



Broadcasting Decision CRTC 2007-246

Ottawa, 24 July 2007

Various applicants

Across Canada

Public Hearing in the National Capital Region

27 March 2007

New digital specialty described video programming undertaking; Licence amendments; Issuance of various mandatory distribution orders

*In this decision, the Commission **approves** an application by the National Broadcast Reading Service Inc. for a broadcasting licence to operate a national, English-language digital specialty described video programming undertaking to be known as The Accessible Channel. The Commission also **approves** the applicant's request for this service to be designated for mandatory distribution on digital basic by direct-to-home (DTH) satellite distribution undertakings and by Class 1 and Class 2 broadcasting distribution undertakings (BDUs), excluding multipoint distribution system (MDS) undertakings.*

*The Commission **approves in part** applications for the services CBC Newsworld and Le Réseau de l'information to be designated for mandatory distribution on digital basic by DTH satellite distribution undertakings and by Class 1 and Class 2 BDUs, excluding MDS undertakings that do not currently carry the services.*

*The Commission **approves in part** an application for Avis de Recherche to be designated for mandatory distribution on digital basic by DTH satellite distribution undertakings and by Class 1 and Class 2 BDUs, excluding MDS undertakings. The Commission also **approves** amendments to the broadcasting licence for Avis de Recherche, as requested by the applicant.*

To this effect, the Commission issues, for the above-mentioned services, mandatory distribution orders under section 9(1)(h) of the Broadcasting Act.

*The Commission **denies** applications by Canada One TV and by Métis Michif for broadcasting licences for new programming services to be designated for mandatory distribution on digital basic, as well as applications by the licensees of All Points Bulletin, The Weather Network/MétéoMédia, Canal Savoir, VRAK.TV, YTV, VisionTV and TV5 to be designated for mandatory distribution on digital basic.*

A dissenting opinion by Commissioner Arpin is attached.

Introduction

1. At a public hearing commencing 27 March 2007 in the National Capital Region, the Commission considered twelve applications for mandatory distribution of television programming services on digital basic under section 9(1)(h) of the *Broadcasting Act* (the Act). As stated in this section of the Act, the Commission may, in furtherance of its objectives, “require any licensee who is authorized to carry on a distribution undertaking to carry, on such terms and conditions as the Commission deems appropriate, programming services specified by the Commission.” Nine of these applications were submitted by licensees of existing services, and three were submitted by applicants seeking broadcasting licences for new services.
2. As part of this process, the Commission received and considered interventions with respect to each of the applications. The public record for this proceeding is available on the Commission’s Web site at www.crtc.gc.ca under “Public Proceedings.”
3. In the following sections, the Commission presents the background to mandatory distribution on digital basic, and sets out the criteria upon which the various applications were assessed. Then, the Commission presents the applications and its assessment of the applications. Finally, the Commission sets out its determinations with respect to the applications.

Mandatory distribution on digital basic

4. All broadcasting distribution undertakings (BDUs) are required to offer a basic service to their subscribers so as to ensure that all subscribers have access to a core group of services. Through the *Broadcasting Distribution Regulations* (the Regulations), and through its decisions regarding the basic service, the Commission has ensured that Canadians have access to priority television signals, together with other services that fulfill important policy objectives under the Act. In addition, the Commission has required that certain specialty services be distributed as part of the basic service.
5. The current distribution and linkage rules require Class 1 cable BDUs to distribute specialty services having dual status as part of the analog basic service, unless the service agrees to be carried on a discretionary tier. Eight specialty services are currently licensed as dual status services: MuchMusic, CBC Newsworld, Le Réseau de l’information (RDI), TV5, Vision TV, VRAK.TV, The Weather Network/MétéoMédia and YTV. Among other benefits, this requirement has ensured that specialty services have access to reasonably reliable revenue streams, thereby enabling them to meet their programming obligations.

6. Acknowledging that the existing dual status designations do not necessarily reflect current priorities and may create competitive inequities between established specialty services and those that have been licensed in more recent years, the Commission announced in Broadcasting Public Notice 2006-23 (the Digital Migration Framework) that, in a digital distribution environment, the dual status designations will cease to apply to the distribution of specialty services, effective 1 September 2007. At the same time, the Commission noted that there may be certain services for which basic carriage could be justified in a digital environment.
7. Given the Commission's decision to drop the dual status designations in the digital environment, the Commission determined that it would be appropriate to further consider the composition of the basic service in that environment. The Commission indicated that it was prepared to entertain, on an exceptional basis, applications for digital basic status, and set out the specific criteria by which it would assess such applications, as summarized below. It further stated that such status would be accorded, if warranted, via distribution orders under section 9(1)(h) of the Act.
8. The Commission also indicated that the providers of existing dual status services that wished to apply for digital basic status had to do so within six months of the date of the publication of the Digital Migration Framework. Seven of the eight specialty services chose to do so (an application was not submitted for MuchMusic). In addition, applications for digital basic status were submitted for three non dual status services: the not-for-profit service known as Canal Savoir (for which the applicant also applied for mandatory carriage on analog basic in Quebec) and the Category 2 specialty services known as Avis de Recherche and All Points Bulletin. Finally, the Commission received three applications seeking broadcasting licences for new services (to be known as The Accessible Channel, Canada One TV and Métis Michif), and requesting mandatory distribution of these services on digital basic.
9. As stated in the Digital Migration Framework, and reiterated in Broadcasting Notice of Public Hearing 2007-1, the Commission is of the view that the composition of the digital basic service should be informed by the policy objectives of the Act, with a view to ensuring that subscribers have access to a basic service that, among other things:
 - fosters the growth of Canada's cultural, social, economic and political aims;
 - is varied and comprehensive, providing a balance of information and entertainment programming, at an affordable cost;
 - is drawn from local, regional, national and international sources;
 - includes educational and community programs; and
 - reflects and contributes to Canada's linguistic duality and ethno-cultural diversity, including the special place of Aboriginal peoples in Canadian society.

10. The Commission also stated that any applicant that submitted an application seeking mandatory carriage on digital basic needed to demonstrate that it met the following criteria:
 - the applicant must provide evidence demonstrating the exceptional importance of its service to the achievement of the objectives of the Act;
 - the applicant must demonstrate that having digital basic status will enable its service to contribute in meaningful ways to fulfilling the policy objectives of the Act:
 - in particular, the applicant must demonstrate that the programming of its service makes a significant contribution to Canadian expression and reflects Canadian attitudes, opinions, ideas, values and artistic creativity;
 - the applicant must demonstrate how the programming of its service contributes to the overall objectives for the basic service, as summarized above, and how it specifically contributes to one or more objectives of the Act, such as: Canadian identity and cultural sovereignty; ethno-cultural diversity, including the special place of Aboriginal peoples in Canadian society; service to and the reflection and portrayal of persons with disabilities; or linguistic duality (in the case of French-language services, this objective could be achieved, for example, through commitments to produce programming both inside and outside of Quebec);
 - the applicant must demonstrate that its business plan and implementation of its specific commitments are dependent on receipt of broad national distribution on the digital basic service; and
 - the applicant must demonstrate that the wholesale rate it is proposing would not make its service unaffordable to consumers (in the case of French-language services, this could be achieved, for example, through a lower wholesale rate outside of Quebec).
11. In assessing the applications with respect to the exceptional importance of the proposed services, the Commission focussed on the following issues:
 - To what extent is the proposed programming already available in the Canadian broadcasting system?
 - Does the proposed programming fulfill the needs of underserved communities?
12. In denying mandatory distribution to some dual status analog services, the Commission is not suggesting that these services cannot be carried on digital basic, but instead is indicating that these services should rely on market forces to negotiate their carriage.

13. The Commission also notes that analog dual status services that are denied mandatory carriage on digital basic as a result of this decision will continue to be carried as part of digital basic for the immediate future. In this regard, the Digital Migration Framework stated that the Commission will require Class 1 and Class 2 cable BDUs that offer subscribers a digital-only service option, to distribute, as part of their digital basic service, those Canadian dual status specialty services that were distributed as part of their analog basic service offering as of 27 February 2006. This requirement will remain in place until at least 1 January 2010 unless, in the interim, the programming service agrees to carriage on another basis. Thereafter, and unless the programmer agrees otherwise, Class 1 and Class 2 cable BDUs must continue to offer these services on digital basic until 85% of the cable system's subscribers have a set-top box and are receiving one or more programming services on a digital basis, or 1 January 2013, whichever occurs first.

Applications and assessment of applications

Proposed new services on digital basic

The National Broadcast Reading Service Inc., on behalf of a corporation to be incorporated

Application

14. The National Broadcast Reading Service Inc., on behalf of a corporation to be incorporated (NBRS), proposed to operate a national, English-language satellite-to-cable described video (DV) programming undertaking to be known as The Accessible Channel. The applicant proposed to offer a 24-hour, 100% open format DV service providing news, information, drama, entertainment and other programming to blind and visually impaired Canadians.
15. In its application, NBRS indicated that a minimum of 60% of the programming broadcast during the broadcast day and a minimum of 50% of programming broadcast between 6 p.m. and midnight would be Canadian programming. In addition, over seven years, the applicant committed to expend on the acquisition of and/or investment in Canadian programs a minimum of 43% of the gross revenues derived from the operation of this service, including a first-year expenditure of \$4,468,000. The applicant also proposed to offer a minimum of four hours of French-language DV programming each broadcast week. The applicant further committed to produce a daily Described Viewing Guide to provide information on programming available in DV throughout the Canadian broadcasting system. The applicant also proposed to broadcast original series programming beginning in year five, providing a total of five hours of original programming per broadcast week.

16. While NBRIS had a memorandum of understanding in place with CTV to access programming for the proposed service, in order to address issues raised regarding the potential for preferential treatment of CTV, the applicant agreed to accept a condition of licence stating that no more than 33% of its programming would be obtained from one supplier. NBRIS also agreed to accept a condition of licence stating that no less than 50% of the programming it engages a third party to describe would be sourced to description companies other than Audio Vision Canada or any other entity related to NBRIS.
17. The premise of NBRIS's application is to fill a need in terms of providing DV programming to blind and visually impaired subscribers. The applicant, through several commissioned studies and focus group research, identified that the Canadian broadcasting system is lacking in terms of access to DV programming. According to NBRIS, this is the result of a combination of factors, including a relatively small amount of programming that is described, difficulties encountered by BDUs in passing through DV to subscribers, lack of consistency in identifying programs that are described, as well as challenges faced by visually impaired users in activating the description that is available on their television sets. As a result of all these factors, NBRIS estimated that, at best, less than 3% of programming available in the system is accessible to visually impaired subscribers in any given week. Due to these concerns, NBRIS proposed an open format service that it submitted would better serve the needs of blind and visually impaired subscribers and their families.
18. NBRIS requested national mandatory distribution of The Accessible Channel on digital basic, and requested that the Commission issue a distribution order under section 9(1)(h) of the Act requiring all direct-to-home (DTH) satellite distribution undertakings and all Class 1 and Class 2 BDUs to distribute the service as part of their digital basic services. The applicant proposed a monthly wholesale rate of \$0.20 per subscriber in all anglophone markets and no wholesale fee per subscriber in francophone markets.¹
19. Finally, NBRIS argued that, should The Accessible Channel not be granted mandatory distribution on digital basic, but only assigned discretionary status, it would likely be unsuccessful in negotiating a sufficient pass-through fee. In such a case, NBRIS stated that The Accessible Channel would not be economically viable.

¹ In this decision, the terms "anglophone market" and "francophone market" shall have the same meaning as that set out in section 18(4) of the Regulations, which provide the following: "(a) a licensee is considered to be operating in a francophone market if more than 50% of the total population of all cities, towns and municipalities encompassed in whole or in part within the licensed area has French as its mother tongue, according to the most recent figures published by Statistics Canada; and (b) a licensee that is not operating in a francophone market is considered to be operating in an anglophone market."

Assessment

20. Section 3(1)(p) of the Act states that “programming accessible by disabled persons should be provided within the Canadian broadcasting system as resources become available for the purpose.” In Public Notice 1995-48, the Commission explicitly recognized that television is a key tool for social integration for all citizens, including persons with disabilities.²
21. The Commission recognizes that, due to the limited supply of described programming, as well as to pass-through problems experienced by many BDUs and user problems with accessing DV, there is currently a lack of accessible television programming for blind and visually impaired subscribers.
22. Given that The Accessible Channel would offer a 100% open format DV service providing various types of programming to blind and visually impaired Canadians, the Commission considers that the programming proposed by NBRBS would offer an immediate and fully accessible means by which the objective set out in section 3(1)(p) of the Act can be fulfilled. Therefore, in the Commission’s view, The Accessible Channel would be of exceptional importance to fulfilling the objectives of the Act.
23. The Commission notes that the guaranteed revenue source stemming from mandatory distribution of The Accessible Channel on digital basic would make the service financially viable. Finally, the Commission considers that the proposed monthly wholesale rate of \$0.20 in anglophone markets would be affordable to subscribers and at the same time would ensure that the applicant is able to provide a quality service and to make a significant contribution to Canadian programming.
24. While NBRBS applied for a broadcasting licence to operate a satellite-to-cable programming undertaking, the Commission considers that The Accessible Channel should be categorized as a digital specialty programming undertaking. In light of the above, the Commission considers that it would be appropriate to approve the application by NBRBS for a broadcasting licence to operate a national, English-language digital specialty DV programming undertaking to be known as The Accessible Channel, and to grant the applicant’s request for mandatory distribution of this service on all DTH satellite distribution undertakings and all Class 1 and Class 2 BDUs, in both anglophone and francophone markets. The Commission considers, however, that mandatory distribution should not be extended to MDS undertakings, given their limited capacity. The conditions of licence for this undertaking are set out in Appendix 1 to this decision. The distribution order for this undertaking is set out in Appendix 2.
25. The Commission emphasizes that The Accessible Channel will not be a substitute for the DV obligations of broadcasters, nor an amnesty for BDUs with respect to their delivery obligations.

² As stated in Public Notice 1995-48, “Television has become an essential tool in the robust debate and free exchange of ideas that nourish a democratic society. When deaf and hard-of-hearing persons, most of whom are unable to hear radio broadcasts, are also unable to receive television broadcasts in a form that is comprehensible to them, they are largely cut off from this essential aspect of citizenship.”

Diversity Television Inc., on behalf of a corporation to be incorporated

Application

26. Diversity Television Inc., on behalf of a corporation to be incorporated (DTI), proposed to operate a national, English-language Category 1 digital specialty television programming undertaking to be known as Canada One TV. The proposed service would focus on Canada's diverse multicultural and multiracial society. The programming would be drawn from a variety of programming categories, with a particular emphasis on popular drama programming.
27. DTI proposed that a minimum of 50% of programming broadcast each week would be Canadian programming. In addition, the applicant indicated that during the first three years of Canada One TV's licence term, a minimum of 50% of programming broadcast between 6 p.m. and midnight would be Canadian programming, and that this amount would increase to 60% for the remaining four years of the licence term. The applicant proposed to broadcast 63.5 hours of original Canadian programming in year one, which would increase to 135 hours in year seven. The original Canadian programming would include flagship programming in a current affairs/lifestyle format and drama.
28. DTI also requested mandatory distribution of Canada One TV on digital basic, and requested that the Commission issue a distribution order under section 9(1)(h) of the Act requiring all DTH satellite distribution undertakings and all Class 1 and Class 2 BDUs to distribute Canada One TV as part of their digital basic services in anglophone markets, with a monthly wholesale rate of \$0.50. For francophone markets, the applicant requested that distribution be negotiated on a discretionary basis.
29. The premise of the proposed service was to build diversity in two ways: first, by improving the capacity of the independent production sector to supply television programming – and in particular drama programming – that is reflective of Canada's cultural diversity; and second, by developing the capacity of the creative community to train and supply talent reflective of the visible minorities and Aboriginal peoples who are part of Canadian society. The applicant indicated that the proposed programming would reflect multicultural and multiracial themes and perspectives, as well as the lives, cultures and expression of visible minorities and Aboriginal peoples in Canada.
30. Among other research, the applicant commissioned a study from Solutions Research Group to partially replicate the work of the Task Force on Cultural Diversity on Television (the Task Force)³ to see if any progress has been made by Canadian broadcasters to improve the representation of ethno-cultural diversity in Canada, as they have been mandated to do by the Commission. In its research, the applicant focussed uniquely on improvements made in drama programming. The Task Force, in its 2005 study, noted that 13.5% of speaking roles in English-language drama programs were occupied by visible minorities and Aboriginal peoples, whereas at that time, visible

³ Broadcasting Public Notice 2005-24

minorities and Aboriginal peoples represented 19.3% of the population, excluding Quebec. In DTI's follow-up study conducted in 2006 using the same methodology, 19.5% of speaking roles in English-language drama programs were occupied by visible minorities and Aboriginal peoples, whereas visible minorities and Aboriginal peoples were projected to represent 22.5% of the population in 2006. According to the applicant, these results illustrate that a presence gap still exists.

31. DTI submitted that, for Canada One TV to assist in reducing that presence gap, the service would require the resources that can be derived from subscription revenues through wide distribution. According to the applicant, this reduction would be realized through the production of original, high-quality programming that would be popular and make the service attractive to a wide audience.

Assessment

32. A comparison of the findings of the 2005 research study commissioned by the Task Force and the applicant's 2006 follow-up study regarding English-language drama demonstrates that the Canadian broadcasting system has shown improvement in the representation of cultural diversity in a fairly short period of time. Furthermore, television broadcasters are required to report annually to the Commission regarding their ongoing efforts towards improving representation, on and off screen, via commitments made in their corporate plans on cultural diversity. The Canadian Association of Broadcasters also has industry-wide diversity initiatives in place, and reports annually to the Commission on its progress.
33. With approval, Canada One TV could launch as early as 2008. The applicant committed to airing original Canadian drama programming in prime time in year five (2012, based on a 2008 launch). In the Commission's view, if present efforts by broadcasters continue, by that point, the Canadian broadcasting system will have made more gains in the on-screen and off-screen representation of cultural diversity.
34. The Commission considers that the need for this service in the system is not sufficiently supported with evidence. On the contrary, due to the existing obligations imposed on the broadcasting system by the Commission to improve cultural diversity on Canadian television, improvement has been made already, as acknowledged by DTI's research.
35. The Commission is of the view that it would not be appropriate to grant a broadcasting licence with mandatory distribution on digital basis for the service proposed by DTI. While Canada One TV would make a contribution to the system, the service would not be of exceptional importance in meeting the cultural diversity objectives of the Act, given that the industry has implemented wide-ranging initiatives in this regard. Industry and Commission efforts will continue to work towards ensuring that the entire system is reflective of Canada's multicultural fabric, which is a goal of the Canadian broadcasting system as a whole, as mandated by the Act. Consequently, the Commission denies the application.

Kenneth R. Schaffer, on behalf of a corporation to be incorporated

Application

36. Kenneth R. Schaffer, on behalf of a corporation to be incorporated, proposed to operate a national, English-language digital specialty television programming undertaking to be known as Métis Michif Television Network (MMTN).⁴ This service would include a variety of programming categories, and would be devoted to programming exploring the concerns, and preserving the culture, languages and heritage of the Métis people.
37. The applicant proposed that a minimum of 80% of the programming broadcast during each broadcast day would be Canadian programming. The applicant also proposed that a minimum of six hours of the programming broadcast each week would be Canadian priority programming,⁵ and that this amount would increase to eight hours per broadcast week by the third year of the licence term. Mr. Schaffer also committed to make an annual contribution of up to \$2 million towards priority programming and would devote up to \$50,000 a year in program development funds to this type of programming.
38. The applicant also proposed that 35 hours of programming broadcast each week would be both Métis and other Aboriginal programming, and indicated that the remainder of the broadcast week would be devoted to programming targeting a general Canadian audience.
39. The applicant also proposed to devote 18 hours of programming each week to French-language programming, increasing to 20 hours by the end of the first licence term. As well, the applicant proposed to broadcast an amount of Michif-language programming, as well as programming in other Aboriginal languages, such that no less than 40 hours of programming per broadcast week would be in languages other than English, by the fifth year of the licence term.
40. Finally, Mr. Schaffer requested mandatory distribution of MMTN on digital basic, and requested that the Commission issue a distribution order under section 9(1)(h) of the Act requiring all DTH satellite distribution undertakings and all Class 1 and Class 2 BDUs to distribute MMTN as part of their digital basic services. The applicant proposed a monthly wholesale rate of \$0.15 in both anglophone and francophone markets.

⁴ MMTN was originally licensed as a Category 2 specialty service in Broadcasting Decision 2002-345, but given that the implementation deadline for this service, set out in Broadcasting Decision 2005-479, was not met, the licence expired 6 November 2006.

⁵ That which constitutes “Canadian priority programming” is set out in paragraph 29 of Public Notice 1999-97.

41. In support of its application, the applicant stated that the Canadian Métis population is underserved by the system, which includes the Aboriginal Peoples Television Network (APTN).⁶ The applicant argued that there is a need for a Métis broadcaster in addition to APTN as it is unreasonable to expect APTN to be able to meet all the needs of Canada's 80 different indigenous Aboriginal cultures. The applicant also noted that, without mandatory carriage, MMTN would not be viable or sustainable as an ongoing television network.

Assessment

42. Although MMTN proposed to broadcast primarily new, first-run Canadian content programming, starting at 80% in the first year of its licence term, the applicant was unable to explain how it would meet this commitment. It argued that there is very little Métis programming in the broadcasting system, and the majority of its Canadian content would therefore have to be original programming. The applicant was unable to provide evidence or commitments from other producers or programming sources in regard to their provision of programming for the proposed service. Given the lack of a concrete program strategy for MMTN, it is unclear how the applicant would fulfill its commitment to such high levels of original, Canadian content.
43. As to the need for a service targeting Canada's Métis people, the Commission notes that the applicant provided neither a demand study nor other concrete evidence demonstrating demand for MMTN. Furthermore, while the applicant stated that the intention of MMTN would be to serve the Métis people, and at the same time be devoted to other Aboriginal peoples, culture and languages, it explained at the hearing that the majority of its programming would be in English and target all Canadians. As a result, it is difficult for the Commission to conclude how the proposed service, with such a broad target audience, would differ from what is already available in the system.
44. Finally, in regard to the proposed business plan for MMTN, the Commission notes that the applicant significantly overstated subscriber projections in its application and could not substantiate its proposed business plan at the public hearing. As a consequence, the Commission is concerned about the applicant's ability to fulfill its programming plans – namely, its intention to produce up to 80% original programming – with the amount of subscriber revenues that would be available to the applicant on a digital only basis.
45. In light of the above, the Commission is of the view that the applicant has not demonstrated that its proposal is of exceptional importance to the objectives of the Act. In particular, due to the weaknesses in its programming plans, the Commission is unable to conclude that MMTN, as proposed, would add sufficient programming diversity to the system. Furthermore, as a result of the lack of a clear target audience and the weaknesses

⁶ In Decision 99-42, the Commission licensed APTN, the national Aboriginal television programming service, and granted it mandatory distribution on the basic service of DTH distribution undertakings and Class 1 and Class 2 distribution undertakings (including MDS undertakings).

of MMTN's business plan, the Commission is not convinced that the proposed service would be able to fulfill the needs of the Métis audience. Therefore, the Commission finds that it would not be appropriate to grant a broadcasting licence with mandatory distribution on digital basic for the service MMTN, and consequently denies the application.

Mandatory distribution of existing services on digital basic

Canadian Broadcasting Corporation

Applications

46. The Canadian Broadcasting Corporation (CBC) requested mandatory distribution of the national specialty television programming undertaking known as CBC Newsworld on digital basic, and requested that the Commission issue a distribution order under section 9(1)(h) of the Act requiring all DTH satellite distribution undertakings and all Class 1 and Class 2 BDUs to distribute CBC Newsworld as part of their digital basic services. CBC Newsworld is an English-language news and information service, which broadcasts 90% Canadian programming during the broadcast day and evening periods. The applicant proposed a monthly wholesale rate of \$0.63 in anglophone markets and \$0.15 in francophone markets, which is what it currently charges for distribution of the service on analog basic.
47. In support of its application, the CBC noted the importance of CBC Newsworld to the broadcasting system, submitting that Canadians value and trust the news and information programming the service provides and see it as an essential component of basic television service. The applicant also submitted that in an ever expanding world of digital programming, all Canadians need to have access to Canadian points of view and content when it comes to news and current affairs. Finally, the CBC contended that CBC Newsworld makes a significant contribution to the objectives of the Act, through its high level of Canadian content, its original programming, the presence of diversity in its programming through regional points of view on the same news stories, and the provision of a public service that is essential to the maintenance and enhancement of national identity.
48. The applicant also noted that, should CBC Newsworld not be granted mandatory distribution, the resulting decline in subscription and advertising revenues would lead to a need to reduce expenditures in the form of reduced coverage of events and documentary programming from a Canadian perspective.
49. The CBC also requested mandatory distribution of the national specialty television programming undertaking known as Le Réseau de l'information (RDI) on digital basic, and requested that the Commission issue a distribution order under section 9(1)(h) of the Act requiring all DTH satellite distribution undertakings and all Class 1 and Class 2 BDUs to distribute RDI as part of their digital basic services. RDI is a French-language news and information service that targets Canada's francophone communities. RDI broadcasts 90% Canadian programming during the broadcast day and evening periods.

One-third of all of RDI's original productions distributed each broadcast year are regional productions. The applicant proposed to charge the same monthly wholesale rates of \$1.00 in francophone markets and \$0.10 in anglophone markets that it currently charges for distribution of the service on analog basic.

50. In support of its application for mandatory distribution of RDI, the CBC submitted that the service is Canada's only French-language news and information network that offers a wide variety of information programming to francophone communities outside of Quebec. The applicant also cited the significant amount of Canadian content broadcast on RDI, as well as the service's reflection of national identity through the presentation of regional news, as well as of international news from a Canadian point of view. The applicant also noted that, should RDI not be granted mandatory distribution, it would experience a reduction in its subscriber penetration rate and, consequently, a reduction in advertising revenues, which would ultimately have a negative impact on the service's capacity to continue providing Canadians with quality French-language news and information programming.

Assessment

51. The Commission considers that all francophones and anglophones in Canada should have access to a Canadian news and information service in their own language. While the type of programming provided by CBC Newsworld and RDI is available on other Canadian services in their respective linguistic markets, the Commission considers that these services are of exceptional importance in fulfilling the objective of the Act relating to linguistic duality, as set out in section 3(d)(iii) of the Act, in their linguistic minority markets. The Commission notes that the programming of both CBC Newsworld and RDI is drawn from local, regional, national and international sources, and that both services have teams of journalists collecting information and covering news from across the country. Furthermore, the Commission notes RDI's current obligations to reflect each of the principal francophone regions in Canada: Atlantic Canada, Quebec, Ontario and Western Canada.
52. The Commission notes that the wholesale rates for CBC Newsworld and RDI, in their linguistic majority markets, are \$0.63 and \$1.00, respectively, whereas in their linguistic minority markets, the wholesale rates are \$0.15 and \$0.10, respectively. The Commission considers that the monthly wholesale rates proposed by the applicant for each service in its linguistic minority market are affordable for subscribers. The Commission also notes that the bulk of the services' spending is devoted to production infrastructures and to the personnel required to produce programming, and that any reduction in revenues would have a direct impact on the services' means of production and, consequently, on their capacity to provide adequate regional, national and international news and information. The Commission considers that granting mandatory distribution on digital basic to these services would help maintain their ability to fulfill their mandates with respect to offering high-quality information and news services that aim to serve Canada's French-speaking communities in anglophone markets, and Canada's English-speaking communities in francophone markets.

53. Accordingly, the Commission considers that it would be appropriate to grant the CBC's request for mandatory distribution of CBC Newsworld in francophone markets and of RDI in anglophone markets, on all DTH satellite distribution undertakings, as well as all Class 1 and Class 2 BDUs excluding MDS undertakings, unless those MDS undertakings currently carry the service to which the distribution order applies. The distribution orders for CBC Newsworld and for RDI are set out in Appendix 3 and Appendix 4, respectively, to this decision.

Avis de recherche inc. and All Points Bulletin Incorporated

Applications

54. Avis de recherche inc. (ADR) and All Points Bulletin Incorporated (APB) requested mandatory distribution of the national, French- and English-language Category 2 specialty television programming undertakings known as Avis de Recherche and All Points Bulletin, respectively, on digital basic. They requested that the Commission issue distribution orders under section 9(1)(h) of the Act requiring all DTH satellite distribution undertakings and all Class 1 and Class 2 BDUs to distribute the services as part of their digital basic services, in accordance with the language of either the market or the subscriber. Avis de Recherche is currently distributed by one BDU in Quebec, while All Points Bulletin has not been launched. The applicants described Avis de Recherche and All Points Bulletin as media tools whose scope is to assist law enforcement agencies across the country to obtain clues, tips and leads that might help resolve matters of interest to the communities they serve, both on the local and national levels. ADR proposed a monthly wholesale rate for Avis de Recherche of \$0.08 for francophone markets and \$0.01 for anglophone markets; APB proposed a monthly wholesale rate for All Points Bulletin of \$0.06 for anglophone markets and \$0.01 for francophone markets.
55. Upon approval of their applications, the applicants committed, by condition of licence, to devote at least 20% of subscriber revenues from the previous year to the funding and the production of original Canadian crime prevention capsules, and noted that these amounts would be in addition to their total production costs and would be distinct from the costs associated with regular production. The applicants also agreed to commit to a condition of licence requiring 95% of the programming broadcast during the broadcast day and the evening broadcast period to be Canadian programming, which would replace the existing condition of licence relating to Canadian programming.
56. In support of the applications, the applicants noted the uniqueness of the services' programming genre and submitted that these French- and English-language services serve the national public interest. They also cited the significant support for the applications from the public as well as from various police forces, elected officials, and public security and crime prevention associations and organizations. The applicants also noted that mandatory distribution would lead to greater results by the services and, ultimately, to an increase in the security of Canadian communities. ADR and APB also stated that without mandatory distribution, Avis de Recherche would cease to exist and All Points Bulletin would not launch.

Assessment

57. The Commission considers that the programming provided by Avis de Recherche is unique and complementary to existing programming, and would therefore add to the diversity of the Canadian broadcasting system. In addition, because the programming broadcast on Avis de Recherche serves the public interest by safeguarding Canada's social fabric through the promotion of crime prevention and public safety, the Commission considers the service to be of exceptional importance in fulfilling section 3(1)(d)(i) of the Act.⁷ Furthermore, the applicant has demonstrated that its business plan and implementation of specific commitments are dependent upon receipt of mandatory distribution on digital basic.
58. Accordingly, the Commission considers that it would be appropriate to grant ADR's request for mandatory distribution of Avis de Recherche on the digital basic service of DTH satellite distribution undertakings, as well as all Class 1 and Class 2 BDUs excluding MDS undertakings. Furthermore, given the nature of the programming broadcast on the service, which is largely community-oriented, the Commission considers that the mandatory distribution of Avis de Recherche should be limited to undertakings serving subscribers living in Quebec. The Commission also considers that, given the type of programming provided by this service and the stability its subscriber revenues would provide to the licensee, a monthly wholesale rate of \$0.06, as opposed to the proposed \$0.08, would permit the service to offer the programming it has proposed and be viable, and, at the same time, ensure its affordability for subscribers. The amendments to Avis de Recherche's licence are set out in Appendix 5 to this decision. The distribution order for this undertaking is set out in Appendix 6.
59. On the other hand, the relevance and practicality of All Points Bulletin, as a community-oriented service, is less clear, given that it proposes to reach English-speaking subscribers on a national level. In fact, APB has not provided any indication that All Points Bulletin has the appropriate technology to make the service either viable or operational on a national level. Accordingly, the Commission does not consider that it would be appropriate, at this time, to grant mandatory distribution on digital basic to All Points Bulletin. If APB was to submit a future application that addresses the Commission's concerns noted above, it would have to include evidence demonstrating that All Points Bulletin is of exceptional importance in fulfilling objectives of the Act. Moreover, APB would have to provide a clear programming strategy and a business plan for All Points Bulletin showing that it has the means and resources necessary to implement a service that both merits mandatory distribution and is supported by the technology required to allow it to operate on a national level.

⁷ As stated in section 3(1)(d)(i) of the Act: "It is hereby declared as the broadcasting policy for Canada that the Canadian broadcasting system should serve to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada."

Pelmorex Communications Inc.

Application

60. Pelmorex Communications Inc. (Pelmorex) requested mandatory distribution on digital basic of the national, English- and French-language specialty television programming undertakings known as The Weather Network and MétéoMédia, respectively, and requested that the Commission issue distribution orders under section 9(1)(h) of the Act requiring all DTH satellite distribution undertakings and all Class 1 and Class 2 BDUs to distribute, as part of their digital basic services, The Weather Network in anglophone markets and MétéoMédia in francophone markets. These services, which provide weather-related programming, broadcast 100% Canadian programming and would continue to do so upon approval of the application. Pelmorex proposed that, should the application be approved, it would maintain, for 2007, the same monthly wholesale rate of \$0.23 that it currently charges for distribution of the two services on analog basic in both anglophone and francophone markets, and would gradually reduce this rate to \$0.20 by 2010.
61. In support of its application, Pelmorex submitted that the weather, environmental and road condition information and alerts that are provided by the two services are invaluable to Canadians in that they allow viewers to make decisions in regard to their personal safety. Pelmorex also cited the overwhelming support for its application, based on an Environics Research Group study indicating that the majority of Canadians oppose the removal of the two services from basic television service. The applicant also noted statements made by various interveners that both services are considered to be “public services” that are essential to their personal safety, and that they do not wish to pay – or cannot afford to pay – more for these services.
62. Pelmorex stated that, without mandatory distribution, it would realize significantly lower revenues beginning in 2010, and that its programming expenditures would decrease. The applicant contended that this situation would lead to the service likely being distributed on a discretionary tier and that, as a consequence, many subscribers would not be able to receive timely alerts applicable to their communities.

Assessment

63. In the Commission’s view, while weather information is an important topic to Canadians, such programming is readily available in every Canadian community through conventional over-the-air television services on the basic service as well as certain specialty services, through radio and through sources outside of the broadcasting system, such as print media and the Internet. As such, the Commission considers that the Weather Network and MétéoMédia are not of exceptional importance in the fulfilment of the objectives of the Act and, consequently, should not be granted mandatory distribution on digital basic.

CANAL, Corporation pour l'avancement de nouvelles applications des langages ltée

Application

64. CANAL, Corporation pour l'avancement de nouvelles applications des langages ltée (CANAL), proposed to amend the broadcasting licence of the French-language television programming undertaking CFTU-TV, known as Canal Savoir, by diversifying its programming offering. Canal Savoir primarily provides accredited courses as well as general training programs. Under the proposed change in service, Canal Savoir would provide programming that would complement that of other educational programming services.
65. Based on the above-mentioned diversification of its service, CANAL also requested mandatory distribution of Canal Savoir. Specifically, it requested that the Commission issue a distribution order under section 9(1)(h) of the Act requiring all authorized and exempted distribution undertakings serving Quebec to distribute Canal Savoir on both their analog and digital basic services. It also requested that, under this same distribution order, all BDUs outside of Quebec be required to distribute Canal Savoir on digital basic. The applicant proposed a monthly wholesale rate of \$0.14 beginning 1 September 2007, increasing to \$0.16 on 1 September 2009, for distribution inside Quebec, and a monthly wholesale rate of \$0.02 for distribution in digital mode outside of Quebec.
66. Currently, a minimum of 60% of programming broadcast each week and a minimum of 50% of programming broadcast during the evening is Canadian programming. The applicant committed to increase both amounts to 85% upon approval of the application.
67. In support of its application, CANAL submitted that granting mandatory carriage of Canal Savoir would fulfill certain objectives of the *Official Languages Act* by meeting expectations of the Commission and of the general public that relate in particular to the francophone minority outside of Quebec. It also submitted that the service makes an important contribution to the realization of important public policy objectives of the Act. While Canal Savoir has priority carriage in the Greater Montréal Area, pursuant to the Regulations, it noted that there is no obligation for BDUs outside of the Greater Montréal Area to distribute the service.

Assessment

68. The Commission considers that the new programming plan proposed for Canal Savoir, which would be made possible by the significant increase in revenues resulting from mandatory carriage with a guaranteed wholesale rate, would significantly change the orientation of the service, lacks detail and is not solid. In addition, the Commission is of the view that the new programming proposed by the licensee would not be unique to the service, as it is provided by other broadcasters – including educational broadcasters and

conventional broadcasters – as well as by some specialty services. As such, the Commission considers that the service is not of exceptional importance in fulfilling the objectives of the Act and, consequently, should not be granted mandatory distribution either on digital basic or on analog basic, except where it is currently distributed in accordance with the Regulations.

Astral Broadcasting Group Inc.

Application

69. Astral Broadcasting Group Inc. (Astral) requested mandatory distribution of the national, French-language specialty television programming undertaking known as VRAK.TV on digital basic. It requested that the Commission issue a distribution order under section 9(1)(h) of the Act requiring all DTH satellite distribution undertakings and all Class 1 and Class 2 BDUs, operating in both francophone and anglophone markets, to distribute VRAK.TV as part of their digital basic services, beginning 1 September 2007. VRAK.TV provides programming for children and adolescents up to 17 years of age. The applicant proposed to charge the monthly wholesale rate of \$0.60 for subscribers residing in Quebec, which is the same rate that it currently charges for distribution of the service on analog basic. For subscribers residing outside of Quebec, it proposed a monthly wholesale rate of \$0.05.
70. Currently, a minimum of 60% of programming broadcast each week and a minimum of 50% of programming broadcast during the evening is Canadian programming. In addition, the applicant is currently required to spend, each year, at least 41% of the previous year's gross revenues on Canadian programming. Astral proposed to maintain these amounts. In addition to its current Canadian programming expenditure requirement, the applicant proposed to contribute a minimum of \$5 million during the period beginning 1 September 2008 and ending 31 August 2013 to the development and acquisition of Canadian productions, or of co-productions by independent Canadian producers based outside of Quebec.
71. In support of its application, Astral submitted that the programming provided by VRAK.TV addresses the needs and interests of, and reflects the condition and aspirations of, Canadian children of all ages. The applicant also stated that without mandatory distribution, it would experience a decrease in revenues that would lead to a reduction of spending on Canadian programming.

Assessment

72. The Commission notes that other Canadian French-language programming services that are distributed as part of the basic service and on a discretionary basis currently provide programming to serve younger viewers up to 17 years of age. As such, the Commission considers that VRAK.TV is not of exceptional importance in fulfilling the objectives of the Act and, consequently, should not be granted mandatory distribution on digital basic.

YTV Canada, Inc.

Application

73. YTV Canada, Inc. (YTV Canada) requested mandatory distribution of the national, English-language specialty television programming undertaking known as YTV on digital basic, and requested that the Commission issue a distribution order under section 9(1)(h). This service provides programming for children and adolescents up to 17 years of age. The applicant proposed to charge the same monthly wholesale rate of \$0.35 in anglophone markets and \$0.09 in francophone markets that it currently charges for distribution of the service on analog basic.
74. Currently, a minimum of 60% of programming broadcast each week, based on an 18-hour broadcast day, and a minimum of 60% of programming broadcast during the evening, is Canadian programming. The applicant proposed to maintain these levels, but based on a 24-hour broadcast day. YTV Canada is currently required to spend at least 40% of the previous year's gross revenues on Canadian programming.
75. In addition, the licence for YTV is subject to conditions requiring that it provide 90 hours per year of first-run, original programming, and requiring that no less than one third of Canadian production expenditures be allocated to the development, production and licensing of original first-run programming.
76. In support of its application, YTV Canada submitted that the programming of YTV specifically addresses the needs, interests and aspirations of Canadian children of all ages, and that the service makes an important contribution to the public policy objectives of the Act. The applicant also submitted that, without mandatory distribution, subscriber penetration rates would decrease, leading to a decrease in revenues, which would ultimately lead to the service having difficulties in meeting its projected expenditures for Canadian programming during the course of its current licence term.

Assessment

77. The Commission notes that other Canadian English-language programming services that are available as part of the basic service and on a discretionary basis currently provide programming to serve younger viewers up to 17 years of age. As such, the Commission considers that YTV is not of exceptional importance in fulfilling objectives of the Act and, consequently, should not be granted mandatory distribution on digital basic.

Faith and Spirit Media Inc.

Application

78. Faith and Spirit Media Inc. (Faith and Spirit) requested mandatory distribution of the national, English-language specialty television programming undertaking known as VisionTV on digital basic, and requested that the Commission issue a distribution order under section 9(1)(h) of the Act requiring all DTH satellite distribution undertakings and all Class 1 and Class 2 BDUs operating in anglophone markets to distribute the service

as part of their digital basic services. Vision TV is a multi-faith television programming service providing interfaith religious programming that is related, inspired by, or arises from a person's spirituality, including related moral or ethical issues. Faith and Spirit also indicated that it would welcome a distribution order also requiring mandatory distribution of the service in francophone markets. The applicant proposed to charge the same monthly wholesale rate of \$0.12 in anglophone markets that it currently charges for distribution of the service on analog basic. For francophone markets, it proposed a monthly wholesale rate of \$0.03.

79. Currently, a minimum of 65% of programming broadcast each week and a minimum of 50% of programming broadcast during the evening is Canadian programming. Faith and Spirit is currently required to spend 47% of the previous year's gross revenues, as well as 25% of the previous year's revenues generated from \$0.04 of the wholesale rate, on Canadian programming. The applicant proposed to increase the second amount to 100% upon approval of the application.
80. In support of its application, Faith and Spirit submitted that, as a multi-faith service, VisionTV promotes understanding and tolerance among people of different faiths and cultures, and contributes to Canada's cultural diversity, making the service of exceptional importance for achieving the objectives of the Act. In addition, the applicant contended that VisionTV ensures the availability of a faith perspective to all Canadians, in accordance with the Commission's approach to religious broadcasting set out in Public Notice 1993-78; that it reflects and responds to the growing interest in faith and spirituality; and that it makes a positive contribution to the advancement of religion in Canada.
81. The applicant explained that its business model depends on two main sources of revenue: subscriber fees and the sale of airtime to faith ministries that purchase program blocks based on reach of households. As such, any reduction in its penetration rate would have a direct impact on both subscription revenues and the sale of airtime to faith ministries. If denied mandatory distribution, the applicant fears that BDUs could shift the service to religious theme packages, resulting in significantly reduced revenues over time.
82. Finally, Faith and Spirit noted that it would eventually not be able to fulfill its mandate should VisionTV not be granted mandatory distribution on digital basic.

Assessment

83. The Commission notes that, while VisionTV plays a role in promoting understanding among different religious groups in Canada, it is but one of several elements that form the current religious broadcasting sector in this country. The current broadcasting system provides a range of religious programming to Canadians, including several over-the-air religious television services, all of which include non-Christian faith perspectives. Furthermore, while VisionTV plays an important role in providing programming

reflective of Canada's cultural diversity, all licensees are required to contribute to fulfilling this objective of the Act. As such, the Commission considers that VisionTV is not of exceptional importance in fulfilling objectives of the Act and, consequently, should not be granted mandatory distribution on digital basic.

TV5 Québec Canada

Application

84. TV5 Québec Canada requested mandatory distribution of the national, French-language specialty television programming undertaking known as TV5 on digital basic. It requested that the Commission issue a distribution order under section 9(1)(h) of the Act requiring all DTH satellite distribution undertakings and all Class 1 and Class 2 BDUs, operating in both francophone and anglophone markets, to distribute TV5 as part of their digital basic services. TV5 is a specialty television programming service that offers a variety of information and entertainment programs from various francophone countries around the world, as well as from francophone Canada. Currently, a minimum of 15% of the service's programming is Canadian, reflecting the Canadian Francophonie, with the remainder originating from different countries of the Francophonie outside of Canada. The applicant proposed to charge the monthly wholesale rate of \$0.28 for subscribers residing in Quebec, which is the same rate that it currently charges for distribution of the service on analog basic in francophone markets. For anglophone markets, the applicant proposed the monthly wholesale rate of \$0.06, which corresponds to rates varying between \$0.02 and \$0.08 that it is currently allowed to charge for distribution on the basic service in non-francophone markets.
85. As part of its application, TV5 Québec Canada committed to increase its overall Canadian content to 20% upon approval of the application. The applicant also committed to devote, beginning at the start of its 2008-2009 broadcast year, a minimum of 20% of its total expenditures to the acquisition of Canadian programming; this commitment would include amounts spent on investments and on broadcasting rights, as well as on the acquisition of programming originally produced in the French language. The applicant noted that at least 50% of that amount would be committed to programs produced outside of Quebec.
86. In support of its application, TV5 Québec Canada submitted that TV5 is the only Canadian specialty programming service that presents programming from various francophone countries as well as from francophone Canada. The applicant also submitted that mandatory distribution of TV5 on digital basic would give Canadian francophone producers, creators, technicians and artists the opportunity to be heard and to share their ideas and concerns with bilingual and francophone Canadians, thereby contributing to attaining many public policy objectives of the Act.
87. TV5 Québec Canada indicated its expectation that, once the transition period from analog to digital is over, it will have lost a significant portion of its basic service subscribers, and that it will have experience a significant reduction in its revenues. It also noted that, in a context where digital subscribers are predominant, the service's already

weak penetration rate would decrease. According to the applicant, the loss in revenue could compromise the capacity of TV5 to adequately fulfill its mandate of promoting and presenting a dynamic reflection of the cultural diversity of the international and Canadian Francophonie, as well as of stimulating the development of Canadian francophone communities.

Assessment

88. The Commission notes that several Canadian broadcasters offer programming from francophone countries outside of Canada. Furthermore, an array of programming originating from francophone countries is becoming increasingly available on foreign services authorized for distribution in Canada. As such, the Commission considers that TV5 is not of exceptional importance in fulfilling objectives of the Act and, consequently, should not be granted mandatory distribution on digital basic.

Conclusion

89. In light of the above, the Commission **approves** the following application for a broadcasting licence for a national, English-language digital specialty described video programming undertaking:

The National Broadcast Reading Service Inc., on behalf of a corporation to be incorporated

The Accessible Channel

Application 2006-1579-2, received 30 November 2006

90. The licence for The Accessible Channel will be subject to the terms and **conditions** set out in Appendix 1 to this decision. In addition, the Commission **approves** the applicant's request for a distribution order under section 9(1)(h) of the *Broadcasting Act* requiring that all DTH satellite distribution undertakings and all Class 1 and Class 2 BDUs, excluding MDS undertakings, distribute the service as part of their digital basic services. The Commission authorizes NBRS to charge a maximum monthly wholesale rate for The Accessible Channel of \$0.20 per subscriber in all anglophone markets, and notes that NBRS will not charge a fee in francophone markets. Accordingly, pursuant to section 9(1)(h) of the Act, the Commission issues *Distribution of the digital specialty described video programming service of the National Broadcast Reading Service Inc. known as The Accessible Channel by persons licensed to carry on certain types of broadcasting distribution undertakings*, Distribution order 2007-1, attached as Appendix 2 to this decision, setting out the specific requirements for the distribution of The Accessible Channel. This distribution order will come into effect 24 January 2008.
91. The Commission notes that it has added to the distribution order a clause stating that existing distribution licensees are not required to distribute The Accessible Channel's programming pursuant to the distribution order, unless the licensee provides distribution licensees with 90 days' advance notice of its intended launch date.

92. The Commission **approves in part** the following application for a distribution order under section 9(1)(h) of the *Broadcasting Act* requiring that all DTH satellite distribution undertakings, as well as all Class 1 and Class 2 BDUs excluding MDS undertakings that do not currently carry the service, distribute the following service as part of their digital basic services:

Canadian Broadcasting Corporation

CBC Newsworld

Application 2006-1070-1, received 28 August 2006

93. The Commission notes that mandatory distribution of CBC Newsworld shall be restricted to francophone markets as defined in section 18(4) of the *Broadcasting Distribution Regulations*. The Commission authorizes the CBC to charge a maximum monthly wholesale rate for CBC Newsworld of \$0.15 per subscriber in francophone markets. Accordingly, pursuant to section 9(1)(h) of the Act, the Commission issues *Distribution of the specialty television programming service of the Canadian Broadcasting Corporation known as CBC Newsworld by persons licensed to carry on certain types of broadcasting distribution undertakings*, Distribution order 2007-2, attached as Appendix 3 to this decision, setting out the specific requirements for the distribution of CBC Newsworld. The licence for CBC Newsworld will continue to be subject to the **conditions** specified therein. This distribution order will come into effect 24 January 2008.
94. The Commission also **approves in part** the following application for a distribution order under section 9(1)(h) of the *Broadcasting Act* requiring that all DTH satellite distribution undertakings, as well as all Class 1 and Class 2 BDUs excluding MDS undertakings that do not currently carry the service, distribute the following service as part of their digital basic services:

Canadian Broadcasting Corporation

Le Réseau de l'information

Application 2006-1071-8, received 28 August 2006

95. The Commission notes that mandatory distribution of Le Réseau de l'information shall be restricted to anglophone markets as defined in section 18(4) of the *Broadcasting Distribution Regulations*. The Commission authorizes the CBC to charge a maximum monthly wholesale rate for RDI of \$0.10 per subscriber in anglophone markets. Accordingly, pursuant to section 9(1)(h) of the Act, the Commission issues *Distribution of the specialty television programming service of the Canadian Broadcasting Corporation known as Le Réseau de l'information by persons licensed to carry on certain types of broadcasting distribution undertakings*, Distribution order 2007-3, attached as Appendix 4 to this decision, setting out the specific requirements for the distribution of RDI. The licence for RDI will continue to be subject to the **conditions** specified therein. This distribution order will come into effect 24 January 2008.

96. Finally, the Commission **approves in part** the following application for a distribution order under section 9(1)(h) of the *Broadcasting Act* requiring that all DTH satellite distribution undertakings and all Class 1 and Class 2 BDUs, excluding MDS undertakings, distribute the following service as part of their digital basic services:

Avis de recherche inc.

Avis de Recherche

Application 2006-0508-2, received 28 April 2006

97. The Commission notes that mandatory distribution of Avis de Recherche shall be restricted to subscribers residing in Quebec. The Commission authorizes Avis de recherche inc. to charge a maximum monthly wholesale rate for Avis de Recherche of \$0.06 per subscriber. Accordingly, pursuant to section 9(1)(h) of the Act, the Commission issues *Distribution of the specialty television programming service of Avis de recherche inc. known as Avis de Recherche by persons licensed to carry on certain types of broadcasting distribution undertakings*, Distribution order 2007-4, attached as Appendix 6 to this decision, setting out the specific requirements for the distribution of Avis de Recherche. The amendments to the licence for Avis de Recherche are set out in Appendix 5 to this decision. This distribution order will come into effect 24 January 2008.

98. The Commission **denies** the following applications:

All Points Bulletin Incorporated

All Points Bulletin

Application 2006-0509-0, received 28 April 2006

Faith and Spirit Media Inc.

VisionTV

Application 2006-0766-6, received 13 June 2006

Astral Broadcasting Group Inc.

VRAK.TV

Application 2006-1065-1, received 25 August 2006

YTV Canada, Inc.

YTV

Application 2006-1069-3, received 25 August 2006

TV5 Québec Canada

TV5

Application 2006-1073-4, received 28 August 2006

Pelmorex Communications Inc.

The Weather Network/MétéoMédia

Application 2006-1081-7, received 28 August 2006

Kenneth R. Schaffer, on behalf of a corporation to be incorporated
Métis Michif Television Network
Application 2006-1455-4, received 6 November 2006

CANAL, Corporation pour l'avancement de nouvelles applications
des langages ltée
CFTU-TV (Canal Savoir)
Application 2006-1566-9, received 30 November 2006

Diversity Television Inc., on behalf of a corporation to be incorporated
Canada One TV
Application 2007-0007-2, received 3 January 2007

Secretary General

Related documents

- Broadcasting Notice of Public Hearing CRTC 2007-1, 25 January 2007, as amended by Broadcasting Notice of Public Hearing CRTC 2007-1-1, 7 February 2007, Broadcasting Notice of Public Hearing CRTC 2007-1-2, 20 February 2007, and Broadcasting Notice of Public Hearing CRTC 2007-1-3, 2 March 2007
- *Digital migration framework*, Broadcasting Public Notice CRTC 2006-23, 27 February 2006
- *Deadline to commence operations*, Broadcasting Decision CRTC 2005-479, 5 October 2005
- *Commission's response to the report of the Task Force for Cultural Diversity on Television*, Broadcasting Public Notice CRTC 2005-24, 21 March 2005.
- *Métis Michif Television Network – Category 2 specialty service*, Broadcasting Decision CRTC 2002-345, 6 November 2002
- *All Points Bulletin – Category 2 specialty service*, Broadcasting Decision CRTC 2002-266, 4 September 2002
- *Building on success – A policy framework for Canadian television*, Public Notice CRTC 1999-97, 11 June 1999

- Decision CRTC 99-42, 22 February 1999
- *Introduction to decisions renewing the licences of privately-owned English-language television stations*, Public Notice CRTC 1995-48, 24 March 1995
- *Religious Broadcasting Policy*, Public Notice CRTC 1993-78, 3 June 1993

This decision is to be appended to each licence, and each appendix is to be appended to the appropriate licence. 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 Decision CRTC 2007-246

Terms, conditions of licence and encouragement for The Accessible Channel

Terms

Issuance of the broadcasting licence

A licence will be issued once the applicant has satisfied the Commission, with supporting documentation, that the following requirements have been met:

- an eligible Canadian corporation has been incorporated in accordance with the application in all material respects;
- the applicant has filed executed copies of the incorporation documents (including articles of incorporation and by-laws); and
- the applicant has informed the Commission in writing that it is prepared to commence operations. The undertaking must be operational at the earliest possible date and in any event no later than 36 months from the date of this decision, unless a request for an extension of time is approved by the Commission before 24 July 2010. In order to ensure that such a request is processed in a timely manner, it should be submitted at least 60 days before that date.

The licence will expire 31 August 2013.

Conditions of licence

1. The licensee shall provide a national, English-language digital specialty described video programming undertaking. One hundred percent of the programming provided by the service will be open format described video programming, so as to provide access to a wide breadth of news, information, drama, entertainment and other television programming to blind and visually-impaired Canadians.
2. The programming shall be drawn exclusively from the following categories set out in item 6 of Schedule I to the *Specialty Services Regulations, 1990*, as amended from time to time:
 - 1 News
 - 2 (a) Analysis and Interpretation
(b) Long-form documentary
 - 3 Reporting and Actualities
 - 4 Religion

- 5 (a) Formal Education and Pre-school
 - (b) Informal Education/Recreation and Leisure
 - 6 (a) Professional sports
 - (b) Amateur sports
 - 7 Drama and comedy
 - (a) On-going drama series
 - (b) On-going comedy series (sitcoms)
 - (c) Specials, mini-series, and made-for-TV feature films
 - (d) Theatrical feature films aired on television
 - (e) Animated television programs and films
 - (f) Programs of comedy sketches, improvisations, unscripted works, stand-up comedy
 - (g) Other drama
 - 8 (a) Music and dance
 - (b) Music video clips
 - (c) Music video programs
 - 9 Variety
 - 10 Game shows
 - 11 General entertainment and human interest
 - 12 Interstitials
 - 13 Public service announcements
 - 14 Infomercials, promotional and corporate videos.
3. Regarding the distribution of advertising material:
- (a) Subject to subsection (b), the licensee shall not distribute more than twelve (12) minutes of advertising material during each clock hour.
 - (b) In addition to the twelve (12) minutes of advertising material referred to in subsection (a), the licensee may distribute during each clock hour, a maximum of 30 seconds of additional advertising material that consists of unpaid public service announcements.
 - (c) The licensee shall not distribute any paid advertising material other than national paid advertising.
4. In each broadcast year, the licensee shall devote not less than 60% of programming broadcast during the broadcast day and not less than 50% of programming broadcast between 6 p.m. and midnight to Canadian programs.
5. The licensee shall provide closed captioning for not less than 90% of the programming broadcast during the broadcast day.
6. The licensee shall charge each exhibitor of the service in anglophone markets a maximum wholesale rate of \$0.20 per subscriber per month, where the service is carried as part of the basic service, and \$0.00 in francophone markets.

7. In accordance with the Commission's position on Canadian programming expenditures as set out in *New Flexibility With Regard to Canadian Program Expenditures by Canadian Television Stations*, Public Notice CRTC 1992-28, 8 April 1992; in *The Reporting of Canadian Programming Expenditures*, Public Notice CRTC 1993-93, 22 June 1993; and in *Additional Clarification Regarding the Reporting of Canadian Programming Expenditures*, Public Notice CRTC 1993-74, 10 December 1993:
- (a) The licensee shall expend on the acquisition of and/or investment in Canadian programs:
 - (i) in the second and third years of operation, a minimum of 33% of the previous year's gross revenues derived from the operation of this service; and
 - (ii) in the following years of the licence term, a minimum of 48% of the previous year's gross revenues derived from the operation of this service.
 - (b) In each broadcast year of the licence term, excluding the final year, the licensee may expend an amount on Canadian programs that is up to five percent (5%) less than the minimum required expenditure for that year calculated in accordance with this condition; in such case, the licensee shall expend in the next broadcast year of the licence term, in addition to the minimum required expenditure for that year, the full amount of the previous year's under-expenditure;
 - (c) In each broadcast year of the licence term, where the licensee expends an amount on Canadian programs that is greater than the minimum required expenditure for that year calculated in accordance with this condition, the licensee may deduct:
 - (i) from the minimum required expenditure for the following year of the licence term, an amount not exceeding the amount of the previous year's over-expenditure; and
 - (ii) from the minimum required expenditure for any subsequent broadcast year of the licence term, an amount not exceeding the difference between the over-expenditure and any amount deducted under (i) above.
 - (d) Notwithstanding paragraphs (b) and (c) above, during the licence term, the licensee shall expend on Canadian programs, at a minimum, the total of the minimum required expenditures calculated in accordance with this condition of licence.

8. The licensee shall broadcast no less than 500 new hours of fully described video programming (i.e., programming that has never been described) per broadcast year, of which at least 30% shall be Canadian.
9. The licensee shall ensure that no more than 33% of its programming is obtained from any one program supplier.
10. The licensee shall ensure that no less than 50% of the programming it engages a third party to describe will be sourced to description companies other than Audio Vision Canada or any other entity related to NBRS.
11. The licensee shall adhere to the provisions of the Canadian Association of Broadcasters' *Broadcast code for advertising to children*, as amended from time to time and approved by the Commission.
12. The licensee shall adhere to the guidelines on the depiction of violence in television set out in the Canadian Association of Broadcasters' *Voluntary Code Regarding Violence in Television Programming*, as amended from time to time and approved by the Commission. However, the application of the foregoing condition of licence will be suspended if the licensee is a member in good standing of the Canadian Broadcast Standards Council.
13. The licensee shall adhere to the guidelines on gender portrayal set out in the Canadian Association of Broadcasters' *Sex-Role Portrayal Code for Television and Radio Programming*, as amended from time to time and approved by the Commission. However, the application of the foregoing condition of licence will be suspended if the licensee is a member in good standing of the Canadian Broadcast Standards Council.

For the purpose of the conditions of this licence, the terms "broadcast day," "broadcast year," "evening broadcast period" and "clock hour" shall have the same meaning as that set out in the *Television Broadcasting Regulations, 1987*.

Encouragement

Employment equity

In accordance with *Implementation of an employment equity policy*, Public Notice CRTC 1992-59, 1 September 1992, the Commission encourages the licensee to consider employment equity issues in its hiring practices and in all other aspects of its management of human resources.

Appendix 2 to Broadcasting Decision CRTC 2007-246

Distribution order 2007-1

Distribution of the digital specialty described video programming service of the National Broadcast Reading Service Inc. known as The Accessible Channel by persons licensed to carry on certain types of broadcasting distribution undertakings

The Commission hereby orders, pursuant to section 9(1)(h) of the *Broadcasting Act*, persons licensed to carry on broadcasting distribution undertakings of the types identified in paragraph (a) below to distribute The Accessible Channel's programming service to all digital subscribers as part of the digital basic service, effective 24 January 2008, or when the service begins operation, should this be after 24 January 2008, on the following terms and conditions:

- (a) This Order applies to DTH distribution undertaking licensees, as well as to Class 1 and Class 2 distribution undertaking licensees, excluding multipoint distribution system undertakings. These licensees are collectively referred to in this Order as distribution licensees.
- (b) Distribution licensees are authorized to increase the basic monthly fee to be paid by their subscribers by no more than the amount authorized under the terms of The Accessible Channel's licence.
- (c) Distribution licensees who remove a service in order to comply with this Order may only remove a service carried on an available channel.
- (d) Notwithstanding the foregoing, distribution licensees shall not be required to distribute The Accessible Channel's programming pursuant to this Order unless the licensee or a third party pays for the satellite uplink and transponder costs associated with the delivery of its programming service to such licensees.
- (e) Existing distribution licensees are not required to distribute The Accessible Channel's programming service pursuant to this Order, unless the National Broadcast Reading Service Inc. provides them with 90 days advance notice of its intended launch date.

For the purposes of this Order, the terms "available channel," "basic service," "Class 1 licensee," "Class 2 licensee," "DTH distribution undertaking," "licensed" and "programming service" shall have the same meaning as that set out in the *Broadcasting Distribution Regulations*, as amended from time to time.

Appendix 3 to Broadcasting Decision CRTC 2007-246

Distribution order 2007-2

Distribution of the specialty television programming service of the Canadian Broadcasting Corporation known as CBC Newsworld by persons licensed to carry on certain types of broadcasting distribution undertakings

The Commission hereby orders, pursuant to section 9(1)(h) of the *Broadcasting Act*, persons licensed to carry on broadcasting distribution undertakings of the types identified in paragraph (a) below to distribute CBC Newsworld's programming service to all digital subscribers living in francophone markets as part of the digital basic service, effective 24 January 2008, on the following terms and conditions:

- (a) This Order applies to DTH distribution undertaking licensees, as well as to Class 1 and Class 2 distribution undertakings, excluding multipoint distribution system undertakings that are not carrying CBC Newsworld as of the date of this Order. These licensees are collectively referred to in this Order as distribution licensees.
- (b) A distribution licensee is considered to be operating in a francophone market if more than 50% of the total population of all cities, towns and municipalities encompassed in whole or in part within the licensed area has French as its mother tongue, according to the most recent population figures published by Statistics Canada, as set out in section 18(4) of the *Broadcasting Distribution Regulations*.
- (c) In the case of a DTH distribution licensee, a francophone market will be defined by the licensed area of an incumbent Class 1 or Class 2 cable company with which it competes. DTH undertakings are also required to distribute CBC Newsworld to subscribers living in Quebec in areas where there is no incumbent cable company.
- (d) Distribution licensees are authorized to increase the basic monthly fee to be paid by their subscribers by no more than the amount authorized under the terms of CBC Newsworld's licence.
- (e) Distribution licensees who remove a service in order to comply with this Order may only remove a service carried on an available channel.

- (f) Notwithstanding the foregoing, distribution licensees shall not be required to distribute CBC Newsworld's programming pursuant to this Order unless the licensee or a third party pays for the satellite uplink and transponder costs associated with the delivery of its programming service to such licensees.

For the purposes of this Order, the terms "available channel," "basic service," "Class 1 licensee," "Class 2 licensee," "DTH distribution undertaking," "licensed" and "programming service" shall have the same meaning as that set out in the *Broadcasting Distribution Regulations*, as amended from time to time.

Appendix 4 to Broadcasting Decision CRTC 2007-246

Distribution order 2007-3

Distribution of the specialty television programming service of the Canadian Broadcasting Corporation known as Le Réseau de l'information by persons licensed to carry on certain types of broadcasting distribution undertakings

The Commission hereby orders, pursuant to section 9(1)(h) of the *Broadcasting Act*, persons licensed to carry on broadcasting distribution undertakings of the types identified in paragraph (a) below to distribute RDI's programming service to all digital subscribers living in anglophone markets as part of the digital basic service, effective 24 January 2008, on the following terms and conditions:

- (a) This Order applies to DTH distribution undertaking licensees, as well as to Class 1 and Class 2 distribution undertakings, excluding multipoint distribution system undertakings that are not carrying RDI as of the date of this Order. These licensees are collectively referred to in this Order as distribution licensees.
- (b) A distribution licensee is considered to be operating in an anglophone market if it is not operating in a francophone market, as set out in section 18(4) of the *Broadcasting Distribution Regulations*.
- (c) In the case of a DTH distribution licensee, an anglophone market will be defined by the licensed area of an incumbent Class 1 or Class 2 cable company with which it competes. DTH undertakings are also required to distribute RDI to subscribers living outside Quebec in areas where there is no incumbent cable company.
- (d) Distribution licensees are authorized to increase the basic monthly fee to be paid by their subscribers by no more than the amount authorized under the terms of RDI's licence.
- (e) Distribution licensees who remove a service in order to comply with this Order may only remove a service carried on an available channel.
- (f) Notwithstanding the foregoing, distribution licensees shall not be required to distribute RDI's programming pursuant to this Order unless the licensee or a third party pays for the satellite uplink and transponder costs associated with the delivery of its programming service to such licensees.

For the purposes of this Order, the terms “available channel,” “basic service,” “Class 1 licensee,” “Class 2 licensee,” “DTH distribution undertaking,” “licensed” and “programming service” shall have the same meaning as that set out in the *Broadcasting Distribution Regulations*, as amended from time to time.

Appendix 5 to Broadcasting Decision CRTC 2007-246

Amendments to the licence for Avis de Recherche

The following two conditions of licence, which shall take effect 24 January 2008, shall be added to the licensee's current terms and conditions of licence set out in *Avis de Recherche – Category 2 specialty service*, Broadcasting Decision CRTC 2002-267, 4 September 2002 (Broadcasting Decision 2002-267):

1. The licensee shall charge each exhibitor of the service a maximum wholesale rate of \$0.06 per subscriber per month, where the service is carried as part of the basic service, for each subscriber living in Quebec.
2. In each broadcast year of the licence term, the licensee shall expend on the acquisition of and/or investment in Canadian programs a minimum of 20% of the subscriber revenues derived from the operation of this service during the previous broadcast year.

In addition, the condition of licence relating to the distribution of Canadian programming, as set out in Broadcasting Decision 2002-267, shall be replaced by the following condition of licence, which shall also take effect 24 January 2008:

3. In each broadcast year, the licensee shall devote not less than 95% of the broadcast day and not less than 95% of the evening broadcast period to the distribution of Canadian programs.

For the purposes of this condition of licence, *broadcast day* refers to the 24-hour period beginning 6 a.m. each day, and *evening broadcast period* refers to the period between 6 p.m. and midnight.

Appendix 6 to Broadcasting Decision CRTC 2007-246

Distribution order 2007-4

Distribution of the specialty television programming service of Avis de recherche inc. known as Avis de Recherche by persons licensed to carry on certain types of broadcasting distribution undertakings

The Commission hereby orders, pursuant to section 9(1)(h) of the *Broadcasting Act*, persons licensed to carry on broadcasting distribution undertakings of the types identified in paragraph (a) below to distribute Avis de Recherche's programming service to all digital subscribers living in the province of Quebec as part of digital basic service, effective 24 January 2008, on the following terms and conditions:

- (a) This Order applies to DTH distribution undertaking licensees, as well as to Class 1 and Class 2 distribution undertakings, excluding multipoint distribution system undertakings. These licensees are collectively referred to in this Order as distribution licensees.
- (b) Distribution licensees are authorized to increase the basic monthly fee to be paid by their subscribers by no more than the amount authorized under the terms of Avis de Recherche's licence.
- (c) Distribution licensees who remove a service in order to comply with this Order may only remove a service carried on an available channel.
- (d) Notwithstanding the foregoing, distribution licensees shall not be required to distribute Avis de Recherche's programming pursuant to this Order unless the licensee or a third party pays for the satellite uplink and transponder costs associated with the delivery of its programming service to such licensees.

For the purposes of this Order, the terms "available channel," "basic service," "Class 1 licensee," "Class 2 licensee," "DTH distribution undertaking," "licensed" and "programming service" shall have the same meaning as that set out in the *Broadcasting Distribution Regulations*, as amended from time to time.

Dissenting opinion of Commissioner Michel Arpin

I have read the majority decision, and although I generally agree with their conclusions on the applications considered at the public hearing, I disagree with the conclusion concerning the application by Pelmorex Communications Inc. for the MétéoMédia and The Weather Network services.

In my opinion, the majority members did not take sufficient account of the fact that MétéoMédia and The Weather Network are unique services providing Canadians with top-notch information affecting their safety and their health (e.g. depending on the season: road conditions and construction, UVA and UVB indices, air and water quality, etc.).

The majority expressed the view that various sources of existing programming, as well as the Internet and telecommunications services, provide weather information. They forgot to take into account that these sources do not offer this information in an ongoing, systematic fashion. They also failed to take into account the fact that MétéoMédia and The Weather Network broadcast all weather alerts issued by Environment Canada, and that as soon as the Commission releases the new regulations announced in Decision CRTC 2007-72, 28 February 2007 and Public Notices CRTC 2007-20 and 2007-21 dated the same day, they will be able to provide any warnings of emergencies that may pose an imminent or actual threat to Canadians.

In my opinion, pursuant to section 3(1)(d)(i) of the Broadcasting Policy for Canada, the Commission may approve the broadcast of MétéoMédia and The Weather Network in accordance with the provisions set out in sections 9(1)(g) and 9(1)(h), which read as follows:

9. (1)
- (g) require any licensee who is authorized to carry on a distribution undertaking to give priority to the carriage of broadcasting; and
 - (h) require any licensee who is authorized to carry on a distribution undertaking to carry, on such terms and conditions as the Commission deems appropriate, programming services specified by the Commission.

Under these provisions, the Commission may require the distribution on digital basis of services that meet the requirements of the *Broadcasting Act* and which are in the public interest.

The majority should have acknowledged the impressive support for MétéoMédia and The Weather Network expressed by thousands of subscribers, as well as what Quebecor Media wrote in its intervention, i.e., that MétéoMédia and The Weather Network serve the national public interest “[translation] through their practical content aimed at the health and safety of Canadians” and, accordingly, that they should benefit from mandatory distribution on digital basis.