Commission determined that it would no longer regulate the wholesale rates for the digital distribution of the analog services.

will have an opportunity to respond through the Commission's regular processes. If the Commission is satisfied that the criteria above have been met and, in particular, that diversity within a genre would not be threatened by approving the application, the competitive service would be approved and the genre would be open for competition, subject to the rules listed above. Incumbent services would be free to apply for the new standard conditions of licence.

276. As noted above, competitive services will no longer benefit from access rights. Until such time as the Commission can amend the BDU Regulations, BDUs may apply for an exception to the relevant sections of the BDU Regulations by condition of licence. However, the Commission is of the view that, with respect to news services, Canadians should not have less news diversity than they currently have. Therefore, if a BDU chooses not to distribute a licensed mainstream Canadian national news service, the Commission may be prepared to consider issuing a distribution order under section 9(1)(h) of the Act requiring the distribution of that news service. The Commission notes that the existing distribution orders with respect to the mandatory distribution of CBC Newsworld and RDI in minority-language markets will continue to apply.

Programming flexibility

277. The Commission has also decided to simplify and streamline the rules that govern both nature of service definitions and program categories from which services may draw programming. The Commission's intent in this respect is to ensure that the nature of service set out in the licensee's conditions of licence reflects, as specifically as possible, the unique characteristics of the service.
278. The Commission is of the view that, in most instances, the narrative descriptions of Category A services are sufficiently specific to ensure that these services remain true to the genre for which they were licensed. Therefore, the Commission determines that it will permit all Category A services to draw programming from all program categories, thereby providing these services with greater flexibility in this regard. However, to ensure that this change does not permit services to morph into other established programming genres, and thus become directly competitive with other Category A services, the Commission will establish a standard limitation of 10% of the broadcast month for the following categories:

- 2(b) Long-form documentary;
- 6(a) Professional sports;
- 7 Drama and comedy;
- 7(d) Theatrical feature films aired on television;
- 7(e) Animated television programs or films; and
- 8(b) and (c) combined – Music video clips and Music video programs.

Where a licensee is currently permitted to broadcast more than these standard limitations, it may continue to do so.

279. The Commission is also prepared to eliminate other limiting conditions of licence where the narrative description is sufficient to ensure that the service will not be directly competitive with any other Category A service and will remain true to its genre. The Commission notes that it will be necessary to implement this new approach via amendments to existing conditions of licence.
280. The Commission does not intend to apply this general approach to Category B services; however, in assessing applications for new services or applications for amendments to nature of service conditions of licence, the Commission will generally apply the same limitations.

Advertising limits for specialty services

Issues

281. Currently, specialty licensees are generally limited by condition of licence to no more than 12 minutes of advertising per hour. In the Call for comments, the Commission requested comments on the possibility of increasing this limit for Category 1 and Category 2 specialty licensees, with the intention of eliminating the limit altogether, as announced for OTA stations in Broadcasting Public Notice 2007-53.
282. As a result of Broadcasting Public Notice 2007-53, the *Television Broadcasting Regulations, 1987* were amended to increase the 12-minute-per-hour limit on advertising to 14 minutes per hour in peak viewing periods (7:00 p.m. to 11:00 p.m.), effective 1 September 2007; to increase the limit to 15 minutes per hour for all viewing periods, effective 1 September 2008; and to eliminate the limits altogether as of 1 September 2009. These modifications to the advertising limits are subject to a review, during the licence renewal hearings, of the impact of the increased advertising time limits so as to ensure that the increased flexibility results in a net benefit to the Canadian broadcasting system. No party has provided data that can be assessed by the Commission regarding the impact of this partial deregulation.
283. Parties, including broadcasters, generally supported the elimination of restrictions on advertising for specialty licensees and the harmonization of regulations for OTA and specialty services. Some parties supported maintaining the current conditions on the basis that it would be premature to eliminate them pending a better understanding of the consequences of eliminating the restrictions for OTA services. The Association of Canadian Advertisers (ACA) maintained that removing the limits on advertising would result in unacceptable ad clutter. Alliance Atlantis submitted that specialty broadcasters that do not sell out their inventory would be negatively affected by the expanded available inventory and depressed advertising rates. Finally, TQS inc. (TQS) argued that raising advertising limits for specialty services would depress advertising rates compared to those in place for the English-language market.

Commission's determinations

284. The Commission has carefully considered whether existing limits should be retained for specialty services, and is concerned that the potential negative consequences of permitting specialty services to increase the amount of advertising outweigh any advantages. The Commission notes that both small OTA broadcasters and OTA broadcasters in Quebec are vulnerable to shifts in advertising dollars. A significant shift in ad buying from the OTA sector to specialty services would not be recovered by independent OTA stations, especially those that do not have significant specialty holdings.
285. Further, additional advertising inventory on the specialty services owned by the large ownership groups may have an undue impact on the ability of independent specialty services to sell their own advertising inventory, in addition to depressing advertising rates overall.
286. Therefore, the Commission considers that it is appropriate to maintain the current restrictions on advertising limits for both Category A and Category B services.

Processing of Category B applications

287. In the Call for comments, the Commission noted that the resources required to process Category B applications are significantly disproportionate to the number of services that become operational. Accordingly, the Commission sought comment on measures to better focus resources on services that will in fact become operational.
288. Parties to the Proceeding noted that the current process demands significant resources from both the Commission and the industry. Rogers suggested that the Commission exempt all Category B services from licensing requirements. QMI and Telefilm Canada proposed periodic hearings to alleviate the burden for the Commission and the industry. Other parties proposed that the Commission require applicants to submit a sound business plan or a distribution agreement with their applications.
289. Although there were a number of suggestions for improving the processes associated with the consideration of Category B services, the Commission notes that the volume of applications has decreased over time and has become more manageable, and considers that its processes appear to be working efficiently. Accordingly, the Commission determines that, at this time, it will make no changes to its processes associated with the consideration of Category B services.

Policies relating to over-the-air television undertakings

290. In Broadcasting Notice of Public Hearing 2007-10-4, the Commission sought comment on two issues of particular significance to OTA undertakings, namely, distant signals and fee for carriage. These issues are discussed below. Also in this section, the Commission sets out its plan for the support of local programming in smaller markets.

Distant Signals

Issues

291. In the BDU Regulations, a distant signal, or “distant television station,” is defined as “a licensed television station that is not a local television station, regional television station or extra-regional television station.” This definition applies to terrestrial BDUs. However, the term “distant signal” is not specifically defined in relation to DTH undertakings. It is, however, generally used in connection with the retransmission of signals that originate in one time zone to subscribers in another time zone. The availability of such signals allows subscribers to “time shift,” thus providing multiple opportunities to view a given program.
292. DTH licensees are authorized to distribute, on a national basis, the signal of any licensed television undertaking. When DTH undertakings were first licensed, broadcasting undertakings were given an opportunity to object to distribution by DTH undertakings. No broadcasting undertakings chose to do so at that time.
293. Nevertheless, DTH licensees are obliged under the BDU Regulations to perform simultaneous and non-simultaneous program deletions of out-of-market signals in order to protect the program rights acquired by local stations. However, the requirements to delete certain programs have been suspended provided that the DTH licensees undertake certain “alternative measures” agreed to by the affected broadcasters.
294. Currently, the DTH licensees and the CAB, on behalf of private OTA broadcasters, have agreed to the following measures:
- payment to broadcasters of \$0.25 per month for each subscriber who receives a second set of U.S. 4+1 signals;²⁵
 - the distribution, at the distributor’s expense, of thirteen small market independently-owned television stations;
 - a contribution of 0.4% of the DTH licensee’s gross revenues, as a portion of the 5% required to be contributed to Canadian programming, to the small market local programming fund available to independently-owned stations (the DTH Fund); and
 - the equitable distribution of OTA stations belonging to the larger private ownership groups.

²⁵ As noted earlier in this public notice, the term “U.S. 4+1 signals” refers collectively to the signals that provide the programming of the four U.S. commercial networks (CBS, NBC, ABC, FOX) and of the non-commercial PBS network.

295. Currently, digital terrestrial BDUs are also authorized to carry distant Canadian signals and a second set of U.S. 4+1 signals, as digital discretionary services, subject to a requirement to perform non-simultaneous program deletion. These deletion requirements have been suspended as a result of an agreement to pay affected broadcasters compensation for the impact of distant signals on local and regional television stations. This agreement includes:

- payment to broadcasters of \$0.25 per month for each subscriber who receives a second set of U.S. 4+1 signals, and
- payment to broadcasters of \$0.50 per month (in some cases \$0.75 per month) for each subscriber who receives distant Canadian signals.

These payments are made to the CAB, which redistributes these funds to its members using a formula agreed to by those members.

296. During the Proceeding, broadcasters stated that the current distant signals policy as it applies to both DTH undertakings and terrestrial BDUs was seriously flawed because broadcasters were not adequately compensated for the use of their signals as distant signals or for the harm caused by the importation of distant signals. Broadcasters therefore requested the ability to consent to and be paid for any retransmission of their OTA signals outside the priority carriage market.

297. In a study²⁶ filed with their submission, CTVgm and Canwest estimated that, in 2006/2007, the impact of the existing distant signal policy on their revenues could be as high as a loss of \$93.1 million. Of this amount, the impact of Canadian distant signals was estimated to be \$47.2 million, the balance representing the impact of the U.S. television signals and alleged non-compliance with requirements for simultaneous substitution.

298. The CAB supported the proposal by CTVgm and Canwest that broadcasters should provide consent and be paid for the retransmission of their signals, and further argued the existing DTH Fund be strengthened by:

- enshrining the DTH contribution requirements to the DTH Fund in the amended BDU Regulations;
- requiring cable distributors to make similar contributions in the markets where independently-owned broadcasters access the DTH Fund; and
- extending eligibility to Corus' OTA stations and the TQS station in Trois-Rivières due to the similarities between these stations and other already eligible stations.

²⁶ *The Economic Impact on Canwest and CTVgm Conventional Television Stations from the Importation of Identical Programming on Distant Canadian and U.S. Television Stations: 2006/2007*

299. BDUs, on the other hand, supported the Commission's current approach to distant signals and strongly disputed broadcasters' estimates of the harm caused. They submitted that any impact on OTA stations is minimal. In a study submitted by Bell,²⁷ it was estimated that the impact on broadcasters of distant signals carried by BDUs in the English-language television market could range from -\$20.2 million to +\$10.1 million.
300. Terrestrial BDUs submitted that any harm to OTA services would be caused primarily by DTH undertakings. They specifically stated that DTH undertakings do not pay compensation for the distribution of Canadian distant signals and that any change to the Commission's policy should be fair and equitable to all BDUs.
301. DTH undertakings argued that distant signals constitute a key element of their business model and are necessary for maintaining competitiveness. They argued that any policy that required consent for retransmission would work to the advantage of the broadcasters, who would be able to threaten to remove both OTA and specialty services.

Commission's determinations

Canadian distant signals

302. The Commission considers that the existing regulatory policy with respect to Canadian distant signals should be streamlined and, consistent with its responsibilities set out in the Act, rely on market forces whenever possible.
303. The Commission recognizes the value that Canadian subscribers place on the ability to time shift through the use of distant signals. It also recognizes that broadcasters should have the right to be compensated for the use of their signals when they are retransmitted by a BDU outside the priority carriage market.
304. In the Commission's view, providing broadcasters with the right to negotiate the terms under which their signals will be retransmitted is consistent with the Commission's objective to rely on market forces whenever possible.
305. Market-based negotiations will allow broadcasters to recover the "full value" of their signals and the programming rights they have acquired. Based upon the evidence filed in this proceeding, there is no consensus with respect to the financial impact on broadcasters of the existing distant signal policy. A free negotiation between the parties, taking into account any damage to the broadcasters as well as the value of the signals to the BDU, should result in a fair price.
306. The Commission notes that the primary parties to these negotiations will be large broadcasting groups and large BDUs, each of which has significant bargaining power. This should increase the likelihood that those groups will reach a mutually satisfactory agreement. However, should the parties be unable to do so, the Commission is prepared to offer its dispute resolution services on a final offer basis.

²⁷ *The Effect of Distant TV Stations on TV Advertising Revenues in Canada* (22 January 2008; revised 22 February 2008)

307. Accordingly, the Commission's policy with respect to Canadian distant signals will be to require all licensed BDUs to obtain the consent of OTA licensees prior to distributing their local stations in a distant market.²⁸ OTA licensees will be permitted to negotiate payment from BDUs for the retransmission of their local stations as distant signals. However, DTH undertakings will not be required to obtain consent or pay fees for the distribution of mandatory basic OTA services (i.e., those services that the DTH undertaking has chosen to distribute on basic as a result of the new basic distribution regime set out earlier in this public notice) from a given province to subscribers within that province. In the case of the Atlantic provinces, no consent will be required for the distribution of mandatory basic OTA services originating in any of the four Atlantic provinces to subscribers within any of those four provinces.
308. The Commission determines that the DTH Fund, which is designed to compensate independently-owned small market broadcasters for damage resulting from the impact of DTH distant signals, will be retained. The Commission expects that the benefits to those broadcasters with access to this fund will be considered in the negotiations for any retransmission of their signals.
309. The Commission also determines that the Corus stations licensed to serve Kingston and Peterborough meet the requirements for access to the DTH Fund since these stations are not affiliated with one of the large networks of multi-station groups. Accordingly, the Corus stations in Kingston and Peterborough qualify for assistance from this fund. This is not the case for the Corus station serving Oshawa, since this market has a population greater than 300,000. With respect to stations owned by TQS in smaller markets, the Commission considers that, since TQS has a network licence and a station serving the metropolitan area of Montréal, its stations do not meet the requirements for access to the fund.
310. As described in detail above, the Commission will eliminate the requirement for DTH undertakings to distribute 13 small-market independently-owned stations. DTH undertakings will now be required to carry, as part of their basic service, at least one independently-owned station from each province, subject to the Commission's further determination with respect to the Atlantic region. Further, the Commission will also eliminate the requirement for DTH undertakings to provide equitable distribution of television stations owned by the large private ownership groups.
311. Finally, the requirement for BDUs to obtain consent for distant signals will apply to licensed BDUs. BDUs that operate under an exemption order will not require consent from the broadcaster.
312. The Commission notes that the current rules are set out in a combination of conditions of licence, regulation and agreements. The Commission is of the view that the above changes to the distant signal policy will be implemented ultimately through amendments to the BDU Regulations. The Commission further notes that some conditions of licence

²⁸ This would not apply to 9(1)(h) services, such as TVA.

and agreements may expire before the new rules can be implemented. Therefore, if parties to existing agreements wish to propose mutually acceptable alternative solutions, the Commission will be prepared to consider applications for amendments to the relevant conditions of licence.

U.S. 4+1 signals

313. As noted above, both DTH undertakings and terrestrial BDUs have been authorized to distribute a second set of U.S. 4+1 signals, subject to program deletion requirements that have generally been suspended as a result of payment of compensation to broadcasters and/or other measures.
314. The CAB submitted that the impact of the distribution of these signals is three times greater than the compensation now paid for that distribution. The CAB estimated the impact overall at \$11 million for the year 2005/2006.
315. CTVgm and Canwest, in their final written submission, requested that the Commission simply prohibit the distribution of the second set of U.S. 4+1 signals. They submitted that BDUs could drop distant Canadian signals in favour of U.S. signals with little risk since much of the most popular prime-time programming would still be available to viewers through the U.S. signals.
316. The Commission considers that prohibiting the distribution of the U.S. signals would not be in the interest of Canadian subscribers. Nevertheless, the Commission recognizes that these signals may have a significant negative impact on the revenues of Canadian OTA broadcasters.
317. In light of the above, the Commission will authorize BDUs to make a second set of U.S. 4+1 signals available to the subscriber, only when that subscriber also receives at least one signal, originating from the same time zone as the U.S. signals, of each large multi-station Canadian broadcasting group. For example, if a Vancouver BDU wishes to provide a subscriber with the U.S. 4+1 signals from Boston, the subscriber must also receive at least one eastern time zone signal of each large Canadian multi-station group.
318. In this context, noting that the U.S. 4+1 signals are English-language signals, a large multi-station group will be defined as an entity licensed to operate in several provinces with a potential reach of more than 70% of the English-language audience.
319. The Commission notes that any disputes regarding the distribution of a second set of U.S. 4+1 signals will be subject to the Commission's policies regarding dispute resolution.

Simultaneous substitution

320. During the Proceeding, some parties alleged that cable BDUs were not complying with the Commission's policy with respect to simultaneous substitution. In this regard, the Commission has not received evidence to suggest a systemic problem.

321. However, some complaints have been filed in recent years regarding the non-substitution of HD signals. In this regard, the Commission reminds parties that its policies and regulations with respect to simultaneous substitution remain in effect and that requirements for such substitution will continue into the digital environment, and will apply to HD signals in accordance with the framework elaborated in Broadcasting Public Notice 2003-61.

Fee for carriage

Issues

322. In Broadcasting Notice of Public Hearing 2007-10-3, the Commission announced that it was expanding the scope of the BDU and discretionary service review to include consideration of a fee-for-carriage (FFC) for OTA television stations. The Commission noted the importance of these stations in the creation of Canadian programming as well as the impact that any such fee could have on BDUs, BDU subscribers and discretionary services. The Commission also asked parties advocating an FFC for supporting details, assumptions and rationale.
323. The issue of an FFC for OTA stations was addressed by the Commission during its review of OTA television policy in 2006.²⁹ In the policy decision resulting from that proceeding,³⁰ the Commission denied an FFC for the following reasons:
- it was not convinced that the evidence supported a permanent decline in the profitability of OTA sector;
 - consumer acceptance of any fee had not been addressed sufficiently in order to assess the ultimate impact on the system; and
 - the Commission had particular concerns with respect to the impact that a fee may have on subscribers' take-up of specialty services.

In the absence of reliable and persuasive data, the Commission was not convinced that the introduction of an FFC would result in a net benefit to the broadcasting system, both in terms of increased Canadian programming expenditures and the availability of Canadian programming services.

324. At the 8 April 2008 public hearing, most OTA broadcasters, with the exception of Rogers and Corus, argued in support of an FFC. The CBC maintained that it should also be entitled to an FFC since both Parliament and the Commission have understood that the only way it can fulfil its mandate is through additional revenue-generating mechanisms, such as advertising.

²⁹ See Broadcasting Notice of Public Hearing 2006-5.

³⁰ See Broadcasting Public Notice 2007-53.

325. Broadcasters maintained that the traditional economic model for broadcasting, which relies on advertising revenues, has drastically changed. These revenues are diminishing, and if OTA broadcasters are to continue to meet their obligations, new sources of revenue must be found.
326. CTVgm and Canwest, in a joint presentation, proposed an FFC of \$0.50 per signal per subscriber, per month. In a market with access to six or more Canadian OTA signals, this proposal would amount to an additional cost of \$3.00 or more per subscriber per month. With respect to an FFC for French-language broadcasters, a variety of proposals were made. For instance, TQS, in its written submission, advocated two fees: \$1.50 per month in the Quebec market and \$0.75 per month in markets outside of Quebec with a strong francophone presence. TQS also proposed that a portion of the FFC be invested in Canadian programs, including local programs.
327. CTVgm and Canwest proposed that any FFC only be made available if broadcasters meet monthly local programming requirements. However, they did not commit that the FFC, or any portion of it, would result in incremental spending on Canadian programming.
328. BDUs, on the other hand, were strongly opposed to an FFC. They contended that the OTA broadcasters continue to be profitable and that they have restructured their businesses in order to respond to audience fragmentation. BDUs also noted that the Commission is removing the time limits on advertising for OTA stations and that the Commission has not had the opportunity to assess the impact that this change may have on OTA advertising revenues.
329. BDUs made it clear that any FFC would be passed on to subscribers and argued that the negative consequences of an FFC would outweigh any benefits. Such negative consequences could include subscribers dropping Canadian specialty services, which would result in a lower contribution to the system on the part of these services.
330. BDUs pointed out the significant advantages that OTA broadcasters receive, including access to spectrum, priority carriage by BDUs and simultaneous substitution. They noted that OTA broadcasters had not proposed giving up these advantages in exchange for an FFC.

Commission's determinations

331. The Commission has reviewed the record with respect to FFC and concludes the following.
332. While OTA broadcasters have shown a recent decline in profitability, they, as other enterprises, might first look to their own business plans before making a request for increased revenue from the Commission. In the Proceeding, no business plans suggesting new sources of revenue were provided to the Commission. Neither the rationale for strategic initiatives by OTA broadcasters, such as recent major acquisitions, nor the basis for financing those initiatives or the impact of those initiatives on profitability were explained to the Commission at the public hearing.

333. Further, there was no commitment given by OTA broadcasters that any fee the Commission might grant would be utilized in improving Canadian programming or, if it would be so utilized, how the monies might be spent.
334. Thus, while the Commission remains concerned that each constituent element of the Canadian broadcasting system remains robust, it must base its decisions upon coherent, transparent and complete evidence. Although OTA broadcasters clearly feel strongly that they need the Commission's assistance in increasing their revenues, the Commission does not have conclusive evidence in order to make a favourable determination on this matter. Accordingly, the Commission rejects the request by OTA broadcasters for a general FFC.

Support for local programming in smaller markets

Commission's concerns regarding local programming

335. As set out in section 3(1)(i)(ii) of the Act, the programming provided by the Canadian broadcasting system should be drawn from local, regional, national and international sources. In addition, sections 3(1)(d)(ii) and (iii) of the Act refer to objectives that are relevant to local programming, while section 3(1)(e) states that each element of the system shall contribute in an appropriate manner to the creation and presentation of Canadian programming.
336. At the oral public hearing, the Commission heard evidence regarding the value placed by Canadians on their local television news programming. Two public opinion surveys were filed as part of the Proceeding. In a poll conducted by Nanos Research, 78% of respondents indicated that having local news was of high, or very high, value to them. In the second survey, conducted by Pollara, 76% of respondents considered local news to be very important.
337. These findings regarding the importance of local programming and, in particular, of local news, are consistent with the Commission's determination set out in Broadcasting Public Notice 2008-4. As noted by the Commission in that public notice:

It is from the local media that most Canadians receive the information that is critical to their understanding of local, regional, national and international issues. Local media help to shape Canadian's views and to equip them to be active participants in the democratic life of the country.

338. Canadians are increasingly turning to new media platforms as a source of information about their communities, their country and the world. However, as noted by the Commission in Broadcasting Public Notice 2008-4, these platforms largely offer content that was originally produced by, or using the resources of licensed radio or television stations, or newspapers. As a consequence, encouraging high quality, professionally-produced local programming on television will also benefit those who access this content through new media platforms.

339. At the public hearing, as well as at other recent hearings relating to the acquisition of OTA services, the Commission heard evidence suggesting that both the quality and quantity of local programming available to Canadians have declined significantly over the past decade.
340. Various parties expressed the concern that local news reporting has suffered as a result of a decrease in journalistic staff and the dependence of local stations on information and resources located in larger centres.
341. The Canadian Media Guild (CMG) proposed that the Commission create a new source of funds for conventional broadcasters that could guarantee the continuation of local news and current affairs programming. Friends of Canadian Broadcasting expressed the view that OTA stations must “remain in an ongoing financial position to make a strong contribution to local programming, as well as expensive Category 7 programming, in particular drama.”
342. The Commission’s own data demonstrate that private broadcaster spending on local programming has been flat since 1998. Between 1998 and 2007, the spending on local programming by English- and French-language commercial broadcasters increased by 22.8%. However, as the growth in the consumer price index (CPI) during this period was 22.1%, there was no real increase in local spending. This contrasts with spending on non-Canadian programming, which, after adjusting for CPI growth, increased by 61%, as well as spending on other Canadian programming, which increased by 8.3% over the same period. The data indicate an inability or unwillingness on the part of OTA broadcasters to invest in their local stations.
343. The Commission has also examined broadcasters’ spending on local programming by market size. In the six metropolitan markets with a population of over one million, spending on local programming, after adjusting for the CPI, has increased by 11.8% since 1998. However, in markets with a population of less than one million, local program spending has declined by 15.6% since 1998.
344. From 1998 to 2007, the profit before interest and taxes (PBIT) margins for the private OTA sector declined from 11.1% to 5.2%. Over the same period, in metropolitan markets, the decline was from 15.9% to 9.2%, whereas in markets with a population of less than one million, the PBIT margins declined from 3.2% to -4.0%.
345. It is clear that the business case for local OTA television has changed significantly through the expansion of Canadian and non-Canadian viewing choices offered by DTH undertakings, digital terrestrial BDUs and other digital media. This fragmentation of viewing and advertising revenues is a major reason for the increased consolidation of the industry over the past decade as the owners of OTA services have acquired more profitable specialty services and have explored ways to monetize viewing through the Internet and other new media platforms. However, one of the consequences of consolidation appears to have been that the larger ownership groups have achieved

operating synergies through concentrating production resources in major centres, at the expense of smaller local markets.

346. The Commission recognizes that this strategy may make sense from a business point of view, since stations in smaller markets are on average not profitable. However, the centralizing of resources also means that local viewers are offered less programming and fewer news stories that originate from within their communities.
347. The situation is even more problematic in the French-language market, given its small size. The Commission's economic analysis on spending by private broadcasters on local programming in markets outside metropolitan areas reveals a clear disparity between English- and French-language stations. English-language stations in this group spend 38% more on local programming than French-language stations, on a per station, per capita basis. The greater difficulties facing broadcasters serving French-language markets became quite apparent during TQS's licence renewals, where the licensee's difficult financial situation and viewer dissatisfaction with the local news offered were clearly demonstrated.
348. In the Commission's view, it is in the public interest for the Canadian broadcasting system to include healthy local stations that will enrich the diversity of information and editorial points of view. In particular, it is in the public interest that viewers in French-language markets are not disadvantaged by the smaller size of those markets. It also seems that local stations in all smaller markets are not capable of investing in local programming. Indeed, if present trends continue, it is highly likely that local television stations will either close or reduce even further the quality of local programming offered to viewers.

Appropriate level of contribution by broadcasting distribution undertakings to Canadian programming

349. The BDU Regulations generally require Class 1 and Class 2 BDUs, as well as DTH undertakings, to contribute 5% of their gross broadcasting revenues to Canadian programming.
350. For Class 1 terrestrial BDUs, 2% of the 5% contribution may be directed to the support of the BDU's community channel. The balance must go to support Canadian programming through the CTF (at least 80%) or certified independent production funds (up to 20%).
351. DTH undertakings do not operate community channels. As a result, their contributions are directed to the CTF (80%) and other certified independent production funds (20%). DTH undertakings must also contribute 0.4% of gross revenues to a fund assisting independently-owned local broadcasters. This amount may be deducted from the contribution to be made to certified independent production funds.

352. The contribution level of 5% was first established, by condition of licence, for DTH undertakings in 1995. This contribution level was then applied to terrestrial BDUs and DTH undertakings in the BDU Regulations. Since that time, no changes have been made to the overall required contribution level.
353. In 2007, the operating margin for licensed terrestrial BDUs (Classes 1, 2 and 3) was 40.2%; for DTH undertakings, the operating margin was 17.1%, resulting in an overall operating margin of 35.5%. In a letter sent to appearing interveners prior to the public hearing, the Commission set out an assumed distribution model and posed a number of questions relating to the model. One of the questions sought specific comment on “the appropriate size of the contribution by BDUs to the creation of new Canadian programming.”
354. At the public hearing, several interveners commented on this question and proposed that the contribution to Canadian programming by BDUs be increased from the current 5% of gross broadcasting revenues. Further, a number of these interveners proposed that increased contributions from BDUs be directed to improve the quality and/or quantity of local programming.
355. The Commission determines that it would be appropriate to increase the required contribution to Canadian programming, by licensed BDUs, from 5% to 6% of gross revenues derived from broadcasting activities.³¹ Further, licensed terrestrial and DTH undertakings will be required to direct the additional 1% – estimated to be approximately \$60 million in the first year – to a new fund designed to improve the quality of local programming in non-metropolitan markets. The details of the operation of the new fund, to be known as the Local Programming Improvement Fund (LPIF), are set out below. The Commission will introduce amendments to the BDU Regulations in order to implement the LPIF as quickly as possible.
356. In establishing this new fund to support local programming, the Commission is conscious of the impact that it will have on licensed BDUs. While the precise impact will vary from undertaking to undertaking, the Commission estimates that the aggregate impact on BDUs will be to lower their overall operating margins – currently at approximately 35% – by no more than 1%.
357. In light of the performance levels of the BDU sector and the benefits accruing to BDUs as a result of other changes being made to the regulatory framework, the Commission is of the view that there is no justification for BDUs to pass along any increased costs relating to the LPIF – estimated to be on average approximately \$0.50 per month – to their subscribers.
358. The Commission understands that BDUs serving the largest Canadian markets will be contributing to the LPIF but that the benefits in terms of improved local programming will be directly seen by viewers in smaller markets. In this regard, the Commission notes that one of the benefits from improved local programming is the ability of all stations to

³¹ See Circular No. 426 for a definition of “gross revenues derived from broadcasting activities.”

access stories produced in smaller markets and, as a result, to better reflect, in large markets, the lives of Canadians who live outside the major centres. In addition, greater investments in newsgathering resources in smaller markets provide broadcasters with a larger talent pool from which to draw. Therefore, the result of improved local programs in smaller markets should have the indirect benefit of better programming and increased revenues for the larger markets as well.

Local Programming Improvement Fund

359. The overall objectives of the LPIF are the following:
- to ensure that viewers in smaller Canadian markets continue to receive a diversity of local programming – particularly local news programming;
 - to improve the quality and diversity of local programming broadcast in these markets; and
 - to ensure that viewers in French-language markets are not disadvantaged by the smaller size of those markets.
360. The fund will be made available to stations serving markets in which the population with a knowledge³² of the official language of the station (i.e., English or French) is less than one million. Accordingly, the metropolitan markets of Vancouver, Calgary, Edmonton, Toronto, anglophone Ottawa-Gatineau, and Montréal do not qualify, and stations serving those markets will therefore not qualify for funding from the LPIF.
361. The LPIF will be funded through a contribution by licensed Class 1 terrestrial BDUs and DTH undertakings. The contribution will be 1% of the undertakings' gross revenues derived from broadcasting activities.
362. In order to qualify for LPIF funding, stations must be providing a local programming service that, as of the date of this public notice, includes original local news. In the case of regionally produced programming such as that produced in Halifax for the Maritime provinces and in Sudbury for various northern Ontario communities, the producing stations may draw from the LPIF in order to improve service to all the communities within their region.
363. In regard to the allocation of funds between the English- and French-language markets, the Commission recognizes the structural differences between these markets. French-language market broadcasters have lower advertising revenues and operate in a smaller market. Furthermore, current per capita spending on local programming in smaller sized French-language markets would require an additional 38% to reach the spending by English-language broadcasters in similar sized markets.

³² According to the definition by Statistics Canada

364. The Commission is concerned, however, that even with additional financial support from the LPIF, the disparities between the two markets will be perpetuated. The Commission notes that section 3(1)(c) of the Act stipulates that “English and French language broadcasting, while sharing common aspects, operate under different conditions and may have different requirements.” In order to ensure that viewers residing in French-language markets receive the same quality and diversity of local programming, particularly local news programming, the Commission determines that it would be appropriate to allocate one third of LPIF funding to broadcasters operating in smaller French-language markets and two thirds to those operating in English-language markets. The Commission estimates that this will result in an additional \$20 million distributed among the private and public French-language broadcasters operating in French-language markets and will increase their spending on local programming by 46%. The balance of the LPIF, from which the English-language broadcasters would benefit, will amount to approximately \$40 million and will result in a 33% increase in spending on local programming.
365. The use of LPIF funding must be incremental to the station’s current expenditures on local programming. For each qualifying station, the Commission will calculate the current base level of local programming expenditures by averaging the expenditures submitted in the station’s annual returns for the broadcast years 2005/2006, 2006/2007 and 2007/2008. The resulting base level of expenditure on local programming will be adjusted annually in accordance with the CPI. The base level expenditures may also be subject to adjustments following the licence renewals of OTA stations.
366. LPIF funds may be used to produce additional original local programming or to invest in improvements to the quality of existing local programming. Although all categories of local programming will qualify for LPIF funding, the Commission considers that priority should be given to local news and public affairs programs. Stations receiving LPIF funding must report annually to the Commission with an accounting of how the base level expenditures were allocated and a detailed accounting of how the incremental LPIF funds were spent.

Public and community local broadcasters

367. As set out in section 3(1)(m)(ii) of the Act, the programming provided by the CBC should “reflect Canada and its regions to national and regional audiences, while serving the special needs of those regions.”
368. In light of the objectives of the Act and the objectives that have been set for the LPIF, the Commission determines that public, as well as private, licensees should be entitled to receive LPIF funding, as long as they broadcast original local news programming. In making this determination, the Commission recognizes its responsibility to regulate and supervise the Canadian broadcasting system as a whole, which comprises public, private and community elements.

369. The Commission also notes that many subscribers to BDUs are also viewers to local CBC stations. These viewers should share in the benefits that the LPIF will bring to local news and other local programming on CBC stations as well as to the commercial stations.
370. The CBC has, over the past two decades, been unable to maintain – much less make significant improvements to – local television programming. Following its last licence renewal in 2000,³³ the CBC significantly reduced the quantity of local programming in markets across the country. The government, through its contributions to the CTF, has made earmarked funding available for the CBC to acquire independently produced priority programs such as drama. No such earmarked funding has been made available to support CBC-produced local programming. Further, in recommending a division between the private and public parts of the CTF,³⁴ the Commission recognized that in entertainment programming there are differing objectives. Private broadcasters are appropriately focussed on maximizing audiences while public broadcasters, through their mandates, must also consider public interest objectives. In news, however, no such difference in objectives exists. Therefore, additional resources allocated to both private and public local stations will serve the same objective – improved local service and a better, more accurate reflection of all Canadians.
371. Accordingly, given the above-noted objectives of the LPIF, the Commission considers that the public interest would be best served through BDU contributions serving to improve the quality of local programming offered by both private and public OTA broadcasters.
372. As with the private OTA broadcasters, the use of LPIF funding by the CBC-owned and operated stations must be incremental to each qualifying station's current expenditures on local programming. In this regard, in order for the Commission to calculate each station's current base level of local programming expenditures, the CBC must provide an accounting of the local programming expenditures for each qualifying station for each of the broadcast years 2005/2006, 2006/2007 and 2007/2008. The accounting of the expenditures and their certification by management of the CBC must be in accordance with the format set out in the Annual Return of Programming Undertaking Licensee form. The Commission expects that the CBC and the CBC's independent auditors will file this information in its upcoming licence renewal and will, in its applications for renewal, make commitments with regard to local programming in light of its access to the LPIF. Based on this information, the Commission will calculate the base level of expenditures, which will be adjusted annually in accordance with the CPI.
373. CBC-owned and operated stations receiving LPIF funding shall report annually to the Commission with an accounting of how the base level expenditures were allocated and a detailed accounting of how the incremental LPIF funds were spent.

³³ See Decisions 2000-1 and 2000-2.

³⁴ *CRTC Report to the Minister of Canadian Heritage on the Canadian Television Fund*, 5 June 2008

374. With respect to community television broadcasters, the Commission has decided to consider whether they should have access to the LPIF in the context of its review of the community media policy framework.

Administration of the LPIF

375. The Commission determines that the LPIF should be administered by an independent third party. Currently, the CAB administers the DTH Fund. As a result, the CAB is familiar with the issues and demands involved in managing this type of fund, and is well-positioned to develop a detailed plan for the administration of the LPIF, including a proposal as to who should administer this fund (i.e., the Fund Administrator).

376. In order to ensure that the fund is operated in a manner consistent with the Commission's objectives; that fund allocations are fair and transparent; and that annual reports that are filed and made public provide all the necessary data to evaluate the success of the LPIF, the Commission will establish an LPIF oversight panel made up of three Commissioners. The role of this panel will be to review the following:

- the CAB's plans for administration of the LPIF;
- the disbursement of LPIF funding by the Fund Administrator;
- the continuing fulfilment by licensee recipients of their obligation to provide additional original and/or improved local programming; and
- the annual reports filed by the Fund Administrator and licensee recipients.

The panel may also make recommendations to the Commission with respect to any matters that may arise as a result of these reviews.

377. Accordingly, the Commission asks the CAB to provide, for Commission approval, a detailed plan for the administration of the LPIF. This plan, which must be filed no later than 19 January 2009, should include the following elements:

- Fund Administrator – the party that will administer the LPIF, and how this party meets the following desirable criteria:
 - experience in fund management;
 - knowledge of each of Canada's official language communities;
 - familiarity with the BDU and OTA sectors; and
 - ability to manage the LPIF with minimal cost.
- Annual reporting – the necessary information to be included in reports from the

Fund Administrator, and from recipient licensees, to ensure that the use of LPIF funding is incremental to base level expenditures, that this funding has been allocated appropriately, and that it has been spent to further the objectives of the fund.

- Indicators of success – the necessary information to permit the Commission and the public to evaluate the success of the LPIF. Such indicators should be quantifiable and should include, but not be limited to, the following:
 - evidence of audience success and viewer satisfaction;
 - increases in local advertising revenues;
 - increases in original local news stories;
 - the number of local news stories that are picked up nationally;
 - expansion of news bureaus;
 - increases in the quantity of local programming broadcast;
 - increases in per capita spending on local news in French-language markets;
 - evidence of financial and other resource commitments made to local news over and above the required base expenditures and LPIF funding; and
 - other recommended indicators as well as the weighting that should be applied to each indicator.
- New local licensees – guidelines on how new licensees or existing licensees with no history of providing local news programming could gain access to the LPIF.
- Surpluses – in the event that the full amount of the LPIF is not allocated in any given year, a plan for the carry-over and/or re-allocation of any resulting surpluses.
- Other issues – any other questions or concerns the CAB may have that require Commission guidance.

378. Should the CAB fail to provide this plan by 19 January 2009, the Commission will initiate a process to solicit tenders from other interested parties.

379. Annual reports from the Fund Administrator and from LPIF recipients must be filed with the Commission no later than 30 November of each year. The reports will account for fund activity during the previous broadcast year, and will be made public on the Commission's website.

Evaluation of the LPIF

380. In addition to requiring the submission of annual reports, the Commission will conduct, through a public process, a comprehensive review of the LPIF following its third year of operation. This public process will seek additional evidence in order to determine whether the fund is fulfilling its objectives. The quantifiable criteria to be used in this assessment could include the following:
- the number of original local news stories broadcast during the three years prior to the implementation of the LPIF and the number of original stories broadcast in each year of the fund's operation;
 - evidence of increased audiences to local news and other local programming, including comparisons with audience data from before the implementation of the LPIF;
 - evidence of increased resources allocated to local newsgathering;
 - evidence of the increased diversity of local programming offered; and
 - other quantifiable evidence of audience satisfaction, such as public opinion polling.
381. Following this comprehensive evaluation, which will also take into account the status and impact of the transition by broadcasters from analog to digital transmission, the Commission will determine whether the LPIF should be maintained as originally defined, modified or discontinued.

Implementation of the LPIF

382. As noted above, the Commission will implement the LPIF as soon as possible through an amendment to the BDU Regulations. It is the Commission's intention that funding from the LPIF be available for the 2009/2010 broadcast year, subject to the further public process required to amend the BDU Regulations and barring any unforeseen intervening economic events.
383. The Commission expects that eligible recipients will factor the availability of LPIF funds into the commitments they make as part of their upcoming licence renewals.
384. The LPIF will function as a distinct fund. As noted above, the Commission has also determined that it will retain the DTH Fund. Each of the two funds will have its related but separate focus.

Conclusion

385. As noted elsewhere in this public notice, the majority of the changes to the Commission's frameworks for BDUs and programming undertakings will be implemented via amendments to the relevant regulations, most specifically the BDU Regulations, and will take effect on 31 August 2011.
386. The Commission will issue proposed amendments to the BDU Regulations for public comment according to its normal procedures, in order to implement them on 31 August 2011. However, the Commission notes that a number of other processes are also contemplated in this public notice. For ease of reference, the Commission has summarized these follow-up and related proceedings in Appendix 4 to this public notice.

Secretary General

Related documents

- *Proposed conditions of licence for competitive Canadian specialty services operating in the genres of mainstream sports and mainstream national news* – Notice of consultation – Broadcasting Public Notice CRTC 2008-103, 30 October 2008
- *Call for comments on a proposed framework for the sale of commercial advertising in the local availabilities of non-Canadian satellite services* – Notice of consultation – Broadcasting Public Notice CRTC 2008-102, 30 October 2008
- *Call for comments on a proposed regulatory framework for video-on-demand undertakings* – Notice of consultation – Broadcasting Public Notice CRTC 2008-101, 30 October 2008
- *Review of English- and French-language broadcasting services in English and French linguistic minority communities in Canada* – Notice of consultation and hearing – Broadcasting Notice of Public Hearing 2008-12, 16 October 2008.
- *Canadian broadcasting in new media* – Notice of consultation and hearing – Broadcasting Notice of Public Hearing CRTC 2008-11, 15 October 2008
- *Diversity of voices* – Regulatory policy – Broadcasting Public Notice CRTC 2008-4, 15 January 2008
- *New digital specialty described video programming undertaking; Licence amendments; Issuance of various mandatory distribution orders*, Broadcasting Decision CRTC 2007-246, 24 July 2007

- *Amendments to Exemption Order respecting cable broadcasting distribution undertakings that serve between 2,000 and 6,000 subscribers, with respect to the Commission's community channel policy*, Broadcasting Public Notice CRTC 2007-125, 14 November 2007
- *Review of the regulatory frameworks for broadcasting distribution undertakings and discretionary programming services*, Broadcasting Notice of Public Hearing CRTC 2007-10, 5 July 2007, as amended by Broadcasting Notices of Public Hearing CRTC 2007-10-1 through 2007-10-7
- *Determinations regarding certain aspects of the regulatory framework for over-the-air television*, Broadcasting Public Notice CRTC 2007-53, 17 May 2007
- *Linkage requirements for direct-to-home (DTH) satellite distribution undertakings*, Broadcasting Public Notice CRTC 2007-52, 16 May 2007
- *Distribution and linkage requirements for Class 1 and Class 2 licensees*, Broadcasting Public Notice CRTC 2007-51, 16 May 2007
- *Exemption order respecting certain third-language television undertakings*, Broadcasting Public Notice CRTC 2007-33, 30 March 2007
- *MuchMusic – Licence renewal*, Broadcasting Decision CRTC 2006-380, 18 August 2006
- *Regulatory framework for the licensing and distribution of high definition pay and specialty services*, Broadcasting Public Notice CRTC 2006-74, 15 June 2006
- *Review of certain aspects of the regulatory framework for over-the-air television*, Broadcasting Notice of Public Hearing CRTC 2006-5, 12 June 2006
- *Digital migration framework*, Broadcasting Public Notice CRTC 2006-23, 27 February 2006
- *Canal D – Licence renewal*, Broadcasting Decision CRTC 2005-441, 31 August 2005
- *Good commercial practices*, Broadcasting Public Notice CRTC 2005-35, 18 April 2005
- *Auditing of distributor subscriber information by programming services*, Broadcasting Public Notice CRTC 2005-34, 18 April 2005
- *Improving the diversity of third-language television services – A revised approach to assessing requests to add non-Canadian third-language television services to the lists of eligible satellite services for distribution on a digital basis*, Broadcasting Public Notice CRTC 2004-96, 16 December 2004

- *Talk TV – Licence renewal*, Broadcasting Decision CRTC 2004-26, 21 January 2004
- *Prime TV – Licence renewal*, Broadcasting Decision CRTC 2004-18, 21 January 2004
- *The Score – Licence renewal*, Broadcasting Decision CRTC 2004-10, 21 January 2004
- *The regulatory framework for the distribution of digital television signals*, Broadcasting Public Notice CRTC 2003-61, 11 November 2003
- *Licence renewal for CPAC; and issuance of a distribution order*, Broadcasting Decision CRTC 2002-377, 19 November 2002
- *Amendments to the Exemption order for small cable undertakings*, Broadcasting Public Notice CRTC 2002-74, 19 November 2002
- *Licence renewal for The Discovery Channel*, Decision CRTC 2001-733, 29 November 2001
- *Ownership of analog discretionary services by cable undertakings – amendment to the Commission’s policy*, Public Notice CRTC 2001-66-1, 24 August 2002
- *A policy to increase the availability to cable subscribers of specialty services in the minority official language*, Public Notice CRTC 2001-26, 12 February 2001
- *Men TV – a new specialty channel*, Decision CRTC 2000-464, 14 December 2000.
- *Introductory statement – Licensing of new digital pay and specialty services*, Public Notice CRTC 2000-171, 14 December 2000, as amended by *Introductory statement – Licensing of new digital pay and specialty services – Corrected Appendix 2*, Public Notice CRTC 2000-171-1, 6 March 2001
- Decision CRTC 2000-380, 11 September 2000
- *Final revisions to certain exemption orders*, Public Notice CRTC 2000-10, 24 January 2000, as corrected by *Corrections to Public Notice CRTC 2000-10: Final revisions to certain exemption orders*, Public Notice CRTC 2000-10-1, 27 March 2001
- *Licensing framework policy for new digital pay and specialty services*, Public Notice CRTC 2000-6, 13 January 2000

- *Licences for CBC French-language television and radio renewed for a seven-year term, Decision CRTC 2000-2, 6 January 2000*
- *Licences for CBC English-language television and radio renewed for a seven-year term, Decision CRTC 2000-1, 6 January 2000*
- *Definitions for new types of priority programs; revisions to the definitions of television content categories; definitions of Canadian dramatic programs that will qualify for time credits towards priority programming requirements, Public Notice CRTC 1999-205, 23 December 1999*
- *Order respecting the distribution of the Aboriginal Peoples Television Network, Public Notice CRTC 1999-70, 21 April 1999*
- *Order respecting the distribution of the French-language television service of TVA Group Inc., Public Notice CRTC 1999-27, 12 February 1999, as amended by Order respecting the distribution of the French-language television service of TVA Group Inc., Public Notice CRTC 1999-27-1, 19 May 1999*
- *Guidelines respecting financial contributions by the licensees of broadcasting distribution undertakings to the creation and presentation of Canadian programming, Circular No. 426, 22 December 1997*
- *Religious broadcasting policy, Public Notice CRTC 1993-78, 3 June 1993*

This document 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>.

Appendix 1 to Broadcasting Public Notice CRTC 2008-100

All discretionary services by year of licensing and major ownership groups / owners

Pay services (excluding Category 2 services)

Service	Licensing year	Major ownership group
TMN (The Movie Network)	1983	Astral
MovieCentral (SuperChannel)	1983	Corus
Super Écran	1984	Astral
Family Channel, The	1987	Astral
Mpix (MoviePix)	1994	Astral
Encore Avenue (MovieMax)	1994	Corus
Super Channel (Allarco)	2004	Allarco

(Analog) Specialty services

Service	Licensing year	Major ownership group
Telelatino	1984	Corus
MuchMusic	1984	CTVgm
TSN (The Sports Network)	1984	CTVgm
Fairchild Television (Chinavision)	1984	Fairchild
MusiquePlus	1987	Astral
VRAK.TV	1987	Astral
CBC Newsworld	1987	CBC
YTV	1987	Corus
Réseau des Sports (RDS)	1987	CTVgm
Vision TV	1987	SVOX (not-for profit)
TV5	1987	Consortium de television Québec
Weather Network, The / Météomedia	1987	Canada
Talentvision (Cathay)	1992	Pelmorex
Showcase	1994	Fairchild
Slice (Life Network, The)	1994	Canwest
Canal D	1994	Canwest
Réseau de l'information (RDI)	1994	Astral
CMT (Country Music Television)	1994	CBC
W Network	1994	Corus
Discovery Channel, The	1994	CTVgm
Bravo!	1994	CTVgm
History Television (H&E Network)	1996	Canwest
HGTV Canada	1996	Canwest
MusiMax	1996	Astral
Canal Vie	1996	Astral
Teletoon/Télétoon	1996	Astral
TVtropolis (Prime TV)	1996	Canwest
Treehouse TV	1996	Corus
Business News Network (BNN) (ROBTv)	1996	CTVgm
CTV Newsnet	1996	CTVgm
MTV Canada (Talk TV)	1996	CTVgm
Comedy Network, The	1996	CTVgm
CablePulse 24 (CP24)	1996	CTVgm
Canadian Learning Television (CLT)	1996	Corus
MuchMoreMusic	1996	CTVgm
Outdoor Life Network (OLN)	1996	CTVgm
SPACE (Space: The Imagination Station)	1996	CTVgm
Star! TV	1996	CTVgm

Odyssey Television Network (OTN)	1996	Peter Maniatakos
Le Canal Nouvelles (LCN)	1996	Quebecor
Sportsnet	1996	Rogers
Score, The	1996	Score Media
Asian Television Network (ATN)	1996	ATN
ZTélé (Canal Z)	1999	Astral
Historia (Canal Histoire)	1999	Canwest / Astral
Séries + (Canal Fiction)	1999	Canwest / Astral
Canal Evasion	1999	Serdy Direct
Food Network Canada	2000	Canwest
ARTV (Télé des Arts) ou <i>artv</i>	2000	CBC

Category 1 specialty services

Service	Licensing year	Major ownership group
Discovery Health	2000	Canwest
bold (Country Canada)	2000	CBC
Documentary (Canadian Documentary Channel)	2000	CBC
Travel + escape (CTV Travel)	2000	CTVgm
Book Television: The Channel	2000	CTVgm
Fashion Television Channel	2000	CTVgm
MTV2 (Razer)	2000	CTVgm
Réseau Info Sports	2000	CTVgm
Men TV	2000	Quebecor
Argent (LCN Affaires)	2000	Quebecor
Mystère	2000	Quebecor
Mystery	2000	Quebecor
Biography Channel, The	2000	Rogers
G4techtv	2000	Rogers / Shaw
Independent Film Channel, The	2000	Canwest
ichannel	2000	Stornoway
ONE: Canada's Mind, Body and Spirit Channel	2000	SVOX (not-for-profit)
OUTtv	2000	William Craig

Category 2 pay and specialty services (launched services only)

Service	Licensing year	Major ownership group
Cinépop	2000	Astral
ATN B4U Movies	2000	ATN
ATN Caribbean – CBN	2000	ATN
BBC Kids	2000	Canwest
Fine Living	2000	Canwest
AOV Adult Movie Channel	2000	Drive Publishing Inc.
AOV Maleflixxx	2000	1225520 Ontario Inc.
AOV XXX Action Clips	2000	1225520 Ontario Inc.
Movieola	2000	Movieola: Short Film Channel Inc.
ATN Alpha ETC Punjabi	2000	ATN
ATN ARY	2000	ATN
ATN Tamil Channel	2000	ATN
ATN Zee Gujarati	2000	ATN
Showcase Action	2000	Canwest
BBC Canada	2000	Canwest
Fox Sports World Canada	2000	Canwest
MovieTime (Lonestar)	2000	Canwest
National Geographic Channel	2000	Canwest
Showcase Diva	2000	Canwest
X-treme Sports	2000	Canwest
Leonardo World Canada	2000	Corus
Sky TG 24 Canada	2000	Corus

Video Italia Canada	2000	Corus
Discovery Kids	2000	Corus
Scream	2000	Corus
CourtTV Canada	2000	CTVgm
ESPN Classic Canada	2000	CTVgm
Leafs TV	2000	CTVgm
MuchLoud	2000	CTVgm
MuchMoreRetro	2000	CTVgm
MuchVibe	2000	CTVgm
NHL Network, The	2000	CTVgm
PunchMuch	2000	CTVgm
Raptors NBA TV	2000	CTVgm
TV Land	2000	CTVgm
Animal Planet	2000	CTVgm
Discovery Civilization Channel	2000	CTVgm
RTVi+	2000	Ethnic Channels Group
Festival Portuguese Television	2000	Frank Alvarez
DejaView	2000	Canwest
All TV	2000	Jan Sung Lee
ERT sat Canada	2000	Peter Maniatakos
SSTV	2000	Ravinder Singh Pannu
BPM:TV	2000	Stornoway
Pet Network	2000	Stornoway
Hustler Channel, The	2000	Stuart Duncan
Red Light District TV	2000	Stuart Duncan
CGTV Canada	2000	Stuart Media
Tamil Vision	2000	Tamil Vision
HPItv	2000	Woodbine Entertainment Group
Drive-In Classics	2001	CTVgm
SexTV: The Channel	2001	CTVgm
Bite Television	2001	Glassbox Television
Persian Vision	2001	M.S. Amiri Davanni
Salt and Light Catholic Media Foundation	2001	Not-for-profit Foundation
Tamil One	2002	Subanasir Vaithilingam
Avis de recherche	2002	Vincent G�racitano
Armed Forces Network, The	2002	Dieter Kohler
Auto Channel, The	2002	Dieter Kohler
Cult Movie Channel, The	2002	Dieter Kohler
Silver Screen Classics	2003	1490525 Ontario Inc.
Wild TV	2003	Dieter Kohler
1+1 International	2003	Ethnic Channels Group
ABU Dhabi TV	2003	Ethnic Channels Group
Mabuhay Channel, The	2003	Ethnic Channels Group
RTVi	2003	Ethnic Channels Group
SBTN	2003	Ethnic Channels Group
HTB Canada	2003	HTB Canada
IDNR-TV - Natural Resources Television	2003	IDNR-TV Inc.
KBS World	2003	Seabridge Media
ATN Aastha	2004	ATN
ATN Bangla	2004	ATN
ATN Zee Cinema	2004	ATN
ATN-NDTV	2004	ATN
ATN B4U Music	2004	ATN
ProSiebenSat.1 Welt	2004	Ethnic Channels Group
Israeli Network	2004	Ethnic Channels Group
ITN - Iran TV Network	2004	Ethnic Channels Group
Oasis HD	2004	High Fidelity HDTV
Treasure HD	2004	High Fidelity HDTV
World Fishing Network (WFN TV)	2004	Insight Sports
TFN - The Fight Network	2004	Mayhem Media Corp
Nuevo Mundo TV	2004	NMTV Inc.
HARDtv	2004	William Craig

Discovery HD Theatre	2005	CTVgm
Equator HD	2005	High Fidelity HDTV
Rush HD	2005	High Fidelity HDTV
GOL TV (The Soccer Net)	2005	Insight Sports
Les idées de ma maison	2005	Quebecor
Prise 2	2005	Quebecor
Christian Channel, The	2005	SVOX (not-for-profit)
ATN - Asian Sports Network	2006	ATN
TLN en Espanol	2006	Corus
Cosmopolitan Television	2007	Corus
TELETOON Rétro	2008	Corus/Astral

Pay-per-view (PPV) services (including direct-to-home (DTH) PPV)

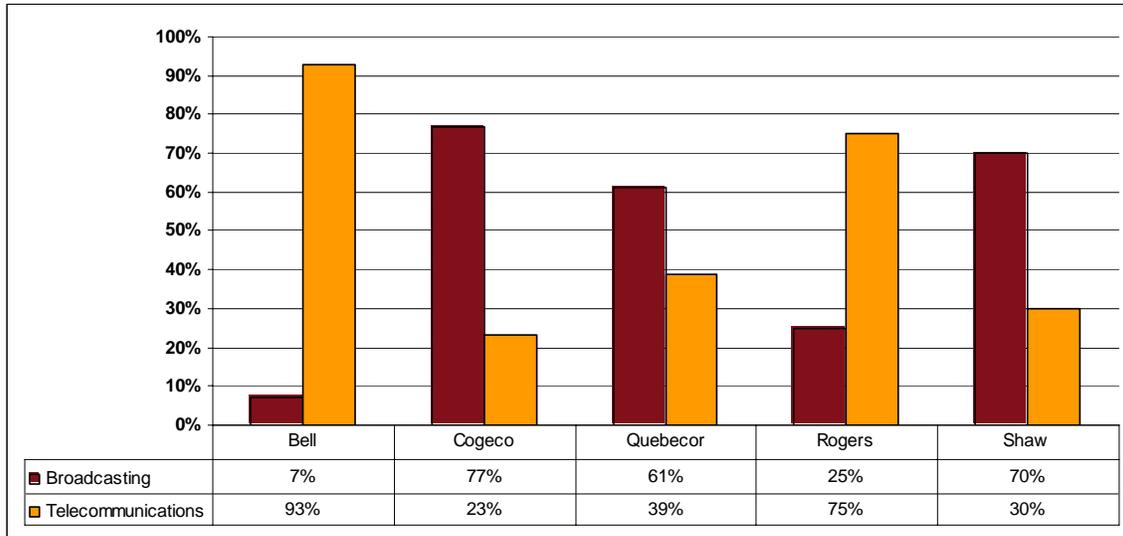
Service	Licensing year	Major ownership group
Shaw Pay-per-view (PPV)	1991	Shaw
Viewer's Choice Canada (PPV)	1991	Astral
Viewer's Choice Canada (DTH PPV)	1995	Astral
Canal Indigo (PPV and DTH PPV)	1995	Quebecor
Rogers Sportsnet (DTH PPV)	1995	Rogers
Shaw Pay-per-view (DTH PPV)	1995	Shaw
Rogers Sportsnet (PPV)	1996	Rogers
Bell TV (DTH PPV)	1999	BCE
Breakaway (PPV and DTH PPV)	2000	Breakaway
Bell TV (PPV)	2000	BCE
SaskTel (PPV)	2005	Saskatchewan Telecommunications
Bell TV (PPV)	2007	BCE

Video-on-demand services (approved; some have not yet launched)

Service	Licensing year
Cogeco	2000
Rogers on Demand	2000
Shaw on Demand (Videon)	2000
Illico sur demande (Théâtre Archambault @ la maison)	2002
MTS VOD	2003
Max Front Row (SaskTel)	2003
Telus	2003
Westman	2003
VU! On Demand (Bell TV)	2004
Compton Cable	2004
Building Technologies	2004
Mountain Cablevision	2004
Bluewater TV Cable	2005
Fleximo sur demande (Câblevision du Nord)	2006
Aurora Cable TV Limited	2006
Eastlink (Bragg Communications)	2006
Seaside Communications	2006
Campbell River TV	2007
Execulink Telecom	2007
Source Cable	2007
TBayTel	2008

Appendix 2 to Broadcasting Public Notice CRTC 2008-100

Major Canadian broadcasting distribution undertakings – Revenues from broadcasting and telecommunication activities – 2007



Source: Companies' 2007 public reporting and CRTC estimates

This graph depicts, for each of the major Canadian broadcasting distribution undertakings (that is, Bell, Cogeco, Quebecor, Rogers and Shaw), the portions of its revenues derived from broadcasting and telecommunications activities, as a percentage of total revenues for all activities, for the year 2007. (Broadcasting activities include broadcasting and broadcasting distribution; telecommunications activities include providing Internet, telephone and wireless services. This graph therefore does not take into account revenues associated with activities such as affiliated newspapers, magazines and Internet portals, among others.)

For Bell, 7% of revenues were from broadcasting activities and 93% were from telecommunications activities. For Cogeco, 77% of revenues were from broadcasting activities and 23% were from telecommunications activities. For Quebecor, 61% of revenues were from broadcasting activities and 39% were from telecommunications activities. For Rogers, 25% of revenues were from broadcasting activities and 75% were from telecommunications activities. Finally, for Shaw, 70% of revenues were from broadcasting activities and 30% were from telecommunications activities.

The following table sets out the broadcasting activities for each of the above-noted major Canadian broadcasting distribution undertakings.

	Bell	Cogeco	Quebecor	Rogers	Shaw
Broadcasting distribution undertakings	Bell TV (formerly Bell ExpressVu)	Cogeco Cable	Videotron Cable	Rogers Cable	Star Choice/ Shaw Cable
Over-the-air television services			TVA/SunTV	City/Omni	CJBN-TV Kenora
Pay and specialty services			6	5	
Video-on-demand and pay-per-view services	✓	✓	✓	✓	✓
Radio services		✓		✓	

Appendix 3 to Broadcasting Public Notice CRTC 2008-100

Revised Morin Model

(the numbers set out in the example below are for illustration purposes only)

In the calculation below, the following values have been assigned:

1. One point is assigned for each percentage of the broadcast day required by condition of licence to be Canadian content.
2. One point is assigned for each hour per week of original Canadian programming (averaged over the year).
3. One point is assigned for each hour per week of high definition content (averaged over the year).
4. One point is assigned for each percentage of the gross revenue of the broadcaster to be spent in a year on Canadian programming.
5. One point is assigned for each cent in the wholesale fee per subscriber paid to the broadcaster by the broadcasting distribution undertaking.

Proposed contribution to Canadian content

Overall Canadian content	60	%
Original Canadian programs	8	hours per week (averaged over the year)
High definition content	12	hours per week (averaged over the year)
Total Canadian content score	80	
plus: Proposed Canadian program expenditure	40	%
minus: Proposed wholesale fee	25	cents per subscriber per month
equals: Final score (80 + 40 – 25)	95	points

Appendix 4 to Broadcasting Public Notice CRTC 2008-100

Follow-up and related proceedings

Broadcasting Public Notices (issued)

Proposed conditions of licence for competitive Canadian specialty services operating in the genres of mainstream sports and mainstream national news – Notice of consultation – Broadcasting Public Notice CRTC 2008-103, 30 October 2008. The Commission will accept comments that it receives on or before **1 December 2008**.

Call for comments on a proposed framework for the sale of commercial advertising in the local availabilities of non-Canadian satellite services – Notice of consultation – Broadcasting Public Notice CRTC 2008-102, 30 October 2008. The Commission will accept comments that it receives on or before **15 January 2009**, and replies on or before **19 February 2009**.

Call for comments on the proposed regulatory framework for video-on-demand undertakings – Notice of consultation – Broadcasting Public Notice CRTC 2008-101, 30 October 2008. The Commission will accept comments that it receives on or before **29 January 2009**, and replies on or before **12 March 2009**.

Review of English- and French-language broadcasting services in English and French linguistic minority communities in Canada – Notice of consultation and hearing – Broadcasting Notice of Public Hearing CRTC 2008-12, 16 October 2008.

- Should the ensuing proceeding result in determinations that will require amendments to those set out in this public notice, the Commission will provide interested parties with an opportunity to comment on those determinations when it issues its call for comments on proposed amendments to the *Broadcasting Distribution Regulations*.

Circulars – Information bulletins (to be issued)

By no later than **1 April 2009**, the Commission will issue an information bulletin setting out the procedural steps to be followed in dispute resolution, including time limitations that will apply.

By no later than **1 April 2009**, the Commission will issue an information bulletin setting out revised information requirements that sponsors must satisfy when making requests to add non-Canadian services to the *Lists of eligible satellite services*.

Broadcasting Public Notices – Notices of consultation (to be issued)

The Commission intends to issue a call for comments on its policies regarding community-based television media, including the question of whether direct-to-home undertakings should be permitted to operate a community channel.

The Commission intends, by no later than 1 April 2009, to issue calls for comments on the following:

- a proposed exemption order for broadcasting distribution undertakings serving fewer than 20,000 subscribers;
- proposed amendments to the *Broadcasting Distribution Regulations* that will permit the Commission to implement the Local Programming Improvement Fund;
- proposed amendments to the *Broadcasting Distribution Regulations* to add a reverse onus provision, as well as to the *Television Broadcasting Regulations, 1987* to add an undue preference provision;
- proposed amendments to the exemption order for terrestrial relay distribution undertakings;
- proposed standard authorizations that will be incorporated into conditions of licence for broadcasting distribution undertakings and into the revised exemption order for broadcasting distribution undertakings serving fewer than 20,000 subscribers; and
- proposed amendments to the *Pay Television Regulations, 1990*, and the *Specialty Services Regulations, 1990*, to implement the requirements that Category A services a) provide their signals to broadcasting distribution undertakings, and b) not withhold their signals during a dispute.

The Commission will issue a call for comments in order to implement the remaining proposed amendments to the *Broadcasting Distribution Regulations* on 31 August 2011. The call for comments will include proposed rules for broadcasting distribution undertakings that wish to continue offering an analog service after that date.

Required filing dates

The Canadian Association of Broadcasters is requested to provide a detailed plan for the administration of the Local Programming Improvement Fund on or before **19 January 2009**.

Direct-to-home undertakings are requested to provide, by no later than **31 December 2008**, up-to-date information on their projected capacity levels as of 31 August 2011. This information will permit the Commission to determine the most appropriate basic distribution requirements with respect to signals originating from the four Atlantic provinces. The Commission intends to include its determinations on this matter in the proposed amendments to the *Broadcasting Distribution Regulations*.

Applications for new Category A services may be filed on or before **1 April 2010**, with a view to issuing decisions (approvals or denials) in advance of 31 August 2011.

The Canadian Broadcasting Corporation, as part of the proceeding for the renewal of its licences, is required to submit information with respect to its local programming expenditures for each station qualifying for the Local Programming Improvement Fund for each of the broadcast years 2005/2006, 2006/2007 and 2007/2008

Modifications to requirements and conditions of licence

When it next publishes the revised *Lists of eligible satellite services*, the Commission will remove the requirement that broadcasting distribution undertakings distribute certain signals only if those signals are received from licensed satellite relay distribution undertakings.

Licensees of Category A services may apply for amendments to their conditions of licence so as to implement the simplified rules respecting their nature of service definitions. The Commission encourages them to do so as part of their licence renewals.

Dissenting opinion of Commissioner Peter Menzies

The decision contains a number of changes to the rules of engagement that will govern Canada's broadcast and distribution environment for many years to come. It is a document upon which the Commission has reached a broad level of consensus and for which its architects deserve recognition.

This dissent is restricted to the creation of a small market fund (the Local Programming Improvement Fund or LPIF) to subsidize local television news production. As outlined, the fund will be financed by the imposition of a 1% fee on terrestrial and satellite broadcasting distribution undertakings (BDUs), generally known as cable companies. This will be done by increasing the required contribution to Canadian programming by licensed BDUs from 5 to 6% of gross revenues derived from broadcasting activities. The money, estimated at this time to be approximately \$60 million in the first year, will be used to subsidize over-the-air (OTA) television broadcast companies who wish to reinvest in local news production in non-metropolitan Canada.

This dissent will outline the key issues and arguments such as the treatment of francophone markets, the status of the CBC, the governance of the fund, who pays, the definition of the news agenda and justifications for establishing the fund or otherwise within the Broadcasting Act (the Act). It will argue that the fund is not required by the Act, unfairly shifts the responsibilities of the Commission and broadcasters to licensed BDUs and eventually the consumer, inserts the regulator into the news agenda and, most important of all, suppresses ingenuity and innovation while rewarding a less desirable set of behaviours.

Background

The Commission has identified a decline in the production of local news. The Commission believes that given the Act's direction on the need for the system to provide Canadians with information not only about their local communities but about similar communities across the country, the decline in local news needs to be reversed. There is no doubt that my colleagues' interpretation of their obligations under the Act is well-intended and their concern is shared.

There is some, but not a great deal, of empirical data upon which to work, but this dissent concedes the core belief inspiring the LPIF: resources for local markets and news have declined in step with ownership concentration and the centralization of operations. Content is commoditized, multi- and repurposed but clearly is neither elevated nor enhanced in the eyes of many Canadians. They argue that OTA stations are licensed based on their commitment to providing local news and reflection and that is why they benefit from mandatory carriage. Without local programming, they argue, these operators should be licensed in other categories or the Commission should act to ensure the survival of local news.

Yet for every person who expresses concern about local news to the Commission, there are others who haven't noticed, feel adequately or enthusiastically served or don't care. Just as the safe daily travel of millions of Canadians doesn't make the nightly newscast, people who are content, oblivious or uninterested do not often make their feelings known, let alone at public hearings.

Most, but not all, private broadcasters and the public broadcaster appealed to the Commission for relief through subsidy at the public hearing in April, but their issue was fee for carriage and as the decision points out, their arguments lacked substance. The LPIF decision is in some ways an elegant and creative effort to deal with the Canwest/CTV argument (“[i]f OTA stations are to continue to provide local programming, local news and information, and are to continue playing a key role in the creation and presentation of Canadian programming, then – commensurate with section 3(1)(s) of the Act – immediate and significant steps must be taken to assure them the resources required to sustain these contributions”), while trying to ensure that the resources are directed only to local news and not to shareholders.

Unfortunately, we are still left with a decision to create a fund designed to address an issue that may or may not be of concern to the majority of the public, is contentious within the industry and lacks the necessary volume of data to support the argument that either the integrity of the broadcasting system or the objectives of the Act are at risk.

The Broadcasting Act

There is no direction to the Commission in the Act or from the government concerning fealty to market forces or any other forms of economic philosophy such as Progressivism or Institutionalism, for instance. The economic philosophy used to achieve the objectives of the Act is a matter for the Commission to determine. It need not be bound ideologically. It must, however, be one that is pragmatically designed so that it rewards the most desirable behaviours and suppresses the least desirable and so that its outcomes and not just its output are measurable.

The Act is not specific on news or local content as the only priority, stating in section 3(1)(i)(ii) that programming should “be drawn from local, regional, national and international sources.” The Act also states in section 3(1)(d)(ii) that the system should “encourage the development of Canadian expression by providing a wide range of programming that reflects Canadian attitudes, opinions, ideas, values and artistic creativity, by displaying Canadian talent in entertainment programming and by offering information and analysis concerning Canada and other countries from a Canadian point of view.”

The same argument used to support the LPIF decision could therefore just as easily be used to argue that subsidies should be established so that broadcasters can finance foreign correspondents striving to “offer information and analysis concerning Canada and other countries from a Canadian point of view.”

Most pertinently, however, the Act states in section 3(1)(h) that “all persons who are licensed to carry on broadcasting undertakings have a responsibility for the programs they broadcast.” OTA TV programming is the responsibility of OTA TV licensees, not of the BDUs or consumers. To expand that premise opens doors that should stay closed and firmly so.

Issues and perspectives

Possible circumstances informing the local news issue may include the following:

- Broadcasters may not be investing in local news because there is less demand for it, notwithstanding the statistics quoted in the decision regarding the popularity of local news. People freely choose to obtain local news elsewhere. Broadcasters may simply be exercising their duty under section 3(1)(s)(ii) of the Act to “be responsive to the evolving demands of the public.”
- Media fragmentation trends mean that audiences for local news are no longer large enough to justify the costs associated with them.
- The public’s expectations of quality are inconsistent with what broadcasters can afford or choose to offer.
- A broadcaster has, for reasons unrelated to market or regulatory demand, been forced to cut costs. This has created the opportunity for others to enhance or maintain profitability through similar reductions without risking market share.
- Broadcasters have engaged in asset acquisitions and are paying for them through cost containment strategies that are most easily focused on newsrooms where there is no short-term negative consequence. When long-term consequences become apparent, accountability can be shifted to market trends, consumer demands and regulation. They can then appeal to the Commission for relief by invoking section 5(2), which calls on the Commission to regulate and supervise the Canadian broadcasting system in a flexible manner that, among other things, “is sensitive to the administrative burden that, as a consequence of such regulation and supervision, may be imposed on persons carrying on broadcasting undertakings.” (It is worth noting with respect to the record of its application and interpretation that the reference is only to an “administrative” burden.)
- News providers faced with negative advertising trends and competition from online sources (including their own) have determined that the wisest path to protect shareholder value and meet consumer demand is not to invest in news. This has led to a less attractive local news package which has resulted in smaller audiences. This could be critiqued as a strategy of self-fulfilling prophecy that creates opportunity under section 5(2) as outlined above while also respecting the requirement under 3(1)(s)(ii) to “be responsive to the evolving demands of the public.”

This means either that broadcasters: a) are reflecting trends in public demand by reducing or reallocating news resources, b) have embraced cost containment as the sole solution to financial obligations or other challenges, or c) have determined that demand is at levels inconsistent with preferred margins and therefore no longer see news as a value proposition but as a burden.

Scenario A: The market argument

If there is less local news on television because there is less demand for it, the creation of a small market fund stands opposed to consumer preferences. The Commission has not made the case that this is a public good sufficiently imperilled to warrant intervention against these forces. This would also appear to be argumentative in terms of the Commission's Call for Comments on these matters that solutions be based on the premise of reliance "on market forces wherever possible."

It is acknowledged that the Act makes it clear that local information and reflection is a requirement and news production is a standard condition of licence in the OTA TV sector. As outlined above, "news" is not an item specified in the Act but rather is inferred or assumed. Regardless, it is the tool the Commission and industry have historically used to achieve their shared goals. Perhaps it is the best tool. It certainly has been a fine tool and the Commission clearly has the power under section 10(1)(k) to make regulations "respecting such other matters as it deems necessary for the furtherance of its objects."

Nevertheless, these goals are best managed through licensing, which, while not necessarily a model of flexibility, is still more fluid and responsive to a rapidly changing media landscape than the LPIF is likely to be. If the LPIF is in opposition to market forces, it is by definition not serving the self-defined needs of the public and can only be justified if one subscribes to the view that the public perception of its interest cannot be trusted.

Scenario B: The financial challenge

If newsrooms are shrinking because companies have designated them as cost reduction centres to ease the burden of challenging finances, there are two most likely outcomes.

One is that the strategy of continued cost-cutting will work, pressures will be reduced and the company will return to full health and have the flexibility to reinvest in these areas in order to maintain a competitive position. In this case, no intervention is required because the cost control is a temporary means to an end and not an end in itself.

The other scenario is that the cost reductions will not be sufficient and will make it impossible to sustain the quality required to maintain audiences and revenues. In this case, the company will fail, sell or reorganize and the options are only to socialize the company or let nature take its course. Even if socialization were an acceptable option, the way to create a competitive system is to inspire successful behaviours and suppress rather than subsidize others.

Phil Lind of Rogers unambiguously articulated his company's opposition to fee for carriage with a stern assessment illustrative of the diversity of views within the industry. (The quotation below is used in the knowledge that Rogers has a growing non-OTA network but is nevertheless illustrative of the different perceptions of the industry's needs from within the industry itself.)

“How, you may be asking, did such an extraordinary idea ever get started? The answer is money. CTV paid too much for CHUM, Global paid too much for Alliance Atlantis; and both, because they bid against each other, are paying far too much for U.S. primetime shows. CBC has set aside insufficient funds to upgrade its ageing facilities, preferring to squander its limited resources in bidding wars for the broadcast rights to blockbuster movies, hockey and the Olympics.

“On the revenue side of the ledger, all three large broadcasters have failed to stay abreast of the new income opportunities offered by digital technologies, which include highly targeted advertising, broadcasting to handheld devices such as cell phones and streaming content online. Broadcasters would rather fatten their bottom lines by taxing consumers than by rolling up their sleeves and working for their money.”

(quoted as posted on the Friends of Canadian Broadcasting website)

Scenario C: The “burden” argument

If there is less local news because operators find it less commercially attractive, the Commission is faced with the prospect that compliance with news-related conditions of licence is or will be grudging.

This should be a matter of concern. But the appropriate vehicle to address it is by using the licence renewal process either to remove the burden or to clarify expectations and reinforce the idea that the possession of a broadcasting licence in Canada is not an entitlement but a privilege. Licensees are granted private use of public property. They are free to succeed or fail provided they serve the public interest in the manner outlined in the Act. Holding the fundamental objectives of the Act hostage is not behaviour that should be tolerated were it ever to be identified, for instance. Nor should ransom be paid, particularly with someone else's money, should such a scenario become clear.

If the creation of local news is something of great interest to the Commission as it clearly is and if licensees are failing to meet expectations, the solution is not to reward this situation with cash. Doing so risks embedding dysfunction into the Commission's relationship with the industry so that innovation might one day be confined to finding things that are undesirable and doing them badly enough so that the regulator may be convinced that someone else should pay for them to be done properly.

The LPIF also risks entrenching a co-dependency between the regulator and industry that has been built up through a history of regulatory impositions followed by exceptions and relief. More funds with more regulations and exceptions will not create a more mature relationship capable of better serving the public interest. Regulation is complex but need not demand complication. Fewer rules (more innovation) more firmly enforced (more accountability) should be preferred. Those willing and able to compete will do well, while those more inclined to invest their time bickering over who gets what will be challenged.

Who Pays?

In the end, there is only one source of funds: the ordinary Canadian consumer whose long-term interests should be at the heart of public regulation and supervision. This dissent doesn't doubt that this view concerning the best interest of the public is sincerely shared throughout the Commission. The issue at hand is the tool being used.

A 1% fee charged to the BDUs will, notwithstanding the Commission's view there is no justification to do so, likely be passed along by BDUs to their subscribers in terms of fee increases calculated to be in the order of 50 to 60 cents per month – at least in the first year. As revenues grow, so will the fee and so will the subsidy. Consumers, at least those who receive their broadcasting via cable or satellite, will therefore pay more (and eventually even more) for a service that they either don't particularly want or which has been withdrawn/depreciated by broadcasters who either sense no demand for it, cannot fulfill their end of the bargain or are no longer interested in doing so.

Large numbers of consumers will resent being asked to subsidize the tastes of others, let alone corporate profits. If the nation's cultural sovereignty were profoundly imperilled, it might be understandable to advocate or require the support of Canadians. This argument might have some merit in Quebec. However, the argument that the nation's culture will be altered in any significant way by the installation of a sports reporter in Medicine Hat or a Water Street nightlife freelancer in St. John's has not been made in a way that justifies a process that passes corporate expenses on to pensioners, persons on disability and others who subscribe to BDUs, particularly during uncertain economic times.

While the benefits, if any, from this fund will be available to all OTA TV viewers whether or not they receive these channels via BDUs, the entire burden will be placed on the BDUs and eventually on their subscribers. It's not necessary to get into whether or not this is justified; it is sufficient to state that if all Canadians are to receive a benefit, then all Canadians should be asked to sacrifice equally or at least be asked for their consent prior to making a disproportionate contribution.

Scenarios summary

As outlined above, creating a fund to sustain a product that is no longer viewed by the public as desirable is counter-intuitive. Creating one that passes on the financial burden of high cost acquisitions means that consumers are subsidizing private-sector expansion without the benefits of shareholding. The arguments that this is in the public interest are

unclear at best: the nation already has one public broadcaster; there is no need to create semi-private/semi-public siblings. Much of the decline in local news can be traced to the acquisition of assets and concentrations of ownership that were approved by previous Commissions and this Commission with little or any codices providing for the specific protection of local news. Now, however, the LPIF will essentially be financing those acquisitions as a banker of, perhaps, last resort. Asking consumers to pay for something that is a fundamental undertaking is shifting the burden of expectations and obligation from operators to consumers. In order to justify such a move, the Commission would require evidence suggesting that there are no Canadian entrepreneurs interested in or capable of fulfilling those OTA TV broadcasting requirements should current private licence holders choose not to. No such case has been made and there is some evidence to suggest a queue is already forming.

The CBC

The CBC already has access to public funds and, in terms of television, also enjoys the benefit of competing with the private sector for advertising revenue. The money being used to support the LPIF will be drawn from the private sector (BDUs) and should remain within that sector. This is not to say the CBC cannot or should not make its case for more funding, but this is not a Commission responsibility.

Francophone markets

The Act is clear in its support for both anglophone and francophone markets and for the distinct characteristics and needs of the francophone market. This dissent respects that and fully understands the special circumstances and the need to ensure the protection, preservation and promotion of Quebec's national culture and Canada's francophone communities' aspirations. Nothing in this dissent should be interpreted otherwise.

There are however no private francophone TV broadcasters outside of Quebec and the decision to disproportionately direct one-third of the fund to the francophone market will likely provide the most relief to TQS, the broadcaster recently purchased out of receivership. There is little evidence of commercial stress elsewhere in that OTA TV market and therefore the argument that this situation is a matter of "market failure" can't apply. On the contrary, the situation would appear to have been a clear example of the Quebec market at work. It is noteworthy that the new TQS owners initially wished to cancel their news operation and lay off more than 200 news-related employees, who at an average salary of \$50,000 each would cost roughly \$10 million. Under the terms of the LPIF, an estimated \$20 million in assistance will now be available to Quebec OTA TV broadcasters, including TQS.

What has in essence occurred is that the Commission approved the TQS purchase with reduced news requirements that will be reviewed after three years. Now TQS can use an LPIF that prioritizes francophone needs to build its local news capacity in a fashion that will be satisfactory to the Commission upon review three years from now. At that time the LPIF will itself be reviewed. Unless the Commission wishes to be accused of killing local news, it is inevitable that the fund will be renewed.

Governance

Much as it is the Commission's desire that this fund should create additional resources in non-metro newsrooms, governance is problematic if the LPIF is to achieve anything other than an infusion of \$60 million-plus straight to the bottom lines of OTA TV broadcasters.

Certain steps might mitigate this but it is difficult to understand why many entities wouldn't simply shuffle resources into qualifying newsrooms in order to have their salaries subsidized. Meanwhile, the jobs could come out of major market newsrooms or other corporate properties with the end result being that there is no net investment, only more earnings before interest, taxes, depreciation and amortization (EBITDA). To be clear, EBITDA improvements are a good thing, but ideally are earned through performance rather than subsidy. Consumers could find themselves paying \$60 million more for nothing other than the addition of 60 extra seconds of "local" news at the expense of 60 seconds of regional or national or international news. It is hoped issues such as this and others will be looked at closely by the Canadian Association of Broadcasters (CAB) in its recommendations.

While it is assumed that BDUs will pass the 1% along to subscribers in order to raise the LPIF's \$60 million, they may also argue that administratively it is easier to increase fees by more, perhaps by 2% or from \$1 to \$1.20 per month per subscriber. This would allow them to pass along the \$60 million required by the LPIF while further enhancing their own situation by an equivalent amount and thus retaining the relative balance of power that currently exists. The LPIF could therefore inspire a "domino" scenario in which consumers are getting neither more nor better news and yet are adding an additional \$120 million-plus annually to the bottom lines of Canada's BDUs and broadcasters. This is an outcome likely to create common ground for opposition from most perspectives.

The majority of the items listed by the Commission for assessment by the CAB as indicators of success (para. 377) are output- rather than performance-based (e.g. evidence of audience success; increases in local advertising revenues; increases in original local news stories; expansion of news bureaus; increases in the quantity of local programming broadcast; increases in per capita spending on local news in the French-language market; and evidence of financial and other resource commitments made to local news over and above the required base expenditures and LPIF funding).

In other words, most measures deal with the ability to spend money and create volume as opposed to performance-based criteria (e.g. increases in viewers of local news; increases in market share; increases in advertising revenue derived from local news programming; increased numbers of national and international awards for local news journalism; financial and other resource commitments made to local news in addition to those funded by LPIF; and long-term sustainability plans for the funding of local news when LPIF expires).

Most business strategies ultimately prefer to create performance measures that emphasize return on investment as opposed to output (investment) only. The LPIF is asking the public through the BDUs to make an investment in local news. The public therefore has a reasonable expectation not only that money will be spent but that it will be spent productively. It is hoped that the CAB will weigh the current set of expectations with that in mind.

While it is clear that francophone broadcasters will get proportionately more of the fund than their anglophone counterparts, it remains unclear whether the fund will be used proportionately across Canada's anglophone regions. While the fund will be available to all licensees in designated markets, it is not unlimited. Corporations that oversee those operations may have an expectation the fund will be divided equitably among them assuming they apply. It makes some sense from a business perspective that they would therefore give priority to those stations under their control that can offer the greatest opportunity for a return on investment. For instance, adding a reporter in Quebec City may be seen as more likely to increase viewer market share and therefore advertising revenue than would making the same size of investment – one reporter – in Charlottetown. If that is the case, the fund will still produce additional news but it may do so only in the largest and most economically robust of the eligible markets. Not all Canadians therefore would receive the same benefit from their investment.

Alberta is particularly problematic in this regard as roughly two-thirds of its population live in the cities of Calgary and Edmonton, neither of which is eligible to apply for LPIF assistance. This means that if it can be assumed – as this dissent does – that BDUs will pass along the cost of the LPIF to their customers, Calgarians and Edmontonians will be subsidizing stations elsewhere in the country but not any of their own.

It is hoped the CAB will also keep issues such as this in mind as it deliberates on its recommendations for the administration of the fund so as to respect regional expectations and sensitivities.

Defining the news agenda

Is a person on the street interview with local people conducted by a local reporter still considered local news if the topic under discussion is the sub-prime crisis in the United States or an earthquake in China?

Given that stations in provincial and territorial capitals and even in the national capital (Victoria, Whitehorse, Yellowknife, Regina, Winnipeg, Ottawa/francophone, Quebec City, Halifax, Fredericton, Charlottetown, St. John's and Iqaluit) all qualify, is the news coming from their legislatures local news or otherwise?

Does a state agency, no matter how independent, have any business in the private newsrooms of the nation? Fundamental principles of press freedom are tweaked by the implementation of a structure that places the sustainability of private newsrooms and the livelihoods of the journalists therein in the hands of an agency whose mandate is ultimately governed by Acts of Parliament and the political process. Does anyone reasonably expect widespread future critiques or eventual calls in the nation's media for

the termination of this fund when the jobs of the people reporting and commenting depend on its continuance? This is not to doubt the integrity of journalists, almost all of whom are capable of professionalism under such circumstances. This is simply a reality many would acknowledge, if not publicly then privately, and it needs to be considered.

Summary

We can enforce expectations or we can change them.

The creation of the LPIF to subsidize news and its providers is not the solution. The Commission may sincerely wish to present this as a temporary measure, but the amount of money flowing into the system is incrementally so large that there is no chance it will ever retreat from it and in the complex world of regulation the distinctions between burdens and crutches will become even more blurred.

Instead, we will have transformed industry newsrooms into permanent wards of the state and asked the consumer to pay the costs of their confinement and care.

Given many Canadians' sensitivity to their insecurities regarding cultural sovereignty, this may be a necessary step at emerging levels and certainly the cultural urgency argument is stronger in the area of francophone broadcasting. For major players, however, the achievement of full corporate maturity and the accountability that comes with it can only take place when the restraint and the security of this umbilical connection is broken. Sadly, this process takes even the boldest entrepreneurs – those with talent, creativity, innovation and the courage to really compete and stand accountable to performance measures – and puts them in the same subsidized assembly line as others. Even those philosophically opposed will be forced, thanks to the LPIF cash potential, to play along. To do otherwise leaves more money on the table for the competition.

If excellence and not mere sustainability is our goal, expectations will be challenging, measurable and achievable. Our nation's operators and their employees should be as free as possible to succeed as vendors of Canadian and other content under the Act. And if we are to support conditions that inspire creativity and content excellence, the industry and Commission must show faith in Canadians' ability to compete, reflect and trust the judgment of its citizens and accept responsibility for the outcomes. Failure is never preferred, but on a systemic basis it is a necessary process in the evolution of excellence. This is not, after all, a banking system but a broadcasting system primarily supported by disposable income in the economy and this argument is not about regulation or deregulation; it is about the tools of regulation.

We cannot succeed in inspiring the creative abilities and instincts of Canadians or retain their confidence by subsidizing shortcomings and obligations that belong at the doorstep of the Commission and the OTA TV licensees. With great respect to my fellow Commissioners and their acknowledged professionalism, wisdom and dedication, the LPIF rewards and encourages the wrong behaviours and stifles and suppresses the right ones – such as innovation and competitiveness – that are required for Canada's economy and culture to flourish.

Dissenting opinion of Commissioner Michel Morin

Introduction

I was appointed to the Canadian Radio-television and Telecommunications Commission (CRTC) in August 2007 for a five-year term. Today, I am issuing my sixth dissenting opinion: Broadcasting Decisions CRTC 2007-435 (Sherbrooke), 2008-62 (Kelowna), 2008-129 (TQS), 2008-222 (Ottawa-Gatineau) as well as *Report on the Canadian Television Fun* (Gatineau 2008). Believe me when I say I am not happy to be compelled to dissent from the majority opinion. In my opinion, there are three important issues at stake in the decision that the CRTC has just made.

First, the \$60 million Local Programming Improvement Fund (LPIF) is poorly targeted. The CRTC noted that there was a deficit in the production of regional news in various Canadian markets, and should have earmarked the LPIF (which comprises 1% of the gross revenues of distribution undertakings) solely for the production of news in these markets and should have made it accessible to commercial and community television only.

Then, the Morin model (in its original version or the version adapted by the CRTC) should have been applied not only to new Category A specialty services and 9(1)(h) services with mandatory carriage on the basic service of all Canadians but also to existing discretionary services as of 2010, when their licences are renewed.

Finally, the sum of more than \$60 million represents almost half of what would have been generated with a monthly distribution fee of \$0.50 (\$138 million), which was proposed jointly by over-the-air (OTA) broadcasters CTVglobemedia and Canwest (Global) at the hearings. This represents \$6 per year for each of the 10,700,000 subscribers to Canadian terrestrial and satellite distribution undertakings. It is not a huge amount, but in these difficult times, the CRTC should have limited its objective to Category 1 programming, meaning traditional news, rather than including all local programming categories, such as opinion/commentary and variety programming. In other words, having acknowledged that there is a deficit in the production of news programming in small markets (population under one million), the CRTC should have focused on a single objective: the production of news in small markets to offset the deficit that has worsened over the last 10 years.

We all agree that no model or fund is perfect, and that this decision will inevitably result in some unfairness. For example, subscribers to the distribution undertakings in five ridings in the Montreal area (Papineau, Hochelaga Bourrassa, Rosemont-La-Petite-Patrie, Laurier-St-Marie) – which are among the 10 poorest in the country – may now find themselves subsidizing, via their subscription fees, regional news produced for subscribers in Quebec City, where the average income has recently topped the average income in Montréal. Similarly, in Alberta, where more than two-thirds of the population is concentrated in two major markets with populations over one million each (and thus ineligible for the LPIF), i.e., Calgary and Edmonton, subscribers in these markets could now have to subsidize local news programming in other Canadian provinces. It is

estimated that \$10 million of the \$60 million LPIF will come from Albertans, but only \$2 million, again according to preliminary estimates, could end up supporting local news programming in Alberta's smaller markets. This is purely and simply a case of Albertans subsidizing the rest of the country to the tune of \$8 million!

Naturally, it costs money to cover a country that is the size of a continent, bordered by three oceans and home to one-tenth the population of our neighbour to the south. However, in all likelihood, only the production of Category 1 news programming in the small markets would really improve news coverage for all Canadians who will directly or indirectly pay to finance the \$60 million fund via increases to their cable or satellite subscriptions. The locally-produced analysis, commentary and opinion programming that will be eligible for subsidies from the LPIF are rarely "exportable" to the large Toronto, Montréal, Vancouver, Calgary and Edmonton markets or to the English-language Ottawa-Gatineau market. The only news liable to be broadcast on the national networks and thus improve coverage across the country for all Canadians is pure news.

For this reason, it was important that the LPIF, which was conceived to stimulate investments in programming, be reserved exclusively for the production of local news in the small markets and thus ensure that the 60% of subscribers who live in large markets with populations over one million (whose television stations will not have access to the LPIF) could at least get some return on their investment with the national networks airing a greater variety of news that while "regional" could be of interest to a broader audience.

Furthermore, the CRTC should have refused access to the LPIF to the CBC/SRC which, unlike private undertakings, has never been transparent with the Commission. Taxpayers should not have to pay twice for a public service. The Crown corporation already receives \$1.5 billion in funding, equal to the revenues generated by Canada's 619 commercial radio stations. Private and community broadcasters are not exactly rolling in dough these days! The Crown corporation, however, can rely on practically iron-clad guarantees of funding via parliamentary appropriations, the recurring \$60 million budget, subscriptions and money from the Canadian Television Fund (CTF), putting it *de facto* in a better position than private and community broadcasters in terms of access to the LPIF.

By allowing the CBC/SRC to benefit from the LPIF, which is funded by contributions from distribution undertakings, the CRTC is reneging on the very principles it established last June in its report on the CTF. Under this new philosophy of the CRTC, which focused on greater transparency and accountability, funds contributed by private distribution undertakings were to be earmarked for private broadcasting undertakings, and funds from the public sector were to be reserved for public companies or not-for-profits. I have trouble understanding the Commission's about-face in favour of an often-criticized hybrid model that we are now returning to by the back door.

A final point: the Morin Model. First, I congratulate the CRTC on its decision to use the model to justify mandatory carriage on the basic service for new Category A licences and for 9(1)(h) services. It was time for the CRTC to be less arbitrary and more transparent and take into account the cost to consumers when approving a discretionary service's

carriage on the basic service. However the CRTC did not follow through but rather opted not to adopt the model to provide access to the basic service, at the next licence renewal, for discretionary services with high Canadian content, high Canadian programming expenditures, and moderate prices for consumers. It was time for the CRTC, via a neutral and empirical point system that would evolve over time, to give new impetus to Canadian content carried on the basic service while allowing stakeholders greater flexibility and greater choice in their business models. It is our journalists, our artists, our technicians, our producers, and Canadian production as a whole, that could have benefited from this new trend toward champions for Canadian content carried on the basic service, in complete accordance with the objectives of the *Broadcasting Act* (the Act), the statements made by CRTC Chairman Konrad von Finckenstein and the recommendations of the Dunbar-Leblanc report.

With this decision, the CRTC now has a two-part system. To qualify for mandatory carriage on the basic service, 9(1)(h) and Category A services will have to pass the Morin Model test, whereas existing discretionary services will no longer be able to take advantage of this model to get even mandatory access and strengthen their negotiating position with broadcasting distribution undertakings (BDUs) or satellite direct-to-home (DTH) undertakings. And that is really too bad for current Canadian content champions.

This dissenting opinion is approximately 50 pages in length, and is the longest ever written by a Commissioner in the CRTC's 40 years. It is divided into the following chapters to help the reader.

THE CBC/SRC SHOULD BE EXCLUDED FROM THE LPIF

- **The CRTC is renegeing on principles established a few months ago**
- **Taxpayers should not have to pay twice**
- **The CBC/SRC has never been transparent**
- **The Canadian Association of Broadcasters (CAB) will be placed in an awkward position**

THE CRTC SHOULD HAVE FOCUSED SOLELY ON CATEGORY 1 PROGRAMMING

- **The CRTC acknowledges the problem but offers no solution**
- **The urgent need to intervene to encourage the production of News (Category 1)**
- **Subscribers in large markets would have benefited**
- **Commentary and opinion : No thank you**

THE MORIN MODEL FOR EVERYONE

- **Context**
- **The statements of Chairman von Finckenstein**
- **The objectives of the hearing, the Dunbar-Leblanc report and the *Broadcasting Act***
- **The objectives of the model**
- **Explanations**
- **Some observations**
- **Application of model to 5 major markets**
- **A few final observations**
- **Replies to counter-arguments**

CONCLUSION

CBC/SRC SHOULD BE EXCLUDED FROM THE LPIF

The CRTC is renegeing on principles established a few months ago

By giving the CBC/SRC access to the LPIF, which has a budget of \$60 million, the CRTC is renegeing on the principles it set out just a few months ago in its recommendations to the Department of Canadian Heritage on the CTF (*CRTC Report to the Minister of Canadian Heritage on the Canadian Television Fund, 5 June 2008*).

In its recommendations submitted last spring to the Department of Canadian Heritage, which is responsible for the CTF, the CRTC clearly stated that the contributions by BDUs, representing 5 percent of their gross revenues, should be allocated on a mandatory basis to the private sector, whereas the Department of Canadian Heritage's overall contribution should be earmarked exclusively for the public sector, meaning the CBC/SRC.

In other words, after a five-day hearing held last February and attended by approximately 50 interveners from all sectors, it was decided that henceforth the genres and objectives of public and private broadcasters would no longer be lumped together. Although the Department of Canadian Heritage has not yet made its final decision, this was the strongest, if not central recommendation of the CRTC's report on the CTF.

The CRTC's goal was to ensure that the CTF's issues and objectives are addressed separately, and it proposed to the Department of Canadian Heritage the creation, for the CTF, not only of two separate funds, but of two boards of directors, thus tacitly admitting that the objectives and values of the public and private sectors are different, and even opposite. One notable example is audience share, which is fundamental for the private sector, but only "accessory" for the largely government-funded public sector.

In its report on the CTF, the CRTC implicitly acknowledged that Canadian taxpayers should not pay twice for a public service. In other words, the contributions drawn from the gross revenues of distribution undertakings like Rogers, Shaw Communications,

Videotron, Eastlink or Cogeco should not be used to increase CBC/SRC funding, but rather should be earmarked for the development of the private broadcasting sector, which, unlike the public sector, cannot rely on parliamentary appropriations to the tune of close to one billion dollars each year.

Taxpayers should not have to pay twice

In its decision, the CRTC is requiring BDUs and DTH undertakings to pay 1 percent of their gross revenues to the LPIF to develop regional programming.

Will the BDUs and DTH undertakings decide to bill their customers 50 cents per month to generate the revenues required (i.e., the equivalent of 1 percent of the BDUs' gross revenues) to develop local programming in markets with a population of less than one million? One can assume, although this is not absolutely certain, that they will probably pass this expense on to Canada's 10.7 million subscribers in order to protect their profit margins.

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According to available data, 60 percent of subscribers in markets with one million inhabitants or more could actually be subsidizing 40 percent of subscribers in smaller markets. This is a first step we could take to fulfil the spirit of the the Act, which promotes the creation and broadcast of Canadian content. In this context, we must remember that BDUs and DTH undertakings are developing within the Canadian market and are thus sheltered from competition from American undertakings. Approximately 50 cents per month, i.e., six dollars per year per subscriber, to better serve Canada, which is bordered by three oceans: this is most definitely an objective to which we can subscribe. The ultimate objective is to allow OTA broadcasters to offer better coverage in a country that, in terms of land mass, is the second largest in the world.

However, we refuse to take the second step: billing cable subscribers, particularly those in large cities and who number 6.4 million, to help the CBC/SRC enhance its local programming in small markets, which represent 4.3 million people.

There is no doubt in my mind that the CRTC is circumventing Parliament by creating a new source of funding for the public service, which ultimately and throughout its mandate, is accountable to Parliament and not to the CRTC, whereas private undertakings are accountable only to the CRTC.

If the CBC/SRC considers that it does not have sufficient resources to finance its local programming, it is up to it to demonstrate leadership. In all likelihood, injecting substantial financial resources into the private sector for local programming via the LPIF would put the Crown Corporation in a better position to support requests to Parliament for additional appropriations. But this is a different issue and it stands to reason that the CRTC should not have to take the initiative in funding the public sector using the revenues of private BDUs and DTH undertakings.

The CBC/SRC has never been transparent

Unlike its counterparts in the private sector, the public broadcaster has never seen fit to provide the CRTC with relevant information on each of its stations across the country.

Each year, all private broadcasters submit to the CRTC, on a confidential basis, a host of information for each of their stations: programming expenditures, wages, staff numbers, operating revenues, profit before interest and taxes (PBIT), local and national advertising revenues, operating expenses, technical services expenditures, spending on sales and promotion, administrative costs ... the list is a long one. What an example of transparency for the private sector, which operates within a fully regulated industry! The CRTC has known all of the expenditures of television networks, for eons! So, it knows whether private broadcasters are increasing their local programming budgets.

Not so for CBC/SRC. Where are the Crown Corporation's audited numbers for recent years that the Canadian Association of Broadcasters (CAB) may need to allocate the Fund's resources? We are fumbling around in the dark. How will the CRTC be able to check the figures that the Crown Corporation gives us? We have never had them in the past, but now we are going to get them? I have my doubts. The current process is as murky for the Crown Corporation as it is open and transparent for the private sector. Why does the CRTC not acknowledge, as it did for the CTF, that it is dealing with two worlds that are governed by different legislation?

In this decision, the CRTC lists criteria such as evidence of audience success, advertising revenues, expansion of news bureaus, local programming, and so on. Fulfilling its public mandate is one thing, winning audiences is something else. How can the numerous criteria to be applied indiscriminately to both the private and public sectors be fairly weighted? The CRTC does not say. In my opinion, it is quite simply mission impossible.

One thing is certain: the Act is clear on the Crown Corporation's mandate, which is to "reflect Canada and its regions to national and regional audiences, while serving the special needs of those regions." (*Broadcasting Act*, 1991, chapter 11, section 3(1)(m)(ii).)

Before giving funds to the public sector, should we not first examine how the Crown Corporation is fulfilling its local programming mandate? The above excerpt from the Act is not the last of the eight paragraphs defining the Crown Corporation's mission, it is the second, just after the paragraph stating that its programming should be "distinctively Canadian"! That says something about its importance, and about the importance that the legislators give to the word "regional" and the term "special needs of those regions."

Although the CRTC claims there is no difference in news coverage provided by the Crown Corporation and that provided by the private sector, the CBC/SRC itself says the exact opposite, as evidenced by its strategic directions (which can be found at <http://www.cbc.radio-canada.ca/about/priorities.shtml>). The first two of its eight directions are, “Ensure distinctive programming of the highest quality,” and “Recognize the importance of regional reflection and of the changing face of Canada.”

If I understand correctly, all of the Crown Corporation’s programming should be “**distinct**,” not only variety or drama programming. Claiming the opposite and lumping the private and public sectors together as the CRTC is doing is an insult to the mandate that the CBC/SRC’s Board of Directors has established in accordance with the Act.

The other element, “**regional reflection**” also ranks second on the list of the Crown Corporation’s eight strategic directions, not last, evidence of the importance it places on regional programming. It was the CBC/SRC that set itself these objectives: the CRTC did not have to intervene. Clearly, the Crown Corporation has all the latitude it needs to adjust its budget to adhere to its own strategic directions or to present its case to Parliament, which private undertakings cannot do. This is also the reason that it has never seen fit to be transparent with the CRTC, as the private sector does.

What other argument could the CBC/SRC give for gaining preferred access to the LPIF – diversity perhaps? The CBC/SRC has nothing to teach anyone in this area. During the five days of hearings on diversity in September 2007, the CBC/SRC was forced to acknowledge that, apart from election campaigns, management of these two networks do, not have any neutral mechanism or system in place to assess the diversity of viewpoints, persons interviewed or themes addressed in their programming (<http://crtc.gc.ca/eng/transcripts/2007/tb0917.htm>, paragraphs 176 to 191). Let us consider now subjects such as the environment, climate change of the financing, the healthcare system, the development of the wind energy industry, the use of fossil fuels, the governmental responsibility for deregulating financial products, the management of agricultural commodities, the impact on Canada of economic programs of American presidential candidates – to mention only those – and ask the Crown Corporation if it has reasonably presented all points of view. And does it care? How could it demonstrate that it is not biased? Is diversity really present?

In other words, apart from election campaigns, where both networks’ news divisions keep meticulous records of reporting on the various political parties (length, names and parties), the CBC/SRC cannot show that diversity is one of the values it demonstrates in its programming. For those who have any doubts, even the Crown Corporation’s two ombudsmen do not have the mandate to undertake what is, in my view, one of the most fundamental exercises. After all, American channels like CNN make diversity one of their key themes. During the current election campaign south of the border, CNN (which, by the way, has increased its audience share by almost 60 percent during the campaign) displays the following motto: CNN as diverse as you are. Where is the motto for the CBC/SRC? It could, like CNN, develop this concept and make it its motto as a public corporation.

If diversity is not the Crown Corporation's core value, how can we justify giving it a new source of revenue for producing more local programming when the government already gives it the funding to do that very thing? In actual fact, there is no proof that the CBC/SRC has more to offer in terms of diversity than private broadcasters do. As far as diversity is concerned, it is a television network, just like the others, except for the fact that it is a Crown Corporation and receives most of its funding from the government. Placing the private sector on the same footing as the public sector only shows that the CRTC is giving preferential treatment to a corporation already receiving public funds.

(As an aside: given the appropriations that the CBC/SRC already receives from Parliament, and which are shrinking each year in terms of constant dollars, it might be time to consider a subscription system for the public broadcaster to replace its advertising dollars. In my opinion, the CRTC should show leadership and give this issue serious consideration. A subscription system would raise less confusion in the minds of subscribers, who could be billed directly as subscribers to the public service. The amounts would be vastly different than those paid by German, British or French consumers for their public service! I have raised this issue at least twice in the past, at hearings on the CTF, but it appears to have fallen on deaf ears. I do not believe that I am exceeding my mandate by raising this issue publicly with all interveners.)

In any case, we should remember that the Crown Corporation's objectives as set out in section 3(1)(m)(ii) of the Act are more ambitious. To be fair to the CBC/SRC, the CRTC should not prevent it from pursuing the eight specific objectives set out in the Act, which fundamentally distinguish the public sector from the private sector; the ambitions of the latter are limited by the whims of the commercial advertising market. For that reason, given the different objectives of television broadcasters, I believe it is unfair, both for the public broadcaster and for private broadcasters, to have their needs assessed against the same criteria for funding purposes.

The Canadian Association of Broadcasters will be placed in an awkward position

The CAB, which will be responsible for administering the LPIF, will inevitably be placed in an awkward position when it comes time to allocate BDUs' contributions to the Crown Corporation rather than to its own members. This will be even more problematic given that the BDUs' subscribers include many more viewers of the CBC/SRC's local stations. How can the CBC/SRC be treated fairly when it has always refused to submit all its data on its local activities to the CRTC, as do private broadcasters? Honestly, I wonder whether CAB, which was not consulted on this issue, will even agree to take on this task.

The Crown Corporation operates in a different world. Its programming, operating and advertising expenditures are a complete unknown, at least on a per-station basis, which is the basis that the CRTC uses to allocate contributions.

But to get back to the essentials. Personally, I believe that it is the CBC/SRC that should show leadership and justify to Parliament the budgets it needs to provide local programming that is worthy of the name. With the creation of a fund devoted exclusively to the private sector, and given the scope of the fund proposed by the CRTC, the CBC/SRC would have an additional argument in support of its requests to the Department of Canadian Heritage and ultimately, to the Canadian government. However, if it had access to the LPIF, Parliament might be less inclined to grant it additional appropriations.

This new source of funding will provide the CBC/SRC with a sixth revenue stream for its budget, which has just hit \$1.5 billion: \$914 million in Parliamentary appropriations, \$60 million to make programming more dynamic, advertising revenues in the order of \$329 million, subscription fees of \$124.3 million, and \$93 million from the CTF. This equals the revenues of Canada's 619 private commercial radio stations!

Private OTA undertakings, however, have to rely on advertising revenues, subscriptions and the CTF – nothing like the billion dollars in government funding that the Crown Corporation has to balance its budget.

If we wanted to maximize the LPIF's impact on private broadcasters, we should have excluded the CBC/SRC. Of course, \$60 million can go a long way: it is roughly two and half times the news budget with which the former TQS succeeded in becoming the second most popular show at 6 p.m., ahead of the SRC and behind TVA, in all Quebec markets (Montréal, Quebec City, Chicoutimi, Trois-Rivières and Sherbrooke). But \$60 million is not the goose that lays the golden egg, revolutionizing local programming across the country!

In my dissenting opinion on the TQS licence renewal (Broadcasting Decision CRTC 2008-129), I proposed two benchmarks for assessing private broadcasters at their licence renewals and ensuring high-quality local programming, basically, category 1 programming. First, I noted (according to confidential information to which I had access) that the major broadcasters were devoting at least half of their advertising revenues to their local programming, network by network. Second, I also noted that they were devoting at least 20 percent of all of their programming expenditures to local programming, over 80 percent of it to category 1. These are two objectives we could consider in future television licence renewal hearings. Obviously, exclusive access to private OTA broadcasters' information would have long allowed us to confirm local programming benchmarks!

In other words, if the CRTC wants to truly impact local programming, a goal with which I fully agree, there has to be enough money to make that happen! For example, the former TQS had a budget of just over \$20 million for producing news programming across the province of Quebec. If we divide the new funding stream between the public and private sectors, the impact will be much less and ultimately it will be harder to assess its impact on local programming, whether private or public.

If some people in Quebec were hoping that with a new \$20 million fund earmarked

solely for the Francophone market, the new management at TQS or a new Quebec television broadcaster could create another news service and thus make the system more diverse, they can stop dreaming. Not only has the CRTC decided to share the funds between the public and private sectors, it has refused to address the real problem, which is the decrease in regional information in the form of category 1 programming. This is the second reason for my dissenting opinion.

THE CRTC SHOULD HAVE FOCUSED SOLELY ON CATEGORY 1 PROGRAMMING

The CRTC acknowledges the problem, but offers no solution

By focusing on funding for local programming, the CRTC is avoiding targeting news programming, particularly category 1 news programming, even though it is central to the imbalance between big and small markets.

For several years, according to data compiled by CRTC staff, category 1 programming (meaning traditional news presented in the form of a newscast, particularly at supertime) has accounted for over 80 percent of local programming budgets. We can thus implicitly conclude that it is newsrooms, meaning category 1 programming, and not category 2 (opinions, analysis and comment) that is bearing the brunt of budget cuts by major private broadcasters in recent years. If the CRTC wants to restore a degree of balance between large and small markets, it has to address the root of the problem: category 1 programming. This is the category in which local commercial stations in markets with a population of less than one million are spending less and earning less. I would have liked the CRTC to use the relatively modest \$60 million fund to focus its actions on dealing with the problem that has been cited by numerous interveners, instead of throwing the doors open to other types of programming.

With its decision to open the LPIF to analysis and opinion (category 2) or variety programming (category 10) rather than focus on the problem we have been seeing in recent years, meaning category 1 news in markets with a population of less than one million, the CRTC is increasing its objectives. In other words, with its decision, it no longer has just one objective, i.e., correcting the recurring problem that has been observed in recent years. It has two: the production of local programming overall and the production of category 1 news programming which up to now has basically been included with local programming. That is a step I refuse to take.

Take, for example, commentary and analysis programs that could now benefit from the new type of funding through the 1 percent contribution from the BDUs' gross revenues. These programs, identified as category 2, are less costly to produce, and may be produced to the detriment of category 1 televised news.

At the licence renewal hearings for TQS in Quebec, the CRTC should have been prudent and focused solely on category 1 for purposes of financing. The Quebec broadcaster's new programming constitutes a drastic reduction in news programming (category 1) in favour of category 2 programming, with commentary, opinions and editorials to replace

local news, which viewers are increasingly deprived of. In my opinion, it is a virus – and this is not too strong a word – that could contaminate the entire Canadian system via the Local Programming Improvement Fund, as its name indicates. I would have preferred a fund aimed at improving local news, period.

Terms like the “Montréalization” of information in Quebec or “Toronto-centric” information in the rest of Canada suggest that major centres are increasingly the focus of news programming, both in terms of its broadcast and cost and of its content. The resources of the new LPIF should be allocated exclusively (and I insist on this) to correcting this problem. There is no need to add anything to the CRTC’s acknowledgement in its decision concerning small markets with a population of less than one million.

When surveys show that Canadians get 44 percent of their local news from Canadian television, and that in the Francophone market in Quebec, this percentage jumps to 50 percent (Decima Research survey, July 2007), they are referring to category 1 programs, not category 2.

The urgent need to intervene to encourage the production of News (Category 1)

When the CRTC believes that it has to act now to promote a better balance between the small and large markets, it cannot reasonably target other types of programming, because the production of variety or category 2 programming represents less than 20 percent of local programming budgets in all markets with a population of less than one million.

These are just some of the arguments that should have prompted the CRTC to limit itself to one goal: increasing the production of category 1 news programming in small markets. By creating the LPIF for all programming combined (category 1, category 2, variety programming), the CRTC is multiplying the number of objectives without first addressing the growing deficit in the production of category 1 programming in recent years.

It would be even better if, eventually, we could do more and increase the number of objectives for small markets, but initially, the CRTC should have stuck with the basics: increasing the production of category 1 news – news which is essential to debate, analysis and commentary! If this was its long-term goal, it has put the cart before the horse. It should have proceeded in stages. In three years, when the results of the LPIF are evaluated, it would still be possible to change direction and expand production objectives to include, for example, variety or category 2 programming.

We must remember that in this business \$60 million is not a lot of money. It could have a considerable impact, of course, but not for prime-time programming as a whole, such as the 6 p.m. time slot at the end of the day. Rather than trying to do everything at once, the CRTC should have set a modest goal: address the deficit in category 1 programming that has occurred in recent years. Money does not grow on trees. Instead of pursuing more goals, we should narrow the field.

I am concerned that by opening the LPIF to Category 2 programming, for example, we are encouraging broadcasters to produce less news programming and more category 2 commentary and analysis. This is precisely the model that TQS, the Quebec OTA broadcaster, proposed to the CRTC last spring: less expensive programming that would help it achieve its Canadian content quotas more easily. This is the model that I cited as a poor example for the Canadian system, and which I did not hesitate to decry in my dissenting opinion on the TQS licence renewal.

It would be much easier to assess the LPIF's impact if we used the production of category 1 programming as a criterion, not the production of category 2 programming, which, by definition, has a much looser and less targeted content than category 1 programs, which contain news segments, each lasting one to two minutes.

Subscribers in large markets would have benefited

Moreover, the 6.4 million subscribers in the large markets who will directly or indirectly subsidize the production of programming in the small markets stand to gain much more from category 1 programming. Category 2 programming, which comprises commentary, opinions and analysis at the local level, is difficult to "export" at the national level. In comparison, category 1 programs may include news segments that the national networks regularly pick up. While a good local story is sometimes used as the lead story in a national newscast at the end of the day, this is never the case for analysis or comment in a regional program produced in a small market.

One of the objectives in creating the LPIF is specifically to improve regional coverage, coverage that can often be of interest to national networks. The same cannot be said of category 2 programming: local commentary and analysis is rarely of interest to national viewers. Only important local stories and facts may be of interest to subscribers in large markets. For them, this would mean the pendulum swinging back. In this respect, it is my contention that the 60 percent of Canadian subscribers to the distribution undertakings that will directly or indirectly contribute to the LPIF could get more for their money if the CRTC had given access to the LPIF to category 1 programming only.

Commentary and opinion: No thank you

In my time with the CRTC, just over one year now, I have never heard major interveners ask for regional category 2 programming. On the contrary, the interveners complain about the shift to a type of journalism that is increasingly driven by commentary and opinion, to the detriment of the facts and investigative journalism.

[Translation] What people are telling us is that ultimately, there is an unprecedented volume of unsubstantiated information on-line, from sources that are not very credible, and the entire question of editorial position, and not even editorial position, opinion pieces, columnists, people are fed up, and are telling us we don't want to be told what to think, we want to be given tools that will help us think, meaning, they want the facts...

The Parti Québécois, represented by its president Monique Richard, stated the following:

[Translation] A problem frequently encountered in the regions is that information has changed.

The newscasts have become vehicles for opinions and emotions, there's been a lot of talk about it, and I'm inclined to say that while commentary and opinion pieces can be one option, information is a recognized right in this society, meaning thorough and quality information.

When appearing at a CRTC hearing (incidentally, the first time that a Quebec minister has attended a hearing in person), Christine St-Pierre, Quebec's Minister of Culture, Communications and the Status of Women, came with a unanimous resolution by the National Assembly, by the three political parties, including the Action démocratique du Québec, which was the first political party to denounce the elimination of local news at TQS. The resolution reads as follows: "That the National Assembly reiterate the importance accorded to diversity of information as well as regional information in a democratic society, and enjoin the Government of Québec to demand that the CRTC maintain the TQS news media services."

(<http://crtc.gc.ca/eng/transcripts/2008/tb0603.htm>). The Minister also stressed the importance of category 1 news, meaning the news, period, in the regions, as evidenced by her statements:

[Translation]

Finally, general interest television must make news its core mission, and as a result, have an information service and a newsroom with sufficient journalistic resources.

Citizens want local and regional information, they want to know what is going on in their communities, they want to know what's happening out there, and Mr. Chairman, it takes a newsroom to make this happen.

Public affairs information is important, of course, and obviously no one is going to dispute that. Public affairs information is an extension of raw news, and the news is truly fundamental.

The Minister clearly stated what the CRTC's local programming priorities should be. We understood that she wanted a commitment from the CRTC about the production of local news.

The above statements by Mr. Corriveau, Ms. Richard and Ms. Saint-Pierre contain the same message: we want news – we've had enough commentary, opinions and analysis!

By not specifying that the LPIF will be earmarked for category 1 news programming, the CRTC risks stimulating the production of other types of programming, even before it has addressed the deficit in regional news programming, which is increasing each year in

various regions across the country.

A LPIF of \$60 million, while representing some degree of progress for the system, deserves a better target than the one selected by the CRTC.

THE MORIN MODEL FOR EVERYONE

Context

During the hearings on BDUs and discretionary programming services, an important player argued that specialty and pay television services made the greatest contribution to Canadian programming, both in terms of funding and audiences reached. Another intervener indicated that for drama, discretionary services provide 70 percent of total expenditures on Canadian programming and 75 percent of total hours tuned to these programs; in music and variety, 65 percent of spending and 80 percent of hours tuned; and in documentaries, 75 percent of spending and 80 percent of hours tuned.

After OTA broadcasters, services under section 9(1)(h) and educational services, discretionary services represent a noteworthy new component of Canadian television, for which access to basic service seems to be increasingly essential.

In its present decision, the CRTC is proposing nothing more to specialty services than the status quo. In fact, the CRTC has not come up with a dynamic approach to improve and support Canadian production. After 9,000 pages of documents, submissions and replies produced by the most important hearings to take place in over fifteen years, this makes one wonder.

Yet the challenge is great, considering that in 2007, 79 percent of tuning to English-language drama and comedy programs was devoted to non-Canadian programs and 63 percent of tuning to French-language services was devoted to non-Canadian programs (Communications Monitoring Report 2008, p. iii).

For me, there is no doubt that these hearings should normally have produced an inclusive model for all specialty services, which could have revitalized and given new impetus to all categories of Canadian production—drama, documentaries, children’s programs and news services as part of the basic service.

Artists, journalists, producers, technicians—in short, the “crafters” of Canadian content—deserved a new advance from the CRTC, with the basic service provided to Canadians by BDUs as its focal point.

The statements of Chairman von Finckenstein

On 23 February 2007, shortly after assuming his duties, CRTC Chairman Konrad von Finckenstein stated: “We’re going to have to find ways, in this ever more borderless world, to carve out a special place within the broadcasting system for Canadian voices, points of view and ways of expressing ourselves. I consider this the principal challenge

facing me, the challenge that will define my tenure as Chairman.”

It is in this spirit that I proposed a new model at the April 2008 hearings, which CRTC staff dubbed the “Morin Model.” It is an empirical, neutral model that meets the expectations of the Chairman as he expressed them in his speech of 23 February 2007.

According to Chairman von Finckenstein, the work of a regulator must be guided by the following four principles: transparency, fairness, predictability and timeliness.

The model I proposed for all services—and not only for the new Category A services or services distributed under section 9(1)(h) of the Act—has transparency at its core. A points system makes it easy for everyone to figure out where they stand. Nothing is arbitrary, apart from a general rule that applies to the entire system. It is a systematic approach consisting of a threshold of 60, 80 or 100 points, which allows us to deal with the entire system in accordance with the objectives of the Act. The CRTC has never proposed an inclusive system that takes into account all of the points that define the Morin Model at once.

This model will ensure that, to quote the Chairman, “our interlocutors understand what we are doing, why and how they can interact with us ... By transparency, I mean that we should be as open in our dealings as the law permits ...”

On the topic of fairness, the Chairman wrote: “The balance may be between large and small companies, between consumers and providers, between broadcaster[s] and BDUs.” I will show how the model, with its points system, re-establishes a balance between large and small companies, by being based on the percentage of Canadian programming and Canadian program expenditures rather than a power relationship based on a greater number of discretionary services provided by large specialty television broadcasters like Astral or Corus. I will also show that the search for this essential balance begins and must always begin with the rates charged to consumers.

As for the third principle brought up by the Chairman, predictability, the points system I proposed at those hearings, and whose basic principles were thankfully adopted by the CRTC for the new Category A services and the 9(1)(h) services allows players to make strategic decisions based on objectives that are known and made public by the CRTC. Too bad the existing specialty services cannot benefit from this guaranteed access to the basic service!

Lastly, with regard to the last principle raised by the Chairman, that of timeliness, the model would allow television broadcasters to make a host of decisions as to whether or not to remain on the basic service, without having to request the CRTC’s approval. The rules become clear for everyone. Discretionary or specialty services make their strategic choices according to their desire to be included in the basic service offered to subscribers, by negotiating (or not) with the distributor to be placed on a higher-priced tier rather than a lower, wholesale price accepted by the CRTC.

The objectives of the hearing, the Dunbar-Leblanc Report and the

Broadcasting Act

Furthermore, it seems to me that this model fully met the general objectives of that hearing – the most important to be held since 1993. Had we not in fact written (Broadcasting Notice of Public Hearing CRTC 2007-19):

[I]t is time to move away from the current detailed regulation, and to take a revitalized approach to both distribution and discretionary programming undertakings...

The Morin Model, as it must be referred to, met all of these objectives, and I find it a real pity that it was not accepted by the CRTC for specialty television production as a whole – this new component, as I have pointed out, of Canadian television.

Let us now look at how the Morin Model very precisely met the objectives set out by the CRTC.

- a) **Detailed regulation:** This disappears in the model I proposed. Apart from the the access rules (the model), there are no more linkage or tiering rules. Interim rules could always guide the transition. In the medium term, the model makes it possible to face deregulation calmly while still respecting the objectives of the Act. The model is ultimately an insurance policy if we want to do away with the hundreds of regulatory provisions set out in the Canadian Broadcasting Regulatory Handbook, the CRTC's Red Book!
- b) **A new, dynamic approach:** In the 9,000 pages of documentation I reviewed, nowhere did I see a points system that offers undertakings the opportunity to position themselves in a dynamic way on the basic service. This points system, properly framed by a public process, will allow players to equip themselves with a business plan that is compatible or not with the distributors' core system.
- c) **As for distribution and discretionary programming undertakings:** Not only is the model dynamic, but it also constitutes a compromise between two extreme positions: that of the status quo (the broadcasters) and that of all-out deregulation (cable or satellite BDUs).

Furthermore, this model was in keeping with the objectives proposed by Laurence Dunbar and Christian Leblanc in the context of their study *Review of the Regulatory Framework for Broadcasting Services in Canada*, commissioned by the CRTC and published in summer 2007. Chapter 5, which looks at the role of competition in the broadcasting sector (page 279 of the report), sets out seven recommendations, the fifth of which is of particular relevance in the present context. It reads as follows:

We recommend that the Commission consider rationalizing the regulatory structure for specialty services in advance of the completion of digital migration in the 2010 to 2013 time period. We recommend that consideration be given to

moving to a new system that rewards services that make significant contributions to furthering the objectives of the Act (through higher levels of Canadian content, significant Canadian programming expenditures or public safety initiatives), with greater carriage and access rights, and that relies more on consumer demand for discretionary services, and less on tiering and linkage rules, to govern the distribution and packaging of discretionary services.

Two expressions interest me particularly: 1) “rationalizing the regulatory structure”; and 2) “new system that rewards services that make significant contributions to furthering the objectives of the Act...with greater carriage and access rights.”

The Morin Model had not yet been invented; but I humbly submit to you that it is perfectly in line with this recommendation of the Dunbar-Leblanc report.
(<http://www.crtc.gc.ca/eng/publications/reports/dunbarleblanc.htm>)

In my opinion, besides being dynamic, the model provides undertakings with a direction, while still contributing to the predictability they need in order to invest and convince their bankers.

Finally, in every aspect the model conforms with the objectives of the Act.

In fact, section 3(1)(b) of the Act states: “The Canadian broadcasting system ... provides, through its programming, a public service essential to the maintenance and enhancement of national identity and cultural sovereignty.”

It is this objective of the Act in particular that inspired Messrs. Dunbar and Leblanc.

The Act does not address consumers’ tastes and demand. I therefore brought it up. I leave it to others to defend a contrary interpretation.

However, the Act does insist and specify, in section 3(1)(d) that “the Canadian broadcasting system should ... serve to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada.”

In addition, section 3(1)(f) states that “each broadcasting undertaking shall make maximum use, and in no case less than predominant use, of Canadian creative and other resources in the creation and presentation of programming...”

Finally section 5(2)(e) of the Act states: “The Canadian broadcasting system should be regulated and supervised in a flexible manner that facilitates the provision of Canadian programs to Canadians.”

The objectives of the model

Yet despite these fine principles, despite the intrinsic qualities of the model, and despite the expectations of the Act, the CRTC chose not to allow existing discretionary services to benefit from the Morin Model, as presented or modified by CRTC staff, in order to be

made available on the basic service. It has denied specialty services this option, even though these services are at the heart of programming and of Canadian content.

Let us acknowledge that 95 percent of Canadian consumers are already not satisfied with the basic service offered by terrestrial and satellite distribution undertakings. It does not occur to me, unlike some stakeholders, not to open the door wide for BDUs to enrich the basic service by adding new services. The numbers speak for themselves: the vast majority of consumers subscribe to a greater number of services than those on the basic service offered by BDUs or DTH undertakings. In a competitive environment, our system has every interest in improving distributors' basic service. The Morin Model would simply ensure that the anticipated improvement of the basic service contributes in a positive way to Canadian content, while still taking into account rates charged to consumers.

Apart from the preponderance requirement, the decision by BDUs to add specialty services to the basic service is in no way related to the need to meet the objectives of the Act in a dynamic, engaging way, at the best possible price for consumers. Within such a system, BDUs and DTH undertakings make decisions that may:

- be completely arbitrary;
- be at odds with the objectives of the Act;
- not reflect the objectives of the Act;
- lead to abuse of smaller players;
- create significant differences among the various regions of the country in terms of services offered as part of the basic service;
- have nothing to do with increasing Canadian programming and content or the best price for consumers.

In other words, I believe that the CRTC was obligated to promote the key principles in which we believe by opening up the basic service to specialty and discretionary services on the basis of a transparent, neutral and empirical points system. Unfortunately, the fact is that the CRTC gave up. This upsets me all the more because the current situation is not particularly reassuring. Economic growth may not keep up the same pace as in recent years. More than ever, our system needs transparency and predictability. This is even more important for small players, who must meet with their bankers and take on the challenge of high definition.

As CRTC Commissioners, it is our responsibility to not only preserve but also stimulate diversity of voices in a Canadian broadcasting system that is defined by a relatively limited number of players. From this perspective, I completely agree with the Chair's speech to which I alluded earlier. It is my creed! The Morin Model was developed to secure, as much as possible, the presence of Canadian voices on the basic service.

This addition of voices to the basic service in the wake of the Morin Model should respect both large and small players, with a system free of arbitrary decisions, not only by BDUs, but also by the CRTC. It was for these reasons that I proposed this system, the parameters of which, when established, give players the freedom to choose between the

basic service and the tiers of a distribution undertaking.

In this time of economic turbulence, when consumers may have to reduce their subscriptions to televised services, I think that it was important for the CRTC to have given a clear signal to expand the basic service and offer access to a small number of services.

Twenty-four-hour all-news services play an increasingly important role in helping the public understand Canadian current events. They must compete with international and continental giants such as CNN, CNBC, BBC and Bloomberg. Given the importance of television in our broadcasting system, Canadian democracy itself is at stake, and as I will demonstrate later, the Morin Model could definitely have improved this democratic expression in our Canadian broadcasting system.

Our smallest broadcasters – particularly independent ones – deserve this seminal support from the CRTC, which could have given them the predictability that they so badly need in the current economic circumstances. Will we have as many independent editorial voices at future hearings on distribution undertakings in five, ten or fifteen years? I fear not, because in fall 2008, we said no to the Morin Model for specialty services.

Explanations

The Morin Model was designed to enable access to the basic service independent of CRTC decisions, such as 9(1)(h) services, and of decisions by cable or satellite distribution undertakings.

The model introduces a certain freedom to the system by offering broadcasters the option of being on the basic service if they wish, within a specific framework. It is a points system based on the percentage of Canadian content, the percentage of revenue allotted to Canadian programming expenditures (CPE) and the basic wholesale rate charged to BDUs.

It is a simple equation: $A + B - C = \text{Points}$ (where A stands for Canadian content, B for CPE and C for the basic wholesale rate).

By definition, the Morin Model is dynamic and aims to increase Canadian content (A) and Canadian programming expenditures (B). It takes into account service costs in the interest of the consumer. Even if specialty services gain points based on Canadian content and programming, the wholesale rate charged to BDUs and DTH undertakings for service distribution is subtracted from the total of A + B to come to a total score.

The model rests on numbers that the CRTC has had for several years. Implementing the model does not require any additional information. However, it may be modified in the future to take into account new realities, such a high definition. CRTC staff proposed this adaptation, and I agree completely. The model was also corrected to take repeats into account and to target original content, following a proposal by Quebecor Media. I could not agree more. I have said from the start that this model could evolve over time based

on CRTC expectations.

I suggested during the hearings that the 100-point threshold could be retained for English-language services, and a lower threshold, perhaps 80 or 70 points could be used for French-language services. In any case, the CRTC would be responsible for setting the thresholds for English and French-language markets, through public hearings or public consultations.

In conclusion, I believe that this model would be stimulating not only for future players, which was the option retained by the CRTC, but also for current players for whom it would provide a new playing field to find a place in the system. It would give a clear direction with no compromises: increasing Canadian content and Canadian program expenditures at a good price for the consumer. Never, in 40 years at the CRTC, has a system been proposed that includes all three variables!

A fourth variable (that was not included in the equation) aimed to affirm the commercial viability of the specialty service on the basic service. At least 33 percent of revenue should come from advertising. This percentage (which, it goes without saying, could have been changed) aimed to ensure that the undertakings on the basic service would not only offer Canadian content, but Canadian content that was of sufficient interest for the audience that it could generate substantial advertising revenue in addition to subscription revenue.

The specialty service Score Media did its homework and created four tables illustrating the Morin Model. I have briefly reproduced these tables here to show in a few numbers what would take me pages to explain. (All explanations and methodological choices can be found on the CRTC website at the following address:

http://support.crtc.gc.ca/applicant/docs.aspx?pn_ph_no=2007-10&call_id=60930&lang=e&defaultname=score%20media%20inc.&replyonly=&addinfo=&addtcmmt=&fnlsub=true).

These tables are an excellent overview of Canadian programming and the revenue generated which some of you have not yet had the opportunity to fully appreciate. It represents forty years of work by the CRTC for all Canadians, and we should appreciate all Commissions and CRTC staff members who have served over the years.

Table 1
Morin Scores for Analog Specialty Services

English	French	Service	Cancon (%)	CPE (%)	Rate (¢)	Morin score	Revenue from market
X		CTV Newsnet	100	66 (e)	15	151.35	36%
X		Slice	83	71	33	120.50	55%
X		Pulse 24	90	59 (e)	30	119.15	78%
	X	Le Canal Nouvelles	100	49 (e)	30	118.99	50%
X	X	Météomédia/The Weather Network	100	37	23	114.00	38%
*	*	CPAC	90	34 (e)	11	112.97	0%
X		The Score	80	45	14	111.00	59%
*		CBC Newsworld	90	75 (e)	63	101.96	19%
*		Business News Network	75	50	25	100.00	27%
X		Vision TV	65	47	12	100.00	48%
X		MTV	71	36	10 (e)	97.04	58%
X		HGTV Canada	50	50	7	93.00	78%
X		MuchMoreMusic	60	31	3	88.00	73%
X		MuchMusic	60	31	3	88.00	73%
*		Canadian Learning Television	60	42	15	87.00	11%
X		Star!	50	42	5	87.00	33%
*		TreeHouse	70	36	20	86.00	19%
X		Food Network Canada	50	44	14 (e)	79.60	72%
X		Outdoor Life Network	50	41	13 (e)	78.30	45%
X		Country Music Television	60	22	4 (e)	77.60	84%
X		The Comedy Network	65	45	33 (e)	77.26	55%
	X	MusiMax	60	31	15	76.00	34%
	X	MusiquePlus	60	33	17	76.00	57%
X		W	70	41	35	76.00	61%
X	X	Teletoon	60	47	35	72.00	57%
X		Showcase	60	42	32	70.00	52%
X		The Discovery Channel	60	45	36	69.00	49%
X		Bravo!	60	33	25	68.00	45%
X		TVTropolis	50	43	25	68.00	61%
X		History Television	50	40	25	65.00	41%
X		YTV	60	40	35	65.00	61%

English	French	Service	Cancon (%)	CPE (%)	Rate (¢)	Morin score	Revenue from market
	*	RDI	90	75 (e)	100	65.00	20%
	*	ARTV	60	46	55	51.00	11%
X		Space: The Imagination Station	40	40	29	51.00	59%
	X	Canal Vie	60	50	60	50.00	42%
	X	Ztélé	50	48	50	48.00	40%
	*	Canal Évasion	50	46	49	47.00	15%
	*	VRAK-TV	60	41	60	41.00	15%
X		SportsNet	60	54	78	36.00	37%
	*	Historia	45	35	48	32.00	22%
	X	TV5	15	40	28	27.00	30%
	X	Canal D	45	45	65	25.00	38%
	X	Séries+	30	22	45	7.00	56%
X		TSN	60	44	107	-3.00	45%
	X	RDS	65	50	121	-6.00	49%

Legend and notes:

X: service passes 33% threshold for revenue earned from market.

*: service does not pass 33% threshold for revenue earned from market.

(e): estimate, based on the following method:

- Except for CPAC, CPE for services without explicit CPE requirements, such as Canadian news services, is estimated based on average Canadian expenditures for 2005, 2006, and 2007.
- Except for CPAC, rate for services without regulatory wholesale rates is estimated by dividing Canadian subscription revenues for 2007 by average Canadian subscribers for 2007 (average of 2006 and 2007 year-end subscribers), then by dividing by 12 (months). Capped at 75.
- CPE and rate for CPAC estimated based on projected figures disclosed in CPAC regulatory filings at last renewal hearing (Applications 2002-0127-8 and 2001-0128-6).

Table 2
Morin Scores for Digital Category 1 Services

English	French	Service	Cancon (%)	CPE (%)	Rate (¢)	Morin score	Revenue from market
	*	Argent	85	52	35 (e)	101.97	9%
*		bold	80	51	30 (e)	100.52	2%
*		Documentary	75	47	35 (e)	86.70	2%
*		travel+escape	70	53	42 (e)	80.75	8%
	*	Info-Sports	80	51	52 (e)	79.02	17%
*		ichannel	65	37	29 (e)	72.86	1%
*		OutTV	65	49	45 (e)	68.80	7%
*		One: The Body, Mind & Spirit Channel	60	41	34 (e)	67.21	3%
*		The Independent Film Channel	60	37	30 (e)	66.64	8%
*		Razer	60	43	37 (e)	66.26	8%
*		Mystery	60	43	39 (e)	63.53	12%
*		Fashion Television	50	41	37 (e)	54.01	11%
*		Book Television – The Channel	50	40	36 (e)	53.77	5%
*		Bio	50	40	38 (e)	51.62	9%
*		Men TV	50	39	40 (e)	49.15	5%
*		G4techTV	50	40	43 (e)	46.68	15%
English	French	Service	Cancon (%)	CPE (%)	Rate (¢)	Morin score	Revenue from market
*		Discovery Health Network	35	20	25 (e)	29.52	18%
	*	Mystère	40	40	59 (e)	20.70	12%

Legend and notes:

X: service passes 33% threshold for revenue earned from market.

*: service does not pass 33% threshold for revenue earned from market.

(e): estimate, based on the following method:

- Rate for services without regulatory wholesale rates is estimated by dividing Canadian subscription revenues for 2007 by average Canadian subscribers for 2007 (average of 2006 and 2007 year-end subscribers), then by dividing by 12 (months). Capped at 75.

Table 3
Morin Scores for Digital Category 2 Services

English	French	Service	Cancon (%)	CPE (%)	Rate (¢)	Morin score	Revenue from market
X		World Fishing Network	35	75 (e)	3 (e)	106.63	38%
*		Gol TV	35	75 (e)	5 (e)	105.24	6%
*		The Pet Network	35	75 (e)	21 (e)	88.50	11%
	*	Avis de recherche	35	52 (e)	6	80.61	0%
*		bpm.tv	35	56 (e)	11 (e)	79.76	1%
*		TFN – The Fight Network	35	75 (e)	37 (e)	72.71	24%
*		Cool TV	35	75 (e)	42 (e)	68.11	2%
X		GameTV	35	18 (e)	0 (e)	53.46	100%
*		SexTV	35	37 (e)	28 (e)	44.68	7%
*		BBC Kids	35	31 (e)	25 (e)	41.07	7%
*		National Geographic Channel	35	26 (e)	21 (e)	39.45	19%
	X	Ciné-pop	35	4 (e)	0 (e)	39.03	100%
X		The Christian Channel	35	4 (e)	0 (e)	39.03	100%
X		Leafs TV	35	75 (e)	76 (e)	33.65	50%
	*	Prise 2	35	58 (e)	60 (e)	33.12	23%
*		Fox Sports World Canada	35	31 (e)	33 (e)	32.60	6%
*		PunchMuch	35	19 (e)	21 (e)	32.52	20%
*		Fine Living	35	21 (e)	24 (e)	32.49	11%
X		MuchVibe	35	6 (e)	9 (e)	31.95	38%
*		Discovery Civilization Channel	35	16 (e)	20 (e)	30.79	28%
X		Animal Planet	35	14 (e)	21 (e)	28.30	38%
*		ESPN Classic	35	15 (e)	23 (e)	26.71	16%
X		BBC Canada	35	17 (e)	27 (e)	25.20	35%
*		Movieola (2006 data)	35	19 (e)	32 (e)	22.63	0%
*		Discovery Kids	35	10 (e)	25 (e)	19.46	10%
X		MuchLoud	35	4 (e)	20 (e)	19.36	19%
X		Showcase Diva	35	11 (e)	28 (e)	17.93	38%
X		Showcase Action	35	11 (e)	28 (e)	17.73	39%
*		MuchMoreRetro	35	3 (e)	21 (e)	16.68	5%
*		Drive-In Classics	35	9 (e)	27 (e)	16.60	7%
*		CourtTV Canada	35	10 (e)	30 (e)	15.54	14%
*		Xtreme Sports	35	11 (e)	32 (e)	14.58	5%

English	French	Service	Cancon (%)	CPE (%)	Rate (¢)	Morin score	Revenue from market
*		Scream	35	10 (e)	31 (e)	13.96	27%
*		TV Land	35	2 (e)	23 (e)	13.66	16%
*		DejaView	35	6 (e)	28 (e)	12.47	21%
*		Lonestar	35	6 (e)	29 (e)	11.87	24%
*		Bite Television	35	13 (e)	36 (e)	11.52	20%
*		The NHL Network	35	30 (e)	57 (e)	8.62	20%
*		HPItv Canada	35	0 (e)	29 (e)	6.42	1%
*		Raptors NBA TV	35	23 (e)	53 (e)	4.82	31%
X		Wild TV	35	1 (e)	34 (e)	1.93	79%
*		Silver Screen Classics (2006 data)	35	13 (e)	65 (e)	-16.83	0%
*		Rush HD	35	9 (e)	65 (e)	-20.97	0%
*		Oasis HD	35	8 (e)	66 (e)	-22.59	0%
*		Equator HD	35	4 (e)	65 (e)	-26.03	0%
*		Treasure HD	35	4 (e)	66 (e)	-26.72	0%
X		AOV Clips	35	9 (e)	99 (e)	-54.81	84%
*		Discovery HD	35	48 (e)	198 (e)	-115.15	2%
*		ATN Cricket Plus	15	20	166 (e)	-131.47	0%
X		Red Light District	35	29 (e)	276 (e)	-211.57	87%
*		The Hustler Channel	35	18 (e)	372 (e)	-318.69	26%
*		HARDtv	35	1 (e)	408 (e)	-372.38	0%
*		AOV Adult Movie Channel	35	9 (e)	423 (e)	-379.71	18%
*		ATN Caribbean TV	20	30	535 (e)	-484.90	11%
*		ATN NDTV	15	20	586 (e)	-551.00	0%
*		AOV Maleflixxx	35	8 (e)	641 (e)	-598.30	27%

Legend and notes:

X: service passes 33% threshold for revenue earned from market.

*: service does not pass 33% threshold for revenue earned from market.

(e): estimate, based on the following method:

- CPE for services without explicit CPE requirements, such as Canadian news services, is estimated based on average Canadian expenditures for 2005, 2006, and 2007.
- Rate for services without regulatory wholesale rates is estimated by dividing Canadian subscription revenues for 2007 by average Canadian subscribers for 2007 (average of 2006 and 2007 year-end subscribers), then by dividing by 12 (months). Capped at 75.

**Table 4
Morin Scores for Discretionary Services**

Type	English	French	Service	Cancon (%)	CPE (%)	Rate (¢)	Morin score	Revenue from market
A	X		CTV Newsnet	100	66 (e)	15	151.35	36%
A	X		Slice	83	71	33	120.50	55%
A	X		Pulse 24	90	59 (e)	30	119.15	78%
A		X	Le Canal Nouvelles	100	49 (e)	30	118.99	50%
A	X	X	Météomédia/The Weather Network	100	37	23	114.00	38%
A	*	*	CPAC	90	34 (e)	11	112.97	0%
A	X		The Score	80	45	14	111.00	59%
2	X		World Fishing Network	35	75 (e)	3 (e)	106.63	38%
2	*		Gol TV	35	75 (e)	5 (e)	105.24	6%
1		*	Argent	85	52	35 (e)	101.97	9%
Type	English	French	Service	Cancon (%)	CPE (%)	Rate (¢)	Morin score	Revenue from market
A	*		CBC Newsworld	90	75 (e)	63	101.96	19%
1	*		bold	80	51	30 (e)	100.52	2%
A	*		Business News Network	75	50	25	100.00	27%
A	X		Vision TV	65	47	12	100.00	48%
A	X		MTV	71	36	10 (e)	97.04	58%
A	X		HGTV Canada	50	50	7	93.00	78%
2	*		The Pet Network	35	75 (e)	21 (e)	88.50	11%
A	X		MuchMoreMusic	60	31	3	88.00	73%
A	X		MuchMusic	60	31	3	88.00	73%
A	*		Canadian Learning Television	60	42	15	87.00	11%
A	X		Star!	50	42	5	87.00	33%
1	*		Documentary	75	47	35 (e)	86.70	2%
A	*		TreeHouse	70	36	20	86.00	19%
1	*		travel+escape	70	53	42 (e)	80.75	8%
2		*	Avis de recherche	35	52 (e)	6	80.61	0%
2	*		bpm.tv	35	56 (e)	11 (e)	79.76	1%
A	X		Food Network Canada	50	44	14 (e)	79.60	72%
1		*	Info-Sports	80	51	52 (e)	79.02	17%
A	X		Outdoor Life Network	50	41	13 (e)	78.30	45%
A	X		Country Music Television	60	22	4 (e)	77.60	84%
A	X		The Comedy Network	65	45	33 (e)	77.26	55%
A		X	MusiMax	60	31	15	76.00	34%
A		X	MusiquePlus	60	33	17	76.00	57%
A	X		W	70	41	35	76.00	61%
1	*		ichannel	65	37	29 (e)	72.86	1%
2	*		TFN – The Fight Network	35	75 (e)	37 (e)	72.71	24%
A	X	X	Teletoon	60	47	35	72.00	57%
A	X		Showcase	60	42	32	70.00	52%
A	X		The Discovery Channel	60	45	36	69.00	49%
1	*		OutTV	65	49	45 (e)	68.80	7%

2	*		Cool TV	35	75 (e)	42 (e)	68.11	2%
A	X		Bravo!	60	33	25	68.00	45%
A	X		TVTropolis	50	43	25	68.00	61%
1	*		One: The Body, Mind & Spirit Channel	60	41	34 (e)	67.21	3%
1	*		The Independent Film Channel	60	37	30 (e)	66.64	8%
1	*		Razer	60	43	37 (e)	66.26	8%
A	X		History Television	50	40	25	65.00	41%
A	X		YTV	60	40	35	65.00	61%
A		*	RDI	90	75 (e)	100	65.00	20%
1	*		Mystery	60	43	39 (e)	63.53	12%
1	*		Fashion Television	50	41	37 (e)	54.01	11%
1	*		Book Television – The Channel	50	40	36 (e)	53.77	5%
2	X		GameTV	35	18 (e)	0 (e)	53.46	100%
1	*		Bio	50	40	38 (e)	51.62	9%
Type	English	French	Service	Cancon (%)	CPE (%)	Rate (¢)	Morin score	Revenue from market
A		*	ARTV	60	46	55	51.00	11%
A	X		Space: The Imagination Station	40	40	29	51.00	59%
A		X	Canal Vie	60	50	60	50.00	42%
1	*		Men TV	50	39	40 (e)	49.15	5%
A		X	Ztélé	50	48	50	48.00	40%
A		*	Canal Évasion	50	46	49	47.00	15%
1	*		G4techTV	50	40	43 (e)	46.68	15%
2	*		SexTV	35	37 (e)	28 (e)	44.68	7%
2	*		BBC Kids	35	31 (e)	25 (e)	41.07	7%
A		*	VRAK-TV	60	41	60	41.00	15%
2	*		National Geographic Channel	35	26 (e)	21 (e)	39.45	19%
2		X	Ciné-pop	35	4 (e)	0 (e)	39.03	100%
2	X		The Christian Channel	35	4 (e)	0 (e)	39.03	100%
A	X		SportsNet	60	54	78	36.00	37%
2	X		Leafs TV	35	75 (e)	76 (e)	33.65	50%
2		*	Prise 2	35	58 (e)	60 (e)	33.12	23%
2	*		Fox Sports World Canada	35	31 (e)	33 (e)	32.60	6%
2	*		PunchMuch	35	19 (e)	21 (e)	32.52	20%
2	*		Fine Living	35	21 (e)	24 (e)	32.49	11%
A		*	Historia	45	35	48	32.00	22%
2	X		MuchVibe	35	6 (e)	9 (e)	31.95	38%
2	*		Discovery Civilization Channel	35	16 (e)	20 (e)	30.79	28%
1	*		Discovery Health Network	35	20	25 (e)	29.52	18%
2	X		Animal Planet	35	14 (e)	21 (e)	28.30	38%
A		X	TV5	15	40	28	27.00	30%
2	*		ESPN Classic	35	15 (e)	23 (e)	26.71	16%
2	X		BBC Canada	35	17 (e)	27 (e)	25.20	35%
A		X	Canal D	45	45	65	25.00	38%
2	*		Movieola (2006 data)	35	19 (e)	32 (e)	22.63	0%

1		*	Mystère	40	40	59 (e)	20.70	12%
2	*		Discovery Kids	35	10 (e)	25 (e)	19.46	10%
2	*		MuchLoud	35	4 (e)	20 (e)	19.36	19%
2	X		Showcase Diva	35	11 (e)	28 (e)	17.93	38%
2	X		Showcase Action	35	11 (e)	28 (e)	17.73	39%
2	*		MuchMoreRetro	35	3 (e)	21 (e)	16.68	5%
2	*		Drive-In Classics	35	9 (e)	27 (e)	16.60	7%
2	*		CourtTV Canada	35	10 (e)	30 (e)	15.54	14%
2	*		Xtreme Sports	35	11 (e)	32 (e)	14.58	5%
2	*		Scream	35	10 (e)	31 (e)	13.96	27%
2	*		TV Land	35	2 (e)	23 (e)	13.66	16%
2	*		DejaView	35	6 (e)	28 (e)	12.47	21%
2	*		Lonestar	35	6 (e)	29 (e)	11.87	24%
2	*		Bite Television	35	13 (e)	36 (e)	11.52	20%
2	*		The NHL Network	35	30 (e)	57 (e)	8.62	20%
A		X	Séries+	30	22	45	7.00	56%
2	*		HPItv Canada	35	0 (e)	29 (e)	6.42	1%
2	*		Raptors NBA TV	35	23 (e)	53 (e)	4.82	31%
Type	English	French	Service	Cancon (%)	CPE (%)	Rate (¢)	Morin score	Revenue from market
2	X		Wild TV	35	1 (e)	34 (e)	1.93	79%
A	X		TSN	60	44	107	-3.00	45%
A		X	RDS	65	50	121	-6.00	49%
2	*		Silver Screen Classics (2006 data)	35	13 (e)	65 (e)	-16.83	0%
2	*		Rush HD	35	9 (e)	65 (e)	-20.97	0%
2	*		Oasis HD	35	8 (e)	66 (e)	-22.59	0%
2	*		Equator HD	35	4 (e)	65 (e)	-26.03	0%
2	*		Treasure HD	35	4 (e)	66 (e)	-26.72	0%
2	X		AOV Clips	35	9 (e)	99 (e)	-54.81	84%
2	*		Discovery HD	35	48 (e)	198 (e)	-115.15	2%
2	*		ATN Cricket Plus	15	20	166 (e)	-131.47	0%
2	X		Red Light District	35	29 (e)	276 (e)	-211.57	87%
2	*		The Hustler Channel	35	18 (e)	372 (e)	-318.69	26%
2	*		HARDtv	35	1 (e)	408 (e)	-372.38	0%
2	*		AOV Adult Movie Channel	35	9 (e)	423 (e)	-379.71	18%
2	*		ATN Caribbean TV	20	30	535 (e)	-484.90	11%
2	*		ATN NDTV	15	20	586 (e)	-551.00	0%
2	*		AOV Maleflicxxx	35	8 (e)	641 (e)	-598.30	27%

Legend and notes:

X: service passes 33% threshold for revenue earned from market.

*: service does not pass 33% threshold for revenue earned from market.

(e): estimate, based on the following method:

- Except for CPAC, CPE for services without explicit CPE requirements, such as Canadian news services, is estimated based on average Canadian expenditures for 2005, 2006, and 2007.
- Except for CPAC, rate for services without regulatory wholesale rates is estimated by dividing Canadian subscription revenues for 2007 by average Canadian subscribers for 2007 (average of 2006 and 2007 year-end subscribers), then by dividing by 12 (months). Capped at 75.
- CPE and rate for CPAC estimated based on projected figures disclosed in CPAC regulatory filings at last renewal hearing (Applications 2002-0127-8 and 2001-0128-6).

Some observations

1. Optional services of which the content has a short shelf life are favoured. However, they are at the heart of this country's identity.
2. To guarantee diversity on the basic service, I suggested developing an additional points system. Dramas, documentaries and children's shows could benefit from this system and have access to the basic service. Of course, the industry would be consulted regarding the points system.
3. CTVNewsnet is in the top spot with 151 points, while TSN, another specialty service in the same category, is at the bottom with a score of minus three (-3). The model does not favour one undertaking over another: it is objective. Another example is the large private French-language broadcaster TVA Group Inc.
4. Table 1 shows that 16 services are 30 points or fewer beneath the 100-point threshold. Hypothetically, it would be possible for them to qualify for distribution on the basic service. On the Francophone side, the 100-point threshold would be more difficult to reach. Accordingly, the CRTC could reduce this threshold to, perhaps, 70 points, as a way to encourage an upward trend, in that case as well.
5. A last exemple: adult films. With the Morin Model, the Hustler Channel receives a Morin Score of -318 points. Not only that, but it could not qualify with respect to advertising revenues. Table 3 shows that it only generates 26% of its revenues from advertising, while I established a threshold of 33%! The Hustler Channel must definitely rely on a subscription fee, and the more expensive the service, the less chance it has to be distributed on the basic service.

The question now is what would be the effect of implementing the Morin Model with no additional points system on the basic service for distribution undertakings.

The tables below illustrate the results of the simulations.

Application of Model to 5 Major Markets

Calgary

Current Basic
Analog Line-up

100-point

90-point

80-point

9(1)(h)

Current Basic Analog Line-up	100-point	90-point	80-point	9(1)(h)
CMT	<i>Remain on Basic</i>	<i>Remain on Basic</i>	<i>Remain on Basic</i>	APTN
NEWSWORLD	CTV Newsnet	CTV Newsnet	CTV Newsnet	Newsworld
TREEHOUSE	Weather	Weather	Weather	CPAC
WEATHER	The Score	The Score	The Score	RDI
YTV-W	BNN	BNN	BNN	Accessibility
TSN	Vision TV	Vision TV	Vision TV	TVA
THE SCORE		MTV Canada	MTV Canada/Talk TV	VoicePrint
HGTV	<i>Added to Basic</i>	HGTV	HGTV	
CTV NEWSNET	Documentary (Digital)		CLT	
BNN	Slice	<i>Added to Basic</i>	TreeHouse	
VISION	Pulse 24	Documentary (Digital)	MuchMusic	
CLT		Slice	CMT	
APTN-W	<i>No guaranteed Basic carriage</i>	Pulse 24	MuchMore	
MUCHMORE	CMT	CountryCan/bold (Digital)		
MUCHMUSIC	Treehouse	TCN/Comedy	<i>Added to Basic</i>	
MTV CANADA	YTV		Pulse 24	
CPAC	TSN		Documentary (Digital)	
TVA WEST	HGTV	<i>No guaranteed Basic carriage</i>	Slice	
RDI	CLT	CMT	CountryCan/bold (Digital)	
	MUCHMORE	Treehouse	TCN/Comedy	
	MUCHMUSIC	YTV	travel+escape	
		TSN	Star!	
		CLT	Food Network	
		MUCHMORE	Outdoor	
		MUCHMUSIC		
			<i>No guaranteed Basic carriage</i>	
			YTV	
			TSN	

Montreal*Current Basic
Analog Line-up**100-point**90-point**80-point**9(1)(h)*

<i>Current Basic Analog Line-up</i>	<i>100-point</i>	<i>90-point</i>	<i>80-point</i>	<i>9(1)(h)</i>
APTN	<i>Remain on Basic</i>	<i>Remain on basic</i>	<i>Remain on basic</i>	APTN
Canal D	Météo	Météo	CMT	Avis de recherche
Newsworld			Météo	Newsworld
CMT	<i>Add to Basic</i>	<i>Add to Basic</i>		CPAC
CPAC - English	CTV Newsnet	CTV Newsnet	<i>Add to Basic</i>	RDI
CPAC - French	Slice	Slice	<i>CTV Newsnet</i>	Accessibility
Météomédia	Weather	Weather	<i>Slice</i>	TVA
RDI	Pulse 24	Pulse 24	<i>Weather</i>	VoicePrint
TV5	The Score	The Score	<i>Pulse 24</i>	
VRAK	BNN	BNN	<i>The Score</i>	
YTV	Vision TV	Vision TV	<i>BNN</i>	
	Documentary (Digital)	Documentary (Digital)	<i>Vision TV</i>	
	LCN	MTV Canada/ Talk TV	Documentary	
		CountryCan/bold (Digital)	Newsworld	
		TCN/Comedy	MTV Canada/ Talk TV	
		HGTV		
			CountryCan/bold (Digital)	
			HGTV	
		<i>No guaranteed Basic carriage</i>	TCN/Comedy	
		Canal D	MuchMore	
		CMT	travel+escape	
		TV5	Star!	
		VRAK	CLT	
		YTV	TreeHouse	
			Food Network	
			MuchMusic	
			Outdoor	
			LCN	
			RIS	
			<i>No guaranteed Basic carriage</i>	
			Canal D	
			TV5/VRAK/YTV	

Halifax

*Current Basic
Analog Line-up*

100-point

90-point

80-point

9(1)(h)

	100-point	90-point	80-point	9(1)(h)
BNN	<i>Remain on Basic</i>	<i>Remain on Basic</i>	<i>Remain on Basic</i>	APTN
CTV NEWSNET	CTV Newsnet	CTV Newsnet	CTV Newsnet	Newsworld
CMT	Weather	Weather	Weather	CPAC
TREEHOUSE	Vision TV	BNN	BNN	RDI
YTV-E		Vision TV	Vision TV	Accessibility
VISION	<i>Add to Basic</i>	Newsworld	CLT	TVA
NEWSWORLD	Slice		TreeHouse	VoicePrint
WEATHER	Pulse 24	<i>Add to Basic</i>	CMT	
TSN	The Score	Slice		
CPAC	BNN	Pulse 24	<i>Add to Basic</i>	
CLT	Documentary (Digital)	The Score	Slice	
RDI		Documentary (Digital)	Pulse 24	
APTN-E	<i>No guaranteed Basic carriage</i>	MTV Canada/ Talk TV	The Score	
	CMT	CountryCan/bold (Digital)	Documentary (Digital)	
	TREEHOUSE	HGTV	MTV Canada/ Talk TV	
	YTV-E	TCN/Comedy	CountryCan/bold (Digital)	
	TSN		HGTV	
	CLT	<i>No guaranteed Basic carriage</i>	TCN/Comedy	
		CMT	MuchMore	
		TREEHOUSE	travel+escape	
		YTV-E	Star!	
		TSN	Food Network	
		CLT	MuchMusic	
			Outdoor	
			<i>No guaranteed Basic carriage</i>	
			YTV	
			TSN	

Vancouver

*Current Basic
Analog Line-up*

100-point

90-point

80-point

9(1)(h)

	100-point	90-point	80-point	9(1)(h)
WEATHER	<i>Remain on Basic</i>	<i>Remain on Basic</i>	<i>Remain on Basic</i>	APTN
W Network	CTV Newsnet	CTV Newsnet	CTV Newsnet	Newsworld
CMT	Weather	Weather	Weather	CPAC
Sportsnet	Vision TV	Vision TV	Vision TV	RDI
MuchMusic		Newsworld	Newsworld	Accessibility
YTV-W	<i>Add to Basic</i>	MTV Canada/ Talk TV	MTV Canada/ Talk TV	TVA
NEWSWORLD	Slice		MuchMusic	VoicePrint
CTV NEWSNET	Pulse 24	<i>Add to Basic</i>	CMT	
APTN-W	The Score	Slice		
MTV CANADA	BNN	Pulse 24	<i>Add to Basic</i>	
VISION	Documentary (Digital)	The Score	Slice	
RDI		BNN	Pulse 24	
CPAC	<i>No guaranteed Basic carriage</i>	Documentary (Digital)	The Score	
	W Network	CountryCan/bold (Digital)	BNN	
	CMT	HGTV	Documentary (Digital)	
	Sportsnet	TCN/Comedy	CountryCan/bold (Digital)	
	MuchMusic		HGTV	
	YTV-W	<i>No guaranteed Basic carriage</i>	TCN/Comedy	
	MTV CANADA	W Network	MuchMore	
		CMT	travel+escape	
		Sportsnet	Star!	
		MuchMusic	CLT	
		YTV-W	TreeHouse	
			Food Network	
			Outdoor	
			<i>No guaranteed Basic carriage</i>	
			W Network	
			Sportsnet	
			YTV-W	

Star Choice

Current Basic Line-up

100-point

90-point

80-point

9(1)(h)

<i>Current Basic Line-up</i>	<i>100-point</i>	<i>90-point</i>	<i>80-point</i>	<i>9(1)(h)</i>
APTN	<i>Remain on Basic</i>	<i>Remain on Basic</i>	<i>Remain on Basic</i>	APTN
The Christian Channel	Weather	Weather	Weather	Newsworld
CMT	CTV Newsnet	CTV Newsnet	CTV Newsnet	CPAC
CPAC	Vision	Vision	Vision	RDI
CTV Newsnet	Météo Média	Météo Média	Météo Média	Accessibility
Encore Avenue	<i>Add to Basic</i>		MTV	TVA
Miracle Channel	Slice	<i>Add to Basic</i>	CMT	VoicePrint
MTV	Pulse 24	Slice	MuchMusic	
MuchMusic	The Score	Pulse 24	<i>Add to Basic</i>	
Teletoon Retro	BNN	The Score	Slice	
TSN	Documentary (Digital)	BNN	Pulse 24	
Vision	LCN	Documentary (Digital)	The Score	
WEATHER		HGTV	BNN	
Météo Média (on bilingual packages)		TCN	Documentary (Digital)	
RDS (on bilingual packages)	<i>No guaranteed Basic carriage</i>	LCN	HGTV	
	CMT	Country Can/bold	TCN	
	Encore Avenue		MuchMore	
	Miracle Channel	<i>No guaranteed Basic carriage</i>	Star!	
	MTV	CMT	CLT	
	MuchMusic	Encore Avenue	Treehouse	
	Teletoon Retro	Miracle Channel	Food Network	
	TSN	MuchMusic	Outdoor	
	RDS	Teletoon Retro	RIS	
	The Christian Channel	TSN	LCN	
		RDS	Country Can/bold	
		The Christian Channel		
			<i>No guaranteed Basic carriage</i>	
			Encore Avenue	
			Miracle Channel	
			Teletoon Retro	
			TSN	
			RDS	
			The Christian Channel	

A few final observations

First off, the model did not unduly weigh down the basic service.

For example, in Calgary, our simulation shows that three new specialty services would have been added to the basic service. The Commission probably would have reduced the obligation to two, because CP 24 serves mainly the Ontario market. The Commission could have and, in my opinion, should have set up a specific additional points system to enable optional children's programs, documentaries and dramas to qualify to access the basic service. We would have had a Canadian cornucopia of specialty services on the basic service of Shaw Communications, which already has the broadest basic service in the country. In Calgary specifically, this could have meant the addition of three more services. Imagine! Five additional services added to the 26 services already on the basic service. This addition, which would not have been costly for Shaw Communications or for consumers, would ensure that proponents of Canadian content, in the spirit of the Act, find their place on the basic service. Remember that over 90 percent of distribution undertaking clients already order services over and above the basic service. There is no doubt that many consumers already pay more through their subscription rates for optional services that would be on the basic service were the Morin Model adopted.

I will leave you to perform the same exercise for all the other markets. Had the Commission retained my proposed 100-point threshold, it would have resulted in the addition of four Canadian services to the basic service in the English-language Toronto market, five in Vancouver, six in Halifax, and nine in Montréal. With regard to the French-language market, raising the threshold for English-language specialty services offered to francophones and reducing it for French-language services, which, even in French, are less rich in Canadian content, taking translation into account would have to have been considered.

Replies to counter-arguments

At last spring's hearings, I attempted to confront objections that could be raised to the Morin Model. Here are some of the objections that I attempted to address last on 24 April.

1. Does this model take consumer demand for these services into consideration?

I respond to this important question with another: has it been proven that BDUs add discretionary services to the basic service at the request of consumers? In my view, this has yet to be proven. In any case, the question has been asked several times during the course of these hearings and BDUs have, one after another, stated that in the end very few of their clients subscribe only to the basic service. It is clear in my mind that this model gives BDUs total freedom to add the services they wish to their basic service; this model does not tie the hands of BDUs with respect to their basic service offerings. Finally, additional criteria could be added to my formula, such as a requirement that a discretionary service must receive at least one-third of its annual gross revenues from commercial advertising. After programming

expenses, this fourth variable, i.e., the sale of commercial advertising equivalent to 33% of a discretionary service's annual gross revenues, could ensure, in my view, that discretionary services find a certain audience amongst viewers – a proposition that should reassure BDUs and DTH undertakings!

2. **During the hearing, Rogers indicated that there is a tendency in the digital world to offer more theme packages.**

I recognize that access to the basic service does in fact give increased bargaining power to discretionary services vis-a-vis BDUs. I note, however, that nothing in this model prevents BDUs from negotiating a theme tier with a discretionary service. With a better price, a discretionary service could invest more in Canadian programming so as to retain a score that would enable it to access the basic service. Finally, let's be clear: theme packages are not specifically addressed by the Act. The Act refers to Canadian programming and broadcasting, not theme packages. It is notable that Rogers' most popular package is its VIP package, which includes an abundant offering of many programming services. In my view, this offering seems far removed from that of a theme package.

3. **With the proposed model, wouldn't there be a risk that the price for the basic service would increase?**

At the outset, I submit that it has been demonstrated during the hearings, first, that the price for BDU basic service has increased approximately 300% in over six years and, second, that those increases have had little to do with a rise in the price of programming. In other words, the increase in the price of the basic service following deregulation is the result of business decisions made by BDUs. The Commission has no desire whatsoever to re-regulate the basic service; we want BDUs to offer a competitive basic service in keeping with consumer demand and their own business decisions. I note that most consumers, even with an expanded basic service, already opt for additional programming packages. The proposed model does not preclude the offering of programming packages beyond an expanded basic service.

4. **An extended basic service does not follow in the wake of recent decisions made by the CRTC to eliminate dual status for discretionary services and the introduction of 9(1)(h) services on the basic service.**

While it would obviously be preferable that the basic service resulting from this proposed model mirror existing basic service offerings, one cannot expect any new model to assimilate all of the rules introduced prior to its creation. More importantly, we should not mistake the forest for the trees or the plumbing for the house. This is an empirical and dynamic model based on the very foundations of the Act, the recommendations of the Dunbar-Leblanc Report, the Call for comments issued in the context of the current proceeding and the previous statements made by Chairman von Finckenstein.

5. **The model does not take into account the retail price of basic packages.**
I note that retail prices for the basic service have been deregulated since the beginning of this decade; no one during the hearings asked to have them regulated again. The CRTC only establishes wholesale rates for services included on the basic service. Of course, it is possible that a higher rate will be charged for one (or more) services in the basic package, but this has always been the case; if adopted, this model would not change this situation. In my view, under this model, BDUs would remain in control of the pricing of their basic service offerings if access to the basic service were governed by a point system.

6. **In order to access the basic service, certain companies could be motivated to increase their Canadian content by repeating or adding Canadian programming of questionable quality.**
This is a question that we would be right to ask if and when a programming service's schedule is modified. At licence renewal, licensees must submit a standard program schedule. If there is excessive repeat programming, the CRTC may propose modifications to the programming schedule. Finally, the CRTC may take the appropriate steps to ensure that quality service is provided by licensees and ask that licensees submit their program schedules in order to verify diversity and quality.

7. **The model ignores the often higher costs of acquiring certain types of programming, such as drama or children's programming. Services that provide such programming would be at a disadvantage vis-à-vis other services that can spend less to acquire programs.**
If the CRTC were to decide that dramas, documentaries or children's programming constitute priority programming and that programming services offering such programming are effectively at a disadvantage as a result of the costs for their acquisition, nothing would prevent it from granting bonuses of 20, 30 or 40 points for services offering these types of programs over a set period – short-, medium- or long-term – in order to give them priority in the broadcasting system. This would also provide for increased diversity; the proposed model could, in fact, account for all types of priority programming through this bonus system.

8. **Some have pointed out that five of the six analog services that could benefit from access to the basic service under this model, namely the services with 100 points or more, belong to the news and information category. In the case of English-language services, for example, this would include CTV Newsnet, Pulse 24, The Weather Network, The Score and ROBTv.**
Firstly, it should be noted that these services lie at the heart of the Canadian identity. Moreover, it would be inequitable to refuse to give CTV Newsnet access to the basic service in the name of diversity, while promoting the CBC's public service, CBC Newsworld. Some cite the example of YTV, a service dedicated to teenagers, which, with 60 points, would not reach the

100-point threshold. In response, I would again emphasize the aforementioned opportunity to create bonus points for priority programming; the CRTC could give 30 bonus points to programming services similar to YTV that focus on a teenage audience. Moreover, if this service is in great demand, a BDU would always have the option of adding YTV to its basic service on its own, as has been done, for example, by Shaw Communications in Calgary and Vancouver, Eastlink in Halifax and Videotron in Montréal.

9. **How can we ensure diversity on the basic service?**

The promotion of programming diversity is an objective of the Act. BDUs assist in the attainment of this major objective through their service offerings; an expanded basic service would help in this regard. From the point of view of promoting diversity in the broadcasting system, however, we cannot, in my view, entrust BDUs, within the current regulatory framework, to manage the services offered on the basic service on their own.

10. **Is the model as simple to manage as it appears given the deregulation of wholesale prices?**

In my opinion, the wholesale rates established by the CRTC apply in all circumstances where the service is offered as part of the basic service. Ultimately, a competitive market has more advantages than a regulated market; the rates paid by consumers for the basic service were deregulated several years ago. To be clear, this model does not propose to re-regulate rates for the basic service. On the other hand, the wholesale rate that the model uses remains a valuable instrument for qualifying a service for carriage on the basic service and to ensure that costs are reduced as much as possible.

Following the hearings in the National Capital Region that ended on 24 April, several stakeholders commented on the model in their final replies. CRTC staff summarized the arguments presented for the CRTC. In this dissenting opinion, I address the main arguments opposing the model. (I hope that I will be forgiven for addressing, again, in some cases, objections that I already dealt with on 24 April using the same examples.)

1. The final outcome of the model may not result in its intended purpose. Under this model, it is quite conceivable that we could end up with a number of news, information and some sports and much too little of anything else thereby jeopardizing diversity within the system. (Friends of Canadian Broadcasting, Stornaway, S-Vox, CBC/SRC, Shaw)

First of all, let's agree that, with the application of this model, the specialty channels with strong Canadian content will be assured of being part of the basic service (which, in itself, is not negligible) and this, independent of the will of the distributors, simply because CTV Newsnet, LCN, The Score or The Weather Channel will have obtained a rating that is equal or superior to the threshold established by the CRTC. Is there anything more "Canadian" than the news, sports and weather in both languages? In fact, this is the objective of the Act itself. A non-arbitrary and non-political rating based on the Canadian content and the price will be proof of everything. I have also suggested that for children's programs,

documentaries or drama we could introduce a bonus system of 20, 30 or even 40 points so they would stand a better chance of being placed on the basic service instead of a tier. With this points system in place, which would be determined by the Commission and expected to evolve over time, there will be great diversity. To conclude, the Commission will be in charge and have all the flexibility and latitude needed to create Canadian diversity on the basic service.

- 2. *The model does not distinguish between original programming and repeats, or between priority programming (which is often very expensive to produce) and non-priority programming. Thus, it would benefit services that run numerous repeats of cheap Canadian programs. (Quebecor)***

The staff suggested modifying the Morin Model in such a way as to take into account the original content and not the repeats, which makes sense. I have never pretended that the model was etched in stone. The “CRTC formula,” as I now refer to it, could be expected to evolve over time. It is a flexible, adaptable and evolving model. Everyone agrees that the emphasis should be placed on original content rather than on repeats. This is, let us say again, simple common sense. After all I have written on this subject, how can they evoke this reason to refuse the model? Once the modifications have been implemented, the owners of the specialty channels will have no choice but to invest in original Canadian content. And this content will be more easily monetized since it will be present on the basic service instead of it having to negotiate a tier and a price with the distribution companies.

- 3. *The proposal does not recognise that a higher wholesale rate is necessary to support the production of higher quality programming. Consumers are willing to pay a reasonable price for quality. What they do not want is to be forced to purchase a grab bag of services selected by BDUs or on the basis of a formula which puts undue weight on each individual service being low cost. (CBC/SRC)***

The proposal recognizes that revenues are required and that is all to the good. However, what is forgotten here is the advertising revenues that are associated with the basic service. If a specialty channel finds itself on the basic service, it is no longer 75% of subscribers who are reached but 100% of them. This makes quite a difference. But this difference has been totally ignored in the summary provided by the staff in the CBC/SRC arguments. From the moment you can count not only on the revenues from subscribers but also on advertising monies from a larger distribution on the basic service, the entire game changes and that, to the benefit of the specialty service distributed this way. This specialty service will see its general revenues increased accordingly, and it will be in its best interests to boost its promotional efforts for its service and therefore the Canadian content involved. As for the wholesale rate, it is in the best interest of the specialty service, as it is with the Commission, to make sure that it is kept as low as possible to ensure its presence on the basic service. These are the economics of broadcasting that will stem from the application of the Morin Model or better yet, from a new “CRTC formula.”

Is it that difficult for the CBC to understand this issue, with its mandatory and more costly 24-hour news services compared with those offered on a 24-hour basis by TVA and CTV? The optional service offered by TVA's LCN costs 30 cents per month as opposed to \$1 for that of the CBC. However, LCN reaches a million viewers more per week than RDI, which costs three times as much and to which the BDU clients are forced to subscribe.

- 4. *The model may result in a potentially unlimited number of services receiving basic carriage, thereby increasing costs and decreasing choice for consumers. Subscribers would be forced to buy this large collection of services whether or not they are of any interest to them. Using a 100-point threshold, Commissioner Morin's model would create a basic package consisting of many services that are currently the least popular with viewers. (Bell, CBC/SRC)***

This argument is totally false and the audience ratings bear this out, at least if we use the 100 point threshold that was suggested. If we were to adopt this model, it would be a handful of services that the distribution companies would be forced to offer. Take Shaw Communications, for example. To reach the suggested 100-point threshold, this Calgary company would have to add the following specialty channels: Documentary (Digital), Slice and Pulse 24. This would not be a tall order for a company that is already offering some 23 channels on its basic service. Three more! We are a far cry from the unlimited number of channels that Bell and the CBC/SRC mentioned, quite far from a collection of specialty channels that would suddenly appear in the basic service. And how can one claim that these channels are any less popular than the others? Once again, a simple comparison of the audience ratings of the three services with the other 23 currently being offered by Shaw Communications shows that this argument does not bear scrutiny, given the very interesting simulations presented by the staff. I would invite the Commissioners to review these again. Finally, I would like to remind everyone that the 100-point threshold – which could be 80 points for the French-language market – was proposed for discussion purposes. Nothing has been etched in stone. Over time, the Commission will always have the opportunity to modify this threshold, whether upward or downward.

- 5. *It would rely on a formula, instead of customer preferences and competitive circumstances, to determine the basic service. The model does not reflect demand for a service. Canadian content and expenditures aside, the model will always select for services with the lowest wholesale rate. A service that commands a high wholesale rate because it is popular will be disadvantaged. The result could be a basic service consisting of unattractive services. (Quebecor, Shaw)***

To this argument, let me simply respond that the sports services which are already extremely popular, such as TSN or RDS (both owned by CTVglobemedia), do not need the basic service to get more subscribers. The demand is already there and viewers are ready to pay the price. The Morin Model does not apply to them and they have no advantage in wanting to benefit from it. For these services, it is preferable to be on a tier and demand a high rate. As for the distributors that are in this situation, they will also find their profit because it is more advantageous for

them to offer their specialty services on a tier rather than as part of the basic service. The goal of the model is not to offer a cut-and-paste of the demand from consumers, but rather to realize the objectives of the Act. In summary, the model – which has absolutely no pretention to be the Gospel according to St. Luke – would have the effect of forcing producers and distributors to offer the service on the basic service. In other words, it would not prevent commercial agreements – and so much the better if they come about without the direct or indirect intervention of the Commission!

- 6. *It would be extraordinarily difficult to implement and administer. In theory, services could move in and out of the basic service, creating ongoing billing and marketing difficulties for BDUs along with considerable customer disruption. (Cogeco, Rogers)***

Here is another completely false argument. Doesn't the licence last for a period of seven years? How can they talk about services that will be moved in and out of the basic service? On the contrary, I'd almost think it is the distribution companies that make changes to their offer, their tiers and their basic services at every turn! The Morin Model will only serve to comfort the specialty channels in their negotiations with the BDUs. So it is not surprising that the opposition would come mainly from the BDUs!

- 7. *It would likely result in regulatory gaming by specialty services and would place programming services in control of whether they would receive mandatory basic carriage, thereby creating uncertainty for BDUs and consumers, and would not be in the best interests of the Broadcasting Act. (Rogers, Bell, Stornaway, CBC/SRC)***

It is up to the Commission to decide if a company is submitting a well-founded proposal or not. The Commission will maintain complete freedom to increase the conditions or not, because it alone grants licences to operate. The discussion will be completely transparent, in a virtual fishbowl, during public hearings. Modifications have already been made to the model by the staff so that it now takes into account original content instead of repeats.

- 8. *It represents a return to the micromanagement and intrusive regulation of days gone by. While appearing "simple" on its face, the model requires that the Commission make various assessments of quality, pricing and priorities which are not contained in this "simple formula." (TELUS)***

With the Morin Model, it is exactly the opposite that will happen. The model allows for a regulatory framework which will forever eliminate linkage rules and replace them with one rule – a rating. Make no mistake: this is a simple system that allows participants to develop their business plans in light of their presence or absence from the basic service. Yes, it's a simple formula, but a formula that effectively blocks interventions by the CRTC in terms of micromanagement. On at least two occasions I have denounced micromanagement by the CRTC in dissenting opinions (Broadcasting Decisions CRTC 2007-435 and CRTC 2008-12)!

- 9. *It runs counter to the objectives enunciated by the Commission at the outset of the proceeding, i.e., to reduce the regulation of BDUs and specialty services through the development of rules that are forward-looking, that ensure a strong Canadian presence and that recognize the increasing autonomy of audiences and consumers. (MTS Allstream)***³⁵

The model doesn't increase regulation, but rather allows it to be eliminated in a single stroke or by stages if we wanted to proceed cautiously. It is an insurance policy against an all-out deregulation campaign, an insurance policy that allows the Commission to satisfy its mission as the trustee of the Act.

- 10. *It produces a substantially similar result as the dual and modified dual status requirements that the Commission has abandoned, undermines the significance of 9(1)(h) mandatory distribution orders and is also inconsistent with the Commission's policy set out in the Digital Migration framework (Public Notice 2006-23) which indicates that the Commission would only consider mandatory basic carriage for specialty services on "an exceptional basis."*** (Bell)

Yes, it does resemble modified dual status. So? Is it not in the same order of things? Whether it is modified dual status or the model, in both cases, it is the increase in Canadian content that is sought in order to conform to the objectives of the Act. The Commission is governed by this Act and it is up to it to do what is necessary, to use every possible means to increase Canadian content over the airwaves. Yes, some very specialized services, such as Avis de recherche or APTN, are required on the basic service under section 9(1)(h), but they are the exception and are not, by definition, general content. The Morin Model fills this void.

- 11. *The model is likely to benefit BDU- owned or other large conglomerate-owned channels as they have the wherewithal to increase their CPE levels and shut out both a diversity of programming choices and plurality of voices (e.g., TV5 could not qualify due to the nature of its service).*** (Stornaway and S-Vox)

This will not benefit BDUs. Only LCN belongs to a BDU. So it is really the opposite that would likely happen. Specialty channels that would be blocked by BDUs will then qualify for the basic service.

³⁵ MTS Allstream also noted that the presentation of this proposal by one of the decision-makers, at the eleventh hour in a ten-month proceeding - at a point when parties have been limited to a fifteen-page written final comments and warned that they may not introduce any new evidence - raises serious questions concerning the procedural fairness of the proceeding.

- 12. *The model relies on a wholesale rate that would be established by the Commission. However, the Commission does not set wholesale rates for a number of services (Category 1). These services may need to apply for one and there may be questions regarding how such rates are set. In addition, since retail rates are not regulated, no one will know what the cost of any service on basic is to the subscriber, eliminating thereby the significance of component C, which is intended to address affordability. (Quebecor, S-Vox)***

Is it not the role of the Commission to ensure that the price to consumers is as low as possible? The model will offer greater transparency than is the case with the current model and its behind closed-door negotiations, a transparency that will assure diversity. Who knows what rates Québecor negotiated with the specialty chains?

- 13. *Given that there are so many variables in making such an assessment beyond Canadian content levels and program expenditures – including contributions to diversity and to the various other broadcasting policy objectives in section 3 of the Broadcasting Act – it is questionable as to whether an entirely objective model, notwithstanding its attractiveness because of that very characteristic, would be sufficient to accomplish this goal. (CAB, Astral, Canwest)***

The best way to offer more visibility to Canadian content is to ensure its presence on the basic service. Not only would the distribution of Canadian content be on a wider scale, but it would also be more widely accessible than under current conditions. At the end of the day, this distribution on the basic service will be fully integrated into the business plans of companies that have everything to gain by promoting Canadian content and increasing their Canadian programming expenditures and all of this at the best price for the consumer.

- 14. *There are a number of regulatory rules, such as access for analog and Category 1 specialty and pay services, genre protection, preponderance and 1:1 linkage, which are all necessary to ensure the continued success of the Canadian broadcasting system. Commissioner Morin’s model, if adopted, should not replace the need for other important regulatory rules. (CAB, Astral, Canwest)***

This is wise counsel. I acknowledge that with the Morin Model, regulation could be lightened because services at low rates and with strong Canadian content would be found on the basic service. Genre protection and preponderance remain. We have everything it takes to substantially reduce regulation and pursue this objective in the upcoming years, without having to impose anything. It will be up to the companies to choose their business model and to decide whether they prefer the basic service or a tier. Since the framework is established and the safeguards are in place, we win – that is to say the companies win in predictability. It will become easier for specialty services to negotiate with their banker. Currently, for category A, it is impossible to make a forecast: access is possible, but that’s all! According to the model, small independents that enrich the diversity of voices throughout the system can freely position themselves and be sheltered from arbitrariness.

In reality, the model is anything but arbitrary: it is mathematical. Every input can be discussed during public hearings. Everyone will be free to give his or her opinion for the consideration of the Commission.

15. To introduce factors to make up for the model's deficiencies would be to subject it to arbitrary considerations that would undermine its main virtue (neutrality) and produce a result quite similar to the status quo. (Quebecor)

The basic service is best defined as including local OTAs, provincial educational services, the community channel and services distributed on basic pursuant to an order under section 9(1)(h). Specialty services seeking basic status should be obliged to make their case for such status under the existing criteria. Beyond the basic service, market forces should replace finicky regulations. (Quebecor)

Finally, as others have done, Quebecor has overlooked the most important point: that of satisfying the objectives of the Act. Must we repeat to Quebecor that the Act requires that all players produce as many shows as possible and ensure the best distribution of the same? The Act refers neither to the law of the market nor to consumers. As for market forces, we strongly believe in them. However, must we remind everyone that, in Quebec, Quebecor is a dominant player, as much in the area of general television as in newspapers? In these circumstances, the Commission must proceed with caution before giving it all the keys to the house in the name of market forces.

CONCLUSION

In the 15 years since the CRTC's last in-depth review of the Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services, of the 500 regulatory provisions in the CRTC "red book," how many have been deleted? One hundred and fifty? And how many new regulatory provisions have been adopted? Seventy-five? Whatever the exact numbers, we now have the result of this lengthy exercise, which began a year ago.

Unfortunately terms like "transparency," "predictability," "flexibility," "consumer price," "diversity," "revitalized approach," "regulatory streamlining" or "Canadian champions" did not get a warmer welcome for discretionary services, a welcome they would have received with the adoption of the Morin Model for all specialty services: the new television window that will determine whether it will be Canadian or not. The timing was right.

This is only a postponement. The CRTC will be again asked to address other aspects, such as community television or licence renewals for OTA broadcasters and specialty services. Other hearings will be held. I hope that the CRTC uses that opportunity to introduce new concepts. I hope that the result will be streamlined regulations that are less nit-picking and are less arbitrary, demonstrate respect for broadcasting and distribution undertakings, and are based on achieving the objectives of the *Broadcasting Act*.