



## Broadcasting Regulatory Policy CRTC 2013-372

PDF version

Route reference: 2013-19

Additional references: 2013-19-1, 2013-19-2, 2013-19-3 and 2013-19-4

Ottawa, 8 August 2013

### Various applicants

Across Canada

*The application numbers are set out in the document.*

*Public hearing in the National Capital Region*

*23 April 2013*

### Applications for mandatory distribution on cable and satellite under section 9(1)(h) of the *Broadcasting Act*

*The Commission sets out its determinations on applications for mandatory distribution of programming services by cable and satellite providers under section 9(1)(h) of the Broadcasting Act (the Act). The orders reflecting these determinations will take effect on 1 January 2014 in order to give broadcasting distribution undertakings (BDUs) sufficient time to adjust their channel lineups, deal with the programming services affected, adjust their billing and warn their customers of any potential changes.*

*The Commission considers mandatory distribution on the digital basic service a great privilege, as services that receive such distribution are assured that they are part of a basic service package offered to all subscribers of cable and satellite companies. Mandatory distribution can also have a direct impact on consumers' bills and on the choice of services they receive. Accordingly, the Commission has set the bar very high for obtaining mandatory distribution and has granted such applications only where the existing or proposed services make exceptional contributions to meeting the objectives of the Act. These objectives notably include reflecting the ethno-cultural and linguistic diversity of Canada, including the special place of Aboriginal peoples in Canadian society and the needs of official language minority communities; allowing Canadians living with disabilities to participate more fully in the Canadian broadcasting system; and supporting Canada's democratic life and institutions and its regions, including the North.*

*In light of the above, the Commission **approves** the following applications for **continued** mandatory distribution on the digital basic service:*

- *Aboriginal Peoples Television Network*
- *AMI-tv*
- *AMI-audio*

- *Canal M*
- *Cable Public Affairs Channel*

*The Commission also **approves** new applications for mandatory distribution on the digital basic service of the following services:*

- *Nouveau TV5 (TV5/UNIS)*
- *AMI-tv Français*
- *the Legislative Assemblies of Nunavut and the Northwest Territories (on the digital basic service of direct-to-home satellite BDUs serving Nunavut and the Northwest Territories)*

*Finally, the Commission **approves** the application to obtain a distribution order for the national French-language specialty Category A service ARTV giving it access rights to the digital service of terrestrial BDUs in anglophone markets, although not necessarily as part of the basic service.*

*Further, with respect to the duration of the mandatory distribution orders issued today, the Commission has decided that a five-year term is appropriate, given the pace of change in the Canadian broadcasting environment. The Commission also notes that these orders may be reviewed at an earlier date should the context and environment of the Canadian broadcasting system change significantly.*

*The Commission **denies** the applications for mandatory distribution of the following services on the digital basic service:*

- *ACCENTS*
- *Described Video Guide*
- *Avis de recherche*
- *Sun News Network*
- *All Points Bulletin*
- *FUSION*
- *The Natural Resources Television Channel*
- *Dolobox TV*
- *EqualiTV*
- *Canadian Punjabi Network*
- *Maximum Television Canada*
- *Starlight: The Canadian Movie Channel*
- *Vision TV*

*However, in the case of the application for Avis de recherche, while the Commission concludes that it is not appropriate to maintain the service's 9(1)(h) distribution order, the Commission has decided to phase out the mandatory distribution requirement for this service over the next two broadcast years (i.e. by 31 August 2015) to allow the licensee time to adapt its business plan in light of this change.*

*Further, the Commission has taken into consideration the importance of national news to Canada's social and democratic life and in particular the objectives of the Act that the programming provided by the Canadian broadcasting system should: be varied and comprehensive, providing a balance of information; should be drawn from local, regional, national and international sources; should provide a reasonable opportunity for the public to be exposed to the expression of differing views on matters of public concern; and should encourage the development of Canadian expression, including information and analysis concerning Canada and other countries from a Canadian point of view. The Act also provides that distribution undertakings should give priority to the carriage of Canadian programming services. In light of these objectives, the Commission addresses other significant issues raised at the hearing, such as access to cable or satellite distribution by new Canadian national news services. Specifically, the Commission has also issued today a notice of consultation initiating a process to review the framework for all Category C news services (CBC News Network, CTV News Channel, Le Canal Nouvelles, Le Réseau de l'information and Sun News Network).*

*The Commission intends to address the exemption order for terrestrial BDUs serving fewer than 20,000 subscribers set out in Broadcasting Order 2012-408 so as to reflect its determinations in this policy and to harmonize the exemption order with the distribution orders published today.*

*A dissenting opinion by Commissioner Candice Molnar is attached to this document.*

## **Introduction**

1. At a public hearing beginning on 23 April 2013, the Commission considered 22 applications by programming services for mandatory distribution by licensed Canadian cable and satellite providers, pursuant to orders issued under section 9(1)(h) of the *Broadcasting Act* (the Act). Of these applications, six were from services seeking continued mandatory distribution, while the remainder were from new and existing services not currently benefiting from mandatory distribution. The Commission also considered the renewal of the licences for 10 of these services. These licence renewals are addressed in Broadcasting Decisions 2013-383, 2013-384, 2013-385, 2013-387, 2013-388, 2013-389, 2013-390, 2013-391, 2013-392 and 2013-393.
2. In Broadcasting Notice of Consultation 2013-19, the Commission called for comments on the applications for mandatory distribution, as well as on renewal applications for various pay and specialty television services<sup>1</sup> and the more general issues of the composition and affordability of the digital basic television service for Canadian television viewers. The Commission received and considered over 135,000 interventions in response to this notice,<sup>2</sup> including interventions from a wide range of

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<sup>1</sup> Decisions regarding the renewal applications of these services will be issued shortly.

<sup>2</sup> This includes interventions received in response to both the appearing and non-appearing items announced in Broadcasting Notice of Consultation 2013-19.

parties, such as individuals, public advocacy groups, broadcasters and distributors. The public record for this proceeding can be found on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) under "Public Proceedings."

## Regulatory framework

### What is mandatory distribution on the digital basic service?

3. When Canadians buy a package of digital television services from their cable company or satellite distributor (i.e. a broadcasting distribution undertaking or BDU), certain channels or programming services automatically come with the package. This is the case for instance for local over-the-air television services. A few of these channels that are not over-the-air television services but rather not-for-profit television services are mandated by the Commission to be part of every Canadian's basic service package pursuant to section 9(1)(h) of the Act. When requiring the mandatory distribution of a service, the Commission may also set a rate that must be paid by the BDU to the service provider to distribute the service. The subscriber revenue received by the service is a monthly per subscriber fee. Because part of the fees for these channels may be reflected on Canadians' monthly cable or satellite bills, the Commission requires their distribution only in exceptional circumstances where the channels fulfill important policy objectives under the Act. The criteria for mandatory distribution are explained below. Currently, the following services have mandatory distribution on the basic service at the following per subscriber monthly wholesale rates:

- Aboriginal Peoples Television Network (APTN): \$0.25
  - Réseau de l'information (RDI) (solely in anglophone markets to provide services to French official language minority communities): \$0.10
  - CBC News Network (solely in francophone markets to provide services to English official language minority communities): \$0.15
  - TVA (outside of Quebec): offered without a wholesale rate
  - The Weather Network/Météomedia: \$0.23
  - Cable Public Affairs Channel (CPAC): \$0.11
  - AMI-audio, formerly VoicePrint (in anglophone markets): \$0.04
  - AMI-tv, formerly The Accessible Channel: \$0.20 in anglophone markets and \$0.00 in francophone markets
  - Canal M, formerly La Magnétothèque (in francophone markets): \$0.02
  - Avis de recherche (solely in Quebec): \$0.06
4. The Commission notes that this proceeding did not examine the renewal of the mandatory distribution orders for TVA, The Weather Network/Météomedia, RDI and CBC News Network. The mandatory distribution order for TVA was examined and maintained in Broadcasting Decision 2012-242, while The Weather

Network/Météomedia's mandatory distribution order was extended in Broadcasting Order 2009-340-1. As for RDI and CBC News Network, the Commission recently examined the extension of their mandatory distribution orders at the November 2012 public hearing for the licence renewal of the Canadian Broadcasting Corporation's French- and English-language services and maintained these orders in Broadcasting Decision 2013-263.

5. The Commission has the authority under section 9(1)(h) of the Act to “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.” Since section 9(1)(h) allows the Commission to require carriage of programming services on the terms and conditions it deems appropriate, mandatory distribution can take different forms, including:
  - a “must-offer” status – in other words, the cable or satellite operator must make the service available to subscribers, who can then choose whether to subscribe to it;
  - mandatory distribution in certain regions of the country; and
  - national distribution on the basic service of all BDUs.
6. In the latter two cases, subscribers cannot opt out of receiving and, if a monthly wholesale rate is set, paying for these channels where BDUs choose to pass on the cost.

**Criteria for assessing applications for mandatory distribution on the digital basic service**

7. As noted above, there are a number of ways in which the Commission can require the distribution of a programming service, the most prescriptive being mandatory distribution on the digital basic television service of all BDUs. For this reason, in Broadcasting Regulatory Policy 2010-629 (the Policy), the Commission set out a new approach for evaluating applications for mandatory distribution on the digital basic service under section 9(1)(h) of the Act. This new approach is based on specific criteria established to allow the Commission to determine if a programming service:
  - makes an exceptional contribution to Canadian expression and reflects Canadian attitudes, opinions, ideas, values and artistic creativity;
  - contributes in an exceptional manner to achieving the overall objectives for the digital basic service and 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 reflection and portrayal of persons with disabilities; or
    - linguistic duality, including improved service to official language minority communities (OLMCs); and

- makes exceptional commitments to original, first-run Canadian programming in terms of exhibition and expenditures.
8. In the Policy, the Commission also determined that existing services that had been granted mandatory distribution on the basic service pursuant to distribution orders under section 9(1)(h) would be required to justify continued mandatory carriage with reference to the new criteria as part of their licence renewal.

## **Interventions**

9. Consumer groups expressed concern that any addition to the digital basic service would result in an increase to the price of the basic service, which could reduce the living standard of Canadians with low incomes. Consumer groups also noted that some independent applicants made the case that BDUs acted as gatekeepers and that mandatory distribution was the only avenue to receive carriage. As such, they argued that the Commission should apply the criteria for mandatory distribution strictly to balance the objectives of adding value to the system through exceptional services, consumer choice and flexibility and an affordable basic service. They also argued that where issues related to competition appear to emerge, such as in carriage negotiations with BDUs, the Commission should examine the ability of other policies in its regulatory framework to address these issues and not use its powers under section 9(1)(h) of the Act.
10. In general, most BDUs opposed the granting of additional distribution orders that would require consumers to receive and pay for services they have not necessarily chosen. BDUs also generally opposed any increases to the per subscriber monthly wholesale rates of services that currently benefit from mandatory distribution. Independent programmers, such as Blue Ant Media Inc. (Blue Ant), OUTtv Network Inc., Groupe Serdy inc. and V Interactions inc., also opposed the applications for mandatory distribution. In this respect, Blue Ant and Allarco Entertainment 2008 Inc. argued that new distribution orders would hinder smaller independent broadcasters because large vertically integrated BDUs would seek to reduce the wholesale rates of smaller broadcasters to recoup the cost of mandatory distribution.
11. Finally, organizations representing OLMCs advocated for additional French-language services on the digital basic service, stressing that these communities are dispersed across the country and are underserved both in terms of reflection and production.

## **Term of the mandatory orders**

12. With respect to the duration of the mandatory distribution orders issued today, the Commission has decided that a five-year term is appropriate, given the pace of change in the Canadian broadcasting environment. The Commission also notes that these orders may be reviewed at an earlier date should the context and environment of the Canadian broadcasting system change significantly.

13. Further, section 15.3 of the *Broadcasting Distribution Regulations* (the Regulations) states:

A licensee shall not realign the channel number on which a Canadian programming service is distributed unless, at least 60 days before the proposed effective date of the realignment, the licensee sends a written notice indicating the intended date of the realignment and the channel number on which the programming service will be distributed to each of the operators of the programming services whose channel placements will be affected by the channel realignment.

14. Moreover, it is the BDUs' usual business practice to give their customers at least 30 days notice if they are to increase the price of the basic service or realign their channels.
15. Given the preceding and given that the Commission's determinations in this policy will require BDUs to realign and make adjustments to the basic service, the Commission has determined that **1 January 2014** would be an appropriate effective date for the distribution orders issued as a result of this process. This effective date is the start of a new calendar year and will give BDUs sufficient time to adjust their channel lineups, deal with the programming services affected, adjust their billing and warn their customers of any potential changes.
16. Accordingly, the existing distribution orders for services affected by this policy will remain in effect until 1 January 2014.

## **Applications and assessment of applications**

### **APTN**

17. Aboriginal Peoples Television Network Incorporated (APTN), a not-for-profit corporation controlled by its board of directors, filed an application (2012-0993-2) for the continued mandatory distribution of the satellite-to-cable undertaking APTN on the basic service. The licensee also proposed to increase its per subscriber wholesale rate from \$0.25 to \$0.40.
18. APTN's programming is devoted to providing a positive window on Aboriginal life for all Canadians and consists of a broad range of programming reflecting the diverse perspectives of Aboriginal peoples, their lives and cultures.
19. In support of its request for continued mandatory distribution, APTN raised the following points:
- its mandate reflects key objectives in the Act, including the special place of Aboriginal people within Canadian society and the reflection of the Aboriginal cultures of Canada;

- APTN is the primary voice for Aboriginal peoples in the Canadian television landscape and the only source for televised Aboriginal-language programming;
  - APTN provides social benefits by strengthening the cultural identity of Aboriginal peoples and providing a cultural bridge between Aboriginal Peoples and non-Aboriginal Canadians;
  - APTN has triggered the development of a substantial Aboriginal independent production industry and offers a distinct contribution to Canadian expression;
  - APTN broadcasts a significant amount of original, first-run Canadian programming and plans to spend approximately 70% of its gross revenues on Canadian production and 46% of its revenues on programs of national interest over the next licence term, as well as to enhance its news and current affairs programming; and
  - the demand for and reliance on APTN are evidenced by the high level of satisfaction among its viewers.
20. In Decision 99-42, the Commission stated that it considered it vitally important that APTN's unique service focused on programming produced by and for Aboriginal peoples be available to all Canadians, consistent with the objectives of the Act. It also stated that distribution of APTN on the basic service was necessary to ensure that it was widely available across the country.
  21. In the context of this proceeding, the Commission is of the view that the same considerations hold true today. Specifically, the Commission considers that as the only television channel by and for Aboriginal peoples of Canada, APTN is exceptional in its contribution to Canadian expression and reflects attitudes, opinions, ideas, values and artistic creativity that would not otherwise be seen on television. APTN also represents the only outlet for most of the independent Aboriginal production industry. The Commission notes that APTN also contributes to Canadian identity, cultural sovereignty and regional reflection and provides programming in both official languages, as well as in 30 different Aboriginal languages and dialects.
  22. Further, the Commission notes that APTN provided evidence demonstrating a need for its service among its intended audience and that the interventions received as part of this proceeding showed general support for the service's mandatory distribution from both Aboriginal and non-Aboriginal Canadians. Moreover, because the Aboriginal population is very diverse and spread throughout the country, the Commission considers that making APTN available only in regions of concentrated Aboriginal population would not allow First Nations, Inuit and Métis people to see themselves properly reflected on television. Therefore, the Commission considers that APTN's mandatory distribution should be maintained in light of this exceptional need.
  23. APTN proposed an increase in its per subscriber monthly wholesale rate from \$0.25 to \$0.40. Of this increase, approximately \$0.05 would reflect inflation, \$0.07 would



be earmarked for planned improvements to its programming and \$0.03 would be to commission new programming in Aboriginal versions and make sure it is available on multiple platforms. APTN stated that its proposed per subscriber monthly wholesale rate would put it within the middle range of Category A services and that it would represent less than 0.5% of the average annual per subscriber revenue generated by BDUs. It also noted that the Act provides that programming that reflects the Aboriginal cultures of Canada should be provided within the Canadian broadcasting system as resources become available for that purpose.

24. The Commission notes that APTN is a registered not-for-profit corporation established to broadcast programming produced by, for and about Aboriginal peoples to all Canadians and viewers around the world. The Commission finds that APTN has provided evidence that the implementation of its business plan depends on mandatory distribution given that the service is targeted towards an underserved minority community and given that advertising revenues will be difficult to achieve in light of this target audience and the national scope of the service. The Commission also notes that APTN has provided evidence that it is facing financial challenges and has stated that if it was denied its requested rate increase, it would be forced to take measures, such as closing news bureaus, reducing news programming and program development and cutting its overall operating expenses, including staff. As such, after reviewing APTN's financial performance and projections, the Commission is of the view that APTN's request for a rate increase has merit.
25. The Commission notes, however, that any wholesale rate increase would likely result in higher retail rates for basic service for Canadian consumers when BDUs adjust their retail prices to reflect changes in the cost of offering their basic package. The Commission further notes that APTN already has the highest wholesale rate among services with mandatory distribution. As such, the Commission has reviewed APTN's business plan and finds that a wholesale rate increase of \$0.06 would represent a good balance between the impact on the price of the basic package for Canadian consumers and the ability of APTN to sustain and improve the quality of its service and continue reflecting the diverse perspectives of Aboriginal peoples, their lives and culture.
26. In light of all of the above, the Commission **approves** APTN's request for continued mandatory distribution. Accordingly, in Broadcasting Order [2013-373](#), also issued today, the Commission has maintained the mandatory distribution of APTN on the basic service until 31 August 2018 at a per subscriber monthly wholesale rate of \$0.31.

#### **Services for official language minority communities**

27. In response to the Commission's findings in its *Report to the Governor in Council on English- and French-language broadcasting services in English and French linguistic minority communities in Canada*, 30 March 2009 (the Report to the Governor in Council), the Commission received applications by La Corporation de la

télévision francophonie canadienne – ACCENTS and by TV5 Québec Canada for national services with mandatory distribution dedicated to French-language OLMCs.

28. As stated in the Report to the Governor in Council, the Commission is of the view that establishing an interregional French-language service available not only to French-language minority communities but to all Francophones and Francophiles across Canada would enhance the reflection of Francophone communities and the visibility of French-language Canadian productions from OLMCs. This would further allow French-language Canadian producers from OLMCs to find their place in the broadcasting system and on screen and would consequently contribute to the development of talent from these communities, while allowing citizens of these communities to see their everyday realities reflected in the television they watch.
29. In the context of this proceeding, the Commission received interventions from various parties, including from the OLMCs and the Commissioner of Official Languages, supporting the two above-noted applications. In addition to interventions supporting the need for French-language OLMC reflection stated in the Report to the Governor in Council, the Commission heard throughout the public process that there is a need for a service that would enable and promote a dialogue between all Canadian francophone communities.
30. The Commission is of the view that there is a need for an exceptional service to fill the aforementioned void. As such, the Commission has examined each application based on its own merits and in light of the criteria set out in the Policy and the Report to the Governor in Council.

#### *TV5/UNIS*

31. TV5 Québec Canada (TV5), a not-for-profit corporation controlled by its board of directors, filed an application (2012-0711-8) for mandatory distribution of the national French-language specialty programming undertaking TV5 on the digital basic service. The applicant proposed that its service be offered for a per subscriber monthly wholesale rate of \$0.30.
32. As part of its application, TV5 proposed to amend its licence to broadcast two separate feeds (collectively Nouveau TV5) under the same licence:
  - TV5, which would offer programming focused primarily on reflecting the international Francophonie; and
  - UNIS, which would offer programming focused primarily on reflecting the diversity of the Canadian Francophonie, including OLMCs.
33. In support of its application, TV5 raised the following points:
  - Nouveau TV5 would play an exceptional role in the broadcasting system as a window on the French-speaking communities for the world and the diversity of French Canada;

- Nouveau TV5 would contribute in an exceptional manner to reinforcing Canada's linguistic duality and improving service to OLMCs;
- in the Report to the Governor in Council, the Commission mentioned the option of launching a French-language programming service available to all Francophones across Canada that would enhance the reflection of francophone communities and the visibility of OLMC productions;
- the extraordinary need for the service is demonstrated through a quantitative survey and an opinion poll, both conducted by Substance Stratégies;
- UNIS would reflect the situation, the accomplishments and the aspirations of OLMCs with the opening of three regional offices during the first year of operation to liaise with independent producers and OLMCs;
- TV5 would devote at least 15% of its programming to Canadian content, while UNIS would devote at least 75% of its programming to Canadian content, for an average of 45% Canadian content across both services; and
- Nouveau TV5 would devote at least 55% of its programming expenditures to Canadian programming, and at least 75% of its Canadian programming expenditures for TV5 and UNIS combined would be allocated to original first-run Canadian programming, of which at least 40% in years 1 and 2 of operation, 50% in years 3 and 4 of operation and 60% in year 5 of operation would be devoted to the acquisition of original French-language programs that:
  - (a) reflect the situation, achievements or aspirations of French-Canadian minority communities; or
  - (b) are produced or coproduced by independent producers located outside the Census Metropolitan Area of Montreal, as defined by Statistics Canada.
- at least 60% of the expenditures devoted to programming identified in subparagraphs (a) and (b) above would be devoted to programs produced or co-produced by independent producers based outside of Quebec.

34. The Commission considers that Nouveau TV5 would contribute to the achievement of the objectives set out in sections 3(1)(d)(iii) and 3(1)(k) of the Act related to serving the needs and interests of the linguistic duality and providing a range of broadcasting services in English and French. Nouveau TV5 would also contribute to enhancing the vitality of French linguistic minority communities in Canada, consistent with the spirit of section 41 of the *Official Languages Act* and the Commission's recommendations in its Report to the Governor in Council. Further, given the preceding and the support for the service as expressed in over 5,000 interventions, including OLMCs and the Commissioner of Official Languages, the Commission considers that the applicant has shown that there is extraordinary need for the proposed service, as required by the Policy.

35. Moreover, the Commission considers that the proposal to devote 75% of Nouveau TV5's programming expenditures on Canadian programming to original, first-run Canadian programming will contribute in an exceptional manner to the creation of new Canadian programs to the benefit of all Canadians and the Canadian broadcasting system. This commitment will also give Canadian francophone producers, creators, technicians and artists the opportunity to be heard and to share their ideas and concerns with Francophiles and francophone Canadians, thus contributing to many policy objectives of the Act. In light of the above, the Commission considers that Nouveau TV5 meets this criterion of the Policy. However, the Commission is of the view that a minimum of 50% Canadian content for both feeds (TV5 and UNIS) combined is necessary to warrant mandatory distribution under the criteria of the Policy, as discussed below.
36. The Commission further considers that the proposed programming for both feeds would be unique and complementary to existing programming in the broadcasting system. In this respect, a review of the program logs performed on 14 May 2013 indicates that other licensees report very little programming reflecting the Francophonie outside Canada. Hence, TV5 International plays a central role in ensuring that French Canadians have access to international French-language programming. The Commission also notes that TV5 International provides a window on Canada's Francophonie for the world by allowing Canadian French-language programming to be viewed elsewhere. The Commission further notes that TV5 International is a cultural cooperation project of the countries that have the French language and culture in common and is aimed at strengthening the ties among them. Similarly, the Commission is convinced that UNIS will appropriately discharge its mission to serve OLMCs and the regions outside of Montréal by its programming and notes TV5's commitment to establish three regional offices to serve OLMCs. The Commission also notes that in response to interventions by representatives from OLMC organizations, TV5 stated that it would put in place a consultative programming committee with OLMC representatives to ensure their participation in programming decisions affecting OLMCs.
37. Following an examination of TV5/UNIS's proposed programming schedules in light of the special nature of TV5 International, the Commission considers that this service should make predominant use of Canadian resources for the presentation of programming, as required by the Act. The Commission finds that the service should devote at least 50% of the combined programming of TV5 and UNIS to the broadcast of Canadian programs. The Commission considers, however, that some flexibility should be given to TV5 to determine which of the two feeds or to what extent each feed should increase its contribution in terms of Canadian content exhibition. Consequently, as a condition for mandatory distribution, TV5 must clearly demonstrate to the Commission, with 60 days prior notice, that TV5 and UNIS combined will broadcast at least 50% Canadian content.
38. The Commission considers that the implementation of Nouveau TV5's business plan depends on mandatory distribution given that the service is targeted towards an underserved minority community and given that advertising revenues will be

difficult to achieve in light of this target audience and the national scope of the service.

39. With regard to the wholesale rate, the Commission takes note of Nouveau TV5's proposal for a single per subscriber monthly wholesale rate of \$0.30 in every market. However, the Commission is of the view that the proposed rate could result in a significant impact on consumers, especially in anglophone markets. Based on the record of this proceeding, including a review of TV5's financial performance and Nouveau TV5's financial projections, the Commission is of the view that a per subscriber monthly wholesale rate of \$0.28 for Nouveau TV5 in francophone markets and \$0.24 in anglophone markets would allow the applicant to offer a high-quality service and strike a balance between any potential impact on the price of the basic package for Canadian consumers and the availability of a high-quality French-language service to Canadians, especially those located in OLMCs.
40. The Commission also considers that the approved per subscriber monthly wholesale rate for Nouveau TV5 respects the Commission's legislative duty to regulate and supervise all aspects of the Canadian broadcasting system by having regard to the regulatory policy set out in subsection 5(2) of the Act, which states that the Canadian broadcasting system should be regulated and supervised in a flexible manner that is readily adaptable to the different characteristics of English- and French-language broadcasting and that takes into account regional needs and concerns. The Commission notes that TV5 has historically been widely available to all Canadians in both francophone and anglophone markets, in large part as a result of the higher per subscriber wholesale rate payable in francophone markets (\$0.28) than the rate payable in anglophone markets (\$0.06). Given these historical rates, the Commission finds that the approved rate of \$0.28 in francophone markets and \$0.24 in anglophone markets provides all Canadians with a balanced and cost-efficient approach that will permit Nouveau TV5 to fulfill its mandate under the Act as a service benefitting from mandatory distribution. Further, in light of subsection 5(2) of the Act, the Commission is of the view that TV5's request to operate two feeds under one licence is acceptable.
41. In light of all of the above, the Commission **approves** TV5's request for mandatory distribution of Nouveau TV5 on the digital basic service. Accordingly, in Broadcasting Order [2013-374](#), also issued today, the Commission has required the mandatory distribution of TV5/UNIS on the digital basic service in anglophone markets at the monthly per subscriber wholesale rate of \$0.24 and on the digital basic service in francophone markets at the monthly per subscriber wholesale rate of \$0.28 until 31 August 2018. However, this order will only come into effect upon the launch of UNIS, the opening of three regional offices in OLMCs and the creation of a consultative programming committee with OLMC representatives to ensure their participation in programming decisions affecting OLMCs, as well as confirmation that TV5 and UNIS will broadcast a combined minimum level of 50% Canadian programming.

## ACCENTS

42. La Corporation de la télévision francophonie canadienne – ACCENTS (ACCENTS) filed an application (2012-0683-9) for a broadcasting licence to operate a national French-language programming undertaking to be known as ACCENTS and for mandatory distribution of its service on the digital basic service. The applicant proposed that its service be offered for a per subscriber monthly wholesale rate of \$0.25 across Canada.
43. The service would consist of French-language general interest programming of a local and regional nature targeting French-language OLMCs. This programming would essentially be of an entertaining and cultural nature, giving a voice and a face to audiences in Francophone communities across Canada during the day and in prime time.
44. In support of its application, ACCENTS raised the following points:
  - according to studies published by the Commission, including its Report to the Governor in Council, Francophones residing in OLMCs do not receive enough local and regional programming;
  - the proposed service would safeguard, enrich and reinforce Canada's cultural, political and social fabric and reinforce Canada's linguistic duality and ethno-cultural diversity by offering programming targeting French-language OLMCs, including 22 hours per broadcast week of original, first-run programming reflecting OLMCs as of its third year of operation;
  - ACCENTS would devote 55% of its revenues to Canadian programming as of its third year of operation;
  - ACCENTS would contribute to achieving the objective of section 3(1)(i)(v) of the Act by including a significant contribution from Canadian independent producers (at least 85% of its programming from this sector and at least 75% from producers in OLMCs); and
  - ACCENTS would distinguish itself not only through its programming but also its ownership since the initiative was created by and for OLMCs.
45. In spite of the various commitments made by ACCENTS, the Commission notes that a large part of its programming, in particular during its first three years of operation, would be comprised of magazine shows, which would likely limit the diversity of its programming. Therefore, the Commission considers that the applicant has not demonstrated that the proposed service would make an exceptional contribution to meeting the objectives of the Act and the digital basic service. In addition, ACCENTS did not propose to broadcast any programs of national interest before the seventh year of the licence term. As such, the Commission is of the view that the applicant did not demonstrate that it would make an exceptional contribution to original, first-run programming.

46. Moreover, while the Commission recognizes that there is an extraordinary need for a service such as ACCENTS and that several organizations representing OLMCs<sup>3</sup> supported the application,<sup>4</sup> the Commission notes that a number of key organizations, such as the Alliance des producteurs francophones du Canada (APFC), the Société nationale de l'Acadie and the Association acadienne des artistes professionnel.le.s du Nouveau-Brunswick, subsequently withdrew their support for ACCENTS due to its business plan.
47. While the Commission acknowledges that the implementation of the service's business plan depends on mandatory distribution, the Commission shares the concerns raised by the APFC and others relating to the applicant's business plan and the proposed financing. These concerns raise substantial doubts as to the applicant's capacity to finance and sustain its service without adversely affecting the quality of the programming, given that the licensee would be required to incur a high level of debt to implement its project. In particular, the Commission is concerned that the proposed volume of original, first-run Canadian programming was extremely high in relation to ACCENTS's financial resources and would compromise the quality and variety of the programming broadcast. Based on the preceding, the Commission is concerned that the proposed programming service would not allow French-language Canadian producers in OLMCs to find their place in the broadcasting system and on screen and would consequently not necessarily contribute to the development of talent from these communities, as contemplated in the Report to the Governor in Council.
48. In light of the above, the Commission **denies** the applicant's request for mandatory distribution on the digital basic service. The Commission also **denies** ACCENTS's application for a broadcasting licence, given that its application and business plan were dependent on mandatory distribution.

#### *ARTV*

49. The Canadian Broadcasting Corporation (CBC) filed an application (2013-0002-9) on behalf of ARTV inc., a corporation controlled by the CBC, for a distribution order giving the national French-language specialty Category A service ARTV access rights (i.e. "must-offer" status) to the digital service of terrestrial BDUs in anglophone markets. The wholesale rate for the service would be negotiated between ARTV and these BDUs. The Commission notes that as a Category A service ARTV

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<sup>3</sup> These organizations included the Société franco-manitobaine, the Alliance des producteurs francophones du Canada, the Société nationale de l'Acadie, the Association canadienne-française de l'Alberta, the Association acadienne des artistes professionnel.le.s du Nouveau-Brunswick, the Fédération culturelle canadienne française and the Fédération des communautés francophones et acadienne du Canada.

<sup>4</sup> The Commission notes that the intervener Groupe Média TFO (TFO) also sought to introduce a survey (TFO – Annual Survey 2013) at the hearing, stating that this document was public. However, as TFO did not attach the survey to its written intervention and other parties did not have an opportunity to comment on it, the Commission has decided not to admit this survey into evidence.

must be offered in francophone markets and by direct-to-home (DTH) undertakings, pursuant to the Regulations.

50. This application was initially filed in the context of the proceeding for the licence renewal of the French- and English-language services of the CBC announced in Broadcasting Notice of Consultation 2011-379. However, during the hearing that was held as part of that proceeding, the licensee clarified that the distribution order was requested under section 9(1)(h) of the Act. Accordingly, to allow for consideration of the application in a more general context taking into account the requirements to be imposed on other applicants requesting mandatory distribution, the requirements that will be imposed on BDUs and the impact on their subscribers, the Commission invited the licensee to submit a new application for mandatory distribution to be considered in this proceeding. The present application was filed as a result.
51. ARTV is a national French-language arts specialty television service that reflects the unique character of Quebec culture and the needs and circumstances of French-language communities in other parts of Canada.
52. In its application, the CBC indicated that as it was only seeking access rights in anglophone markets for ARTV, it had provided no specific justification regarding the criteria set out in the Policy. Nonetheless, the CBC stated that ARTV met all the criteria except for that relating to evidence that the implementation of its business plan depended on mandatory distribution. At the hearing, the CBC explained that there was an important imbalance in the existing regulatory framework given ARTV's role in serving French-language OLMCs (i.e. ARTV is required by condition of licence to devote at least 20% of its annual budget for original Canadian productions to programs produced outside Quebec) and that it was not being offered in many anglophone markets.
53. In its report on the establishment of a national French-language arts television service (Public Notice 1999-187), the Commission stated that it believed that the establishment of such a service could, if certain conditions were met, make a significant contribution to achieving the objectives of the Act. In particular, section 3(1)(k) of the Act states that "a range of broadcasting services in English and in French shall be extended to all Canadians as resources become available."
54. Given that ARTV did not request distribution on the basic service, the Commission is of the view that the information provided as part of its application is sufficient to make its determination. The Commission notes that granting mandatory distribution on a "must-offer" basis does not impose any direct additional costs on consumers who do not wish to receive the service. It also provides additional choice to those who live in OLMCs wanting to view programming from ARTV.
55. The Commission is of the view that ARTV's exceptional contribution to Canadian programming produced outside Quebec and the reflection of artistic activities in OLMCs justifies granting it access rights in anglophone markets.



56. In light of all of the above, the Commission **approves** the CBC's request to obtain a distribution order for ARTV giving it access rights to the digital service of terrestrial BDUs in anglophone markets until 31 August 2018, the licence expiry date for this service. Accordingly, in Broadcasting Order 2013-375, also issued today, the Commission has set out an order to this effect.

#### **AMI-tv**

57. Accessible Media Inc. (AMI), a not-for-profit organization controlled by its board of directors, filed an application (2012-1095-5) for continued mandatory distribution of the national English-language specialty described video programming undertaking AMI-tv (formerly The Accessible Channel) on the digital basic service at the current per subscriber monthly wholesale rate of \$0.20 in anglophone markets and \$0.00 in francophone markets.

58. All of the programming provided by AMI-tv consists of open format<sup>5</sup> described video programming so as to provide access to a wide breadth of news, information, drama, entertainment and other television programming to Canadians who are blind or partially sighted.

59. In support of its application, AMI raised the following points:

- it met all of the requirements for mandatory distribution on the digital basic service in its first licence term;
- the service fulfills the objective set out in section 3(1)(p) of the Act relating to the accessibility of programming;
- mandatory national distribution on the digital basic service and a wholesale rate continue to be essential to AMI-tv's business plan as otherwise BDUs would not distribute the service as part of their basic package and due to its nature AMI-tv depends exclusively on subscription revenue; and
- the current requirement for described video programming by commercial and public broadcasters is for 4 hours or 2-3% of the broadcast week, which is simply not enough described video programming to meet the target audience's needs.

60. In Broadcasting Decision 2007-246, the Commission stated that due to the limited supply of described video programming, as well as technical issues experienced by many BDUs and user problems with accessing described video, Canadians who are

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<sup>5</sup> There are two means to pass through described video. One is to embed the audio track containing the descriptions with the television program's video and primary audio track. This approach, which is known as "embedded described video," requires a means to select the audio track that provides the descriptions. A person who is blind or partially sighted turns on the described video to hear the descriptions. Alternatively, the audio track containing described video can be distributed together with the original audio and video on a dedicated channel. This is known as "open format described video." Under this approach, described video is always turned on and can be heard by all tuning into the program.

blind or partially sighted lacked accessible television programming. Given that AMI had proposed a 100% open format described video service providing various types of programming to Canadians who are blind or partially sighted, the Commission considered that it would offer an immediate and fully accessible means by which the objective set out in section 3(1)(p) of the Act could be fulfilled. Therefore, the Commission granted mandatory distribution to AMI-tv on the basis that it would be of exceptional importance in fulfilling the objectives of the Act.

61. In the context of this proceeding, the Commission considers that the same considerations hold true today. Specifically, the applicant demonstrated that the service is of exceptional importance in fulfilling the objectives of the Act and the digital basic service by providing Canadians who are blind or partially sighted with a significant amount of programming that would otherwise be inaccessible. Further, the applicant demonstrated that the service makes an exceptional contribution to Canadian expression by helping Canadians who are blind or partially sighted to participate more fully in the political and cultural life of the country and to have their opinions and values taken into account. Moreover, in light of the many interventions supporting this application, the Commission considers that the service responds to an extraordinary need within the system.
62. With regard to Canadian programming, the Commission notes that the applicant has confirmed that it would maintain its current level of Canadian content and Canadian programming expenditures. The applicant also stated that it would continue to create or acquire and broadcast at least 500 hours per year of original English-language described video programming, of which at least 30% would be Canadian programming. Finally, the applicant also confirmed that it would continue to commission original English-language described video programming from Canadian independent producers. The Commission therefore considers that the applicant has clearly demonstrated that the service makes an exceptional contribution to original, first-run Canadian programming.
63. The Commission further considers that AMI has provided evidence that the implementation of its business plan depends on mandatory distribution given that the service is targeted towards an underserved minority community and given that advertising revenues will be difficult to achieve in light of this target audience and the national scope of the service. As such, the Commission considers that AMI-tv is more of a “public service” that brings benefits to a portion of the Canadian population that would not likely have access to such a service without a mandatory distribution order.
64. In light of all of the above, the Commission **approves** AMI’s request for continued mandatory distribution of AMI-tv. Accordingly, in Broadcasting Order [2013-376](#), also issued today, the Commission has maintained the mandatory distribution of AMI-tv on the digital basic service at the current \$0.20 per subscriber monthly wholesale rate in anglophone markets and \$0.00 in francophone markets until 31 August 2018.

## **AMI-tv Français**

65. AMI also filed an application (2012-0709-3) for a broadcasting licence to operate a national French-language specialty Category B service to be known as AMI-tv Français and for mandatory distribution of its service on the digital basic service. In its application, AMI proposed that its service be offered for a per subscriber monthly wholesale rate of \$0.30 in francophone markets and \$0.00 in anglophone markets.
66. All of the programming of AMI-tv Français would consist of open format described video programming so as to provide access to a wide breadth of news, information, drama, entertainment and other television programming to Canadians who are blind or partially sighted.
67. In support of its application, AMI raised the following points:
- there is currently no programming service in Canada or the world dedicated to providing full and open access programming to Francophones who are blind or partially sighted;
  - Quebec, New Brunswick and Ontario, which have the largest French-language communities in Canada, exceed the Canadian average of the number of residents who are blind, partially sighted or have some form of age-related macular degeneration, the leading cause of vision loss in Canada, showing that there is a growing need for accessible programming in all French-language communities; and
  - the service would meet the objective set out in section 3(1)(p) of the Act, which states that “programming accessible by disabled persons should be provided within the Canadian broadcasting system as resources become available for the purpose.”
68. The Commission considers that AMI has demonstrated that its service would make an exceptional contribution to Canadian expression and achieving the objectives of the Act and the digital basic service by providing Canadians who are blind or partially sighted with a significant amount of programming that would otherwise be inaccessible. The applicant also showed that the service will help Canadians who are blind or partially sighted to take part in the political and cultural life of the country by having their opinions and values taken into account. Accordingly, since broadcasting services for such Canadians are underrepresented in the broadcasting system, the Commission considers that the proposed service will make an exceptional contribution to the expression and the reflection of their opinions and values.
69. Further, the Commission considers that the record of this proceeding, including the interventions, demonstrates an extraordinary need for a service that would provide programming in the French language to Canadians who are blind or partially sighted. In this respect, the Commission notes that while English-language Canadians who are blind or partially sighted have had access to a described video service since AMI-tv launched in 2007, an equivalent service does not currently exist in the francophone market. Therefore, to the extent that the AMI-tv English-language service already

contributes to achieving the objectives of the Act and section 3(1)(p) relating to the accessibility of programming, it would seem appropriate that a comparable French-language service be made available, consistent with section 3(1)(k) of the Act, which states that “a range of broadcasting services in English and French shall be extended to all Canadians as resources become available.” In this respect, the Commission also notes that AMI committed at the hearing to work with the French-language community to provide a service that meets the needs of this community. Accordingly, the Commission considers that the proposed service will fill a void in the system and expects AMI to meet its above-noted commitment to the French-language community.

70. However, the Commission considers that the proposed monthly wholesale rate of \$0.30 for francophone markets is very high. At the same time, while AMI’s English-language service is offered at a \$0.20 wholesale rate, the Commission recognizes that the production costs of described video programming in the French language are higher than in the English language as fewer resources are available in the francophone market. The Commission considers that a \$0.28 per subscriber wholesale rate in francophone markets, combined with a wholesale rate of \$0.00 in anglophone markets, would be adequate to ensure that the applicant is able to provide a quality service, thus making a significant contribution to Canadian programming.
71. Given that AMI-tv Français would be of exceptional importance to fulfilling the objectives of the Act, the Commission is of the view that this service, like its English-language counterpart, should be granted a Category A licence. Accordingly, in light of all of the above, the Commission **approves** the application by AMI for a broadcasting licence to operate a national French-language specialty Category A service to be known as AMI-tv Français and for mandatory distribution of its service on the digital basic service until 31 August 2018. Accordingly, in Broadcasting Order 2013-377, also issued today, the Commission has set out a distribution order reflecting the above determinations. The terms and **conditions of licence** for the new service are set out in Broadcasting Decision 2013-386, also issued today.

#### **AMI-audio**

72. AMI further filed an application (2012-1096-3) for continued mandatory distribution of the national English-language audio programming undertaking AMI-audio (formerly VoicePrint) on the digital basic service in anglophone markets at the current per subscriber monthly wholesale rate of \$0.04.
73. The programming of this service consists of readings made by volunteers of full-text articles from leading local and national newspapers and magazines for Canadians who are blind, partially sighted or print-restricted.
74. In support of its application, AMI raised the following points:
  - its service is Canada’s only English-language 24-hour audio broadcast reading service;

- it fulfills the objective set out in section 3(1)(p) of the Act relating to the accessibility of programming; and
- distribution on a discretionary basis is not viable because it would not guarantee access to all Canadians who are blind, partially sighted or print-restricted as this community generally cannot afford to subscribe to any tier beyond basic.

75. In Decision 2000-380, the Commission recognized the value of this unique service and determined that it was in keeping with section 3(1)(p) of the Act. As a result, the Commission issued an order requiring its distribution in anglophone markets. The Commission's decision was based on the fact that the service had received substantial support by interveners and needed a subscriber fee to receive stable funding to continue its operation. The Commission is of the view that the same findings hold true today as AMI-audio continues to foster accessibility, inclusion and education for English-speaking Canadians who are blind, partially sighted or print-restricted. As such, the Commission finds that the applicant has demonstrated that the service makes an exceptional contribution to Canadian expression and achieving the objectives of the Act and the basic service. In addition, in light of the interventions received in support of this service, the Commission finds that the service responds to a need within the system.

76. The Commission also notes that AMI made additional commitments in this proceeding to increase the service's level of Canadian programming. Specifically, AMI committed to abide by a condition of licence requiring that all audio-based talk programming broadcast on AMI-audio be first-run Canadian programming both in terms of exhibition and expenditures. The applicant stated that it would also abide by a condition of licence requiring that all the content be produced by Canadians for Canadians. The Commission is satisfied with these proposed conditions, as well as with the various initiatives put forward by the applicant since the last licence renewal. The Commission further notes that AMI-audio now covers every region of the country with East and West feeds of the service providing local news to many areas, including Saskatchewan and the Northern Territories. For each of these feeds, the service produces distinct content, ranging from current local and national news to feature programs on a variety of subjects. As such, the Commission considers that AMI demonstrated that it provides substantial amounts of programming for Canadians who are blind, partially sighted or print-restricted that would not otherwise be available in the system.

77. In light of all of the above, the Commission **approves** AMI's request for continued mandatory distribution of AMI-audio. Accordingly, in Broadcasting Order 2013-378, also issued today, the Commission has maintained the mandatory distribution of AMI-audio on the basic service in anglophone markets at the current per subscriber monthly wholesale rate of \$0.04 until 31 August 2018.

## **Described Video Guide**

78. Evan Kosiner filed an application (2011-1255-7) on behalf of a corporation to be incorporated (Evan Kosiner, OBCI) for a broadcasting licence to operate a national English-language specialty audio programming undertaking to be known as Described Video Guide and for mandatory distribution of its service on the digital basic service in anglophone markets at a per subscriber monthly wholesale rate of \$0.02.
79. The programming of Described Video Guide would consist entirely of information specific to BDUs regarding where television shows with described video can be found on the dial for persons who are blind, partially sighted or print-restricted.
80. In support of its application, the applicant raised the following points:
- the service would fulfill the objective set out in section 3(1)(p) of the Act relating to the accessibility of programming;
  - the service would be distinct in its offering and in its efforts to make television equally accessible; and
  - the service would support recent Commission rulings requiring at least 4 hours of described video per broadcaster each week given that Canadians who are blind or partially sighted currently experience difficulty in finding such programming out of the 168 hours of programming broadcast in a week.
81. While it is reasonable to assume that the proposed service would respond to the needs of Canadians who are blind or partially sighted, the Commission notes that the nature of the service does not provide for Canadian expression, the reflection of Canadian opinions and values or any commitment in the area of Canadian programming. The Commission therefore finds that the proposed service does not meet these key criteria of the Policy.
82. Moreover, the Commission notes that there are alternatives to the proposed service that garnered greater consensus from interveners, including the public and other participants from the broadcasting system. Such alternatives include AMI's online described video programming guide and its bilingual call centre to assist users with questions about described video programming. The Commission therefore considers that the applicant has not demonstrated that there is an exceptional need among its intended audience for the proposed service.
83. The Commission also notes that the largest BDUs expressed their opposition to the proposed service. In particular, the Commission shares the concern expressed by Rogers Communications Partnership (Rogers) over the fact that the applicant did not provide any financial and technical details regarding its ability to create a unique audio feed for every BDU serving area to implement the service. The Commission further notes that the applicant has not been able to explain how it would update the service on a day-to-day basis. Moreover, as noted by Rogers and other interveners,

the applicant did not demonstrate that the direct attachment of its equipment or software to a BDU's existing infrastructure would not introduce unacceptable risks to the security and reliability of the BDU's service.

84. In light of the above, the Commission **denies** the applicant's request for mandatory distribution on the digital basic service. The Commission also **denies** Evan Kosiner, OBCI's application for a broadcasting licence, given that its application and business plan were dependent on mandatory distribution.

#### **Canal M**

85. Vues & Voix, a not-for-profit organization controlled by its board of directors, filed an application (2012-1411-3) for continued mandatory distribution of the national French-language audio programming undertaking Canal M (formerly La Magnétothèque) on the basic service in francophone markets. The applicant proposed an increase to its per subscriber wholesale monthly fee from \$0.02 to \$0.04.
86. Canal M broadcasts full readings of news, editorials and other articles published in newspapers, magazines and other periodicals.
87. In support of its application, Vues & Voix raised the following points:
- the service allows Francophone Canadians who are blind, partially sighted or print-restricted to receive programming comprised of readings of daily newspapers, including material from OLMCs;
  - about 10% of Canadians are blind, partially sighted or print-restricted; and
  - the service is essential since some Canadians do not have access to the Internet or accessible technology that would allow them to access the Internet.
88. In Broadcasting Order 2009-542, the Commission granted Canal M mandatory distribution on the basic service in francophone markets on the basis that it contributed to the objective set out in section 3(1)(p) of the Act relating to the accessibility of programming and that the service was comparable to the English-language service AMI-audio. Canal M provides Francophone Canadians who are blind, partially sighted or print-restricted with access to complete information, allowing them to participate more fully in Canadian civil society by having access, like other citizens, to complete and essential information found in the press. As such, the Commission considers that the service contributes in an exceptional manner to achieving the objectives of the Act and the basic service.
89. The Commission also notes that the licensee stated that it would take into account OLMC needs by adding francophone periodicals and newspapers published outside Quebec beginning in September 2013. As such, the service will also contribute in an extraordinary manner to the achievement of the objectives set out in sections 3(1)(d)(iii) and 3(1)(k) of the Act relating to serving the needs and interests of the

linguistic duality. The Commission accordingly expects Canal M to provide OLMCs with adequate programming that reflects their specific needs.

90. The Commission further considers that the applicant has provided evidence that the implementation of its business plan depends on mandatory distribution given that the service is targeted towards an underserved minority community and given that advertising revenues will be difficult to achieve in light of this target audience and the national scope of the service. As such, the Commission considers that Canal M is more of a “public service” that brings benefits to a portion of the Canadian population that would not likely have access to such a service without a mandatory distribution order.
91. However, with respect to the proposed increase to Canal M’s per subscriber wholesale monthly fee from \$0.02 to \$0.04, the Commission notes that the applicant’s request was based on the argument that it should be granted the same rate as currently applies to AMI-audio. Having reviewed the licensee’s financial performance and projections, the Commission considers that the applicant did not provide sufficient evidence to demonstrate that the rate increase is necessary. Therefore, the proposed rate increase is **denied**.
92. In light of all of the above, the Commission **approves** Vues & Voix’s request for continued mandatory distribution. Accordingly, in Broadcasting Order 2013-379, also issued today, the Commission has maintained the mandatory distribution of Canal M on the basic service in francophone markets at the current per subscriber wholesale monthly rate of \$0.02 until 31 August 2018.

#### **Avis de recherche**

93. Avis de recherche incorporée (Avis de recherche), a corporation controlled by Vincent Géricitano, filed an application (2012-1051-7) for continued mandatory distribution of the national French-language Category 2 (now Category B) specialty programming undertaking Avis de Recherche under the terms of its current order, which requires that it be distributed on the basic service in Quebec. The applicant further proposed an increase in its per subscriber monthly wholesale rate from \$0.06 to \$0.08 to improve its programming, including closed captioning, as well as to better promote and publicize its service.
94. Avis de Recherche provides a service primarily intended to be a media tool 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 locally and nationwide.
95. According to the applicant, the service is of exceptional importance and contributes to the public interest in that it serves to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada (section 3(1)(d)(i) of the Act) through the promotion of crime prevention and public safety. In Broadcasting Decision 2007-246, the Commission stated that it considered that Avis de Recherche was unique and complementary to existing programming and would therefore add to the



diversity of the Canadian broadcasting system.<sup>6</sup> In addition, the Commission considered the service to be of exceptional importance in fulfilling section 3(1)(d)(i) of the Act.

96. In the context of this proceeding, the Commission notes that the importance of the service was borne out by the strong support it received from law enforcement agencies, elected representatives, associations and members of the public, who stressed the role it plays in the prevention of crime and the location of missing persons. However, the Commission notes that other interveners, such as Rogers and TELUS Communications Company, submitted that the nature of the service was no longer unique or exceptional given that other programming services, such as conventional television and radio broadcasters, now offer crime prevention programming. Interveners opposing the application also argued that dedicated television channels were no longer the most effective means of relaying important information to the public given the availability of services such as the Amber alert system for missing children that can be accessed by Internet and by wireless short messages. Rogers also argued that Avis de Recherche had been granted sufficient time under its current distribution order to build awareness of its service and to reach its target audience.
97. The Commission notes that Canadians now have access to a whole new set of broadband-based technologies that did not exist when Avis de Recherche obtained mandatory distribution in 2007. These new technologies allow Canadians to assist law enforcement agencies in solving various crimes, including murder and missing people cases, in a more effective and efficient manner than a linear television channel. The Commission considers that little evidence was provided that the programming provided by Avis de Recherche is unique and complementary to existing programming in the Canadian broadcasting system. In addition, the Commission notes that Avis de recherche failed to demonstrate that mandatory distribution of its channel resulted in concrete success indicators such as increased security of Canadian communities. The Commission therefore can no longer conclude that Avis de Recherche is of exceptional importance in fulfilling section 3(1)(d)(i) of the Act by safeguarding Canada's social fabric through the promotion of crime prevention and public safety.
98. Further, based on the record of this proceeding, the Commission is of the view that the applicant has not fully satisfied the criteria set out in the Policy relating to contributing in an exceptional manner to Canadian expression, the reflection of Canadian opinions and values and fulfilling the objectives of the Act and the digital basic service. Nor has the applicant provided evidence demonstrating extraordinary need for the proposed service, as required in the Policy. Finally, in addition to the objectives of the Act, the Commission also considered the direct impact of mandatory distribution on Canadian consumers' bills and on the choice of services they receive.

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<sup>6</sup> The Commission confirmed its decision in Broadcasting Decision 2008-12.

99. In light of the above, the Commission concludes that it is not appropriate to maintain the 9(1)(h) distribution order for Avis de Recherche. However, in light of the laudable objectives advanced by the service, the Commission will phase out the mandatory distribution requirement over the next two broadcast years (i.e. by 31 August 2015) to allow the licensee time to adapt its business plan in light of this change. Accordingly, in Broadcasting Order 2013-380, also issued today, the Commission has amended the current distribution order for Avis de Recherche set out in Appendix 6 to Broadcasting Decision 2007-246 to reflect this determination.
100. With respect to the requested increase to the service's per subscriber monthly wholesale rate from \$0.06 to \$0.08, the licensee initially submitted that this additional revenue would be needed to meet its requirement to caption all its programming in the next licence term. However, at the hearing, Avis de recherche revised its position, stating that all its programming could be closed captioned by the end of the second year of its next licence term at no additional cost. The Commission further notes that the financial projections submitted by the applicant in the course of this hearing suggest that the service would remain profitable under its current per subscriber monthly wholesale rate. Moreover, the Commission notes that Avis de recherche's service extends well beyond the licensed broadcasting system as it is also available over the Internet.
101. While the Commission acknowledges that the Internet service is likely a good way to improve Avis de Recherche's relevance and efficiency, the Commission considers that it might not be appropriate for the licensee to fund these additional activities by relying on subscription fees resulting from a distribution order. In this regard, the Commission notes the high level of support for the service shown during the proceeding from various organizations, including law enforcement agencies. Accordingly, the Commission strongly encourages the licensee to find alternative sources of financing for its service over its next licence term. Based on the preceding, the Commission considers that the licensee has not provided compelling evidence to justify the requested rate increase and consequently **denies** this request.

#### **All Points Bulletin**

102. All Points Bulletin Incorporated (APB), a corporation wholly owned and controlled by Vincent Géracitano, filed an application (2012-0689-7) for mandatory distribution of the national English-language Category 2 (now Category B) specialty programming undertaking All Points Bulletin on the digital basic service. APB proposed that the service be offered at a per subscriber monthly wholesale rate of \$0.06 in anglophone markets.
103. The programming of this service is primarily intended to be a media tool to assist law enforcement agencies across the country to obtain clues, tips and leads which might help resolve matters of interest to the communities they service, both locally and nationwide. Although licensed, the APB service has not been launched.
104. In support of its application, APB raised the following points:

- the service is of exceptional importance to the public interest in that it serves to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada (section 3(1)(d)(i) of the Act) through the promotion of crime prevention and public safety;
- it would have offices in five regions of the country (Atlantic Provinces, Ontario, Manitoba/Saskatchewan, Alberta and British Columbia) with the mandate to offer a better understanding of regional issues and liaise with municipal and provincial police forces;
- 95% of its schedule and 43% of its expenditures would be devoted to original, first-run Canadian programs; and
- when the Commission granted mandatory distribution on the digital basic service to Avis de Recherche in Broadcasting Decision 2007-246, it implicitly invited APB to resubmit an application that provided a clear programming strategy and a business plan showing that it had the means and resources to implement a service that both merited mandatory distribution and was supported by technology allowing it to operate on a national level. APB argued that it now met these requirements.

105. In Broadcasting Decision 2007-246, the Commission denied a request for mandatory distribution of All Points Bulletin on the grounds that its relevance and practicality as a community-oriented service was less clear than that of Avis de Recherche, since it proposed to reach English-speaking subscribers on a national level. The Commission remains concerned in this regard. Specifically, as noted by Cogeco Cable Inc., APB did not propose to offer distinct regional feeds to adapt its programming to the needs of the various regions of the country. The only proposal made by APB in that sense was to broadcast a daily 30-minute program tailored by region and accompanied by short newscasts (2.5 minutes per hour for each of the five regions). Moreover, as indicated by Rogers, APB did not provide any indication that it had the appropriate technology to make the service either viable or operational on a national level. Therefore, the Commission is of the view that the applicant has not demonstrated that the service would be able to overcome the grounds for denial set out in Broadcasting Decision 2007-246.
106. In addition, the Commission considers that its findings above regarding Avis de Recherche and whether a service of this type provides an exceptional contribution to Canadian expression, the reflection of Canadian opinions and values and achieving the objectives of the Act and the digital basic service in the current broadcasting environment also apply in the case of All Points Bulletin.
107. Accordingly, in light of all of the above, the Commission **denies** the applicant's request for mandatory distribution on the digital basic service.

## **The Legislative Assemblies of Nunavut and the Northwest Territories**

108. The Legislative Assemblies of Nunavut and the Northwest Territories (the Assemblies) filed an application (2012-1574-9) requesting mandatory distribution of their services on the digital basic service of DTH satellite BDUs serving Nunavut and the Northwest Territories. The services would be offered without a per subscriber monthly wholesale rate.
109. The services of the Assemblies operate under the *Parliamentary and Provincial or Territory Legislature Proceedings Exemption Order* set out in Broadcasting Public Notice 2002-73 and are devoted exclusively to the broadcast of live and recorded coverage of the proceedings of Nunavut and the Northwest Territories in Aboriginal languages, as well as in English and French. Control over the undertakings is exercised by the Speaker of each Assembly.
110. In support of their application, the Assemblies raised the following points:
- Internet capacity is limited in the North and households in Nunavut and the Northwest Territories that do not subscribe to local cable or are unable to access over-the-air analog transmissions cannot watch the proceedings;
  - the results of a survey they commissioned show that 70% of Nunavut respondents watched the legislative assembly's televised proceedings at least once per week; and
  - ensuring that the residents of Nunavut and the Northwest Territories have access to their televised proceedings is a matter of fair access to essential public services and improving such access would:
    - enhance the broadcasting of the services to remote and underserved Northern communities;
    - protect and promote Canada's Aboriginal languages;
    - strengthen governance and democratic accountability; and
    - promote cultural diversity in Canada and the assertion of Canada's Arctic sovereignty.
111. The Commission notes that broad distribution of the services in Nunavut and the Northwest Territories would ensure that the televised proceedings of the legislatures are available and would be of benefit to citizens living in those regions, in particular Aboriginal people that speak Canada's Aboriginal languages. The Commission considers that the opportunity for such citizens to see and hear their elected representatives in their Aboriginal language represents an important contribution to Canadian expression and one which promotes the Canadian values of democracy and good government by allowing them to participate fully in Canadian civil society. The Commission further considers that mandatory carriage of these services in Nunavut and the Northwest Territories by DTH systems would enhance the reflection of Aboriginal cultures in Canada by making a significant contribution to the protection

and promotion of the linguistic diversity and vitality of Nunavut and the Northwest Territories, furthering the objective set out in section 3(1)(o) of the Act, which states that “programming that reflects the aboriginal cultures of Canada should be provided within the Canadian broadcasting system as resources become available for the purpose.”

112. Moreover, while Shaw Communications Inc. (Shaw) committed at the public hearing to carry the services of the Assemblies, the Commission notes that Shaw did not provide any timeframe by which it would do so. The Commission further notes that Bell ExpressVu Limited Partnership stated in a letter dated 7 May 2013 that it had no immediate plans to carry the services. Thus, in the absence of a mandatory distribution order, there is no assurance that these services would be distributed on a timely basis by DTH systems.
113. In light of all of the above, the Commission **approves** the application by the Assemblies for mandatory distribution of their services on the digital basic service of DTH undertakings in Nunavut and the Northwest Territories until 31 August 2018. Accordingly, in Broadcasting Order 2013-381, also issued today, the Commission has set out a distribution order to this effect.

#### **Cable Public Affairs Channel**

114. Cable Public Affairs Channel Inc. (CPAC), a corporation owned by various cable distributors and controlled by its board of directors, filed applications (2012-1107-8 and 2012-1109-4) for continued mandatory distribution under the terms of its current distribution order, which requires that CPAC’s licensed and exempt services be distributed on the basic service. CPAC further proposed an increase in its per subscriber wholesale monthly rate from \$0.11 to \$0.12.
115. CPAC is a national public affairs programming service devoted exclusively to long-form programming or programming focusing on local, regional, national and international civic affairs, including the process and debates that underpin the operations of democratic government and the development of public policy. CPAC’s licensed service is complementary to the exempt service it operates under the *Parliamentary and Provincial or Territorial Legislature Proceedings Exemption Order* set out in Broadcasting Public Notice 2002-73. The two services are currently distributed on a time-shared basis on the same channel, with the licensed service providing “wrap-around” programming for the exempt service.
116. In Public Notice 2001-115, the Commission announced that the distribution on the basic service of CPAC’s exempt service would be made mandatory. At that time, the Commission emphasized the importance of ensuring access by all Canadians to the proceedings of the House of Commons and its various committees. It deemed the televised coverage of these proceedings vital to the public interest and essential to the attainment of the objective set out in section 3(1)(d)(i) of the Act relating to safeguarding, enriching and strengthening the cultural, political, social and economic fabric of Canada. In Broadcasting Decision 2002-377, the Commission further granted the licensed service mandatory distribution on the basic service of most

BDUs, stating that CPAC's licensed public affairs programming was a significant and valuable component that complemented the proceedings of the Parliament and its committees. Finally, in 2005, the Governor in Council issued *Direction to the CRTC (Reservation of Channels for the Distribution of CPAC)*, in which it instructed the Commission to require all cable BDUs serving more than 2,000 subscribers to distribute both an English- and a French-language version of the CPAC services.

117. CPAC argued that mandatory distribution of its service remains necessary and appropriate since it:
- plays an exceptional role in the broadcasting system as a national window on Canada's democratic life and its contribution to Canadian expression is exceptional as its parliamentary coverage is not replicated elsewhere in the broadcasting system;
  - makes an exceptional contribution to original, first-run Canadian programming (90% of its programming is Canadian content consisting almost exclusively of original, first-run programs);
  - covers not only Canada's national democratic life, but also local matters and regional events, as well as select coverage of international political life;
  - operates simultaneously in both official languages across the country, providing an essential service to OLMCs; and
  - reflects ethno-cultural diversity and the special place of Aboriginal peoples in Canadian society.
118. The Commission considers that CPAC meets specific objectives of the Act as it makes the proceedings of the House of Commons and Senate widely available to Canadians in both languages and provides complementary public affairs programming. The Commission further considers that CPAC has adequately demonstrated that its contribution to Canadian expression is exceptional and that there is no comparable service in the Canadian broadcasting system or available by other means. As such, its contribution to Canadian expression constitutes a unique reflection of Canadian opinions and values in regard to civic matters. Finally, the Commission considers that the applicant demonstrated that its programming contributes in an exceptional manner to achieving the objectives of the Act and the basic service by promoting national identity and linguistic duality, as well as reflecting local and regional matters, Canada's ethno-cultural diversity and Aboriginal peoples.
119. With regard to the proposed per subscriber monthly wholesale rate, the Commission has reviewed CPAC's business plan and finds that a rate increase of \$0.01 represents a good balance between the impact on the price of the basic service for Canadian consumers and the ability of CPAC to improve its programming. Moreover, the Commission notes that CPAC is largely a public service initiative and that it is not authorized to broadcast commercial messages other than sponsorship messages for

closed captioning or described video. Hence, the service relies heavily on subscriber revenue and has a limited potential for garnering revenue from commercial sources.

120. In light of all of the above, the Commission **approves** CPAC's request for continued mandatory distribution. Accordingly, in Broadcasting Order 2013-382, also issued today, the Commission has maintained the mandatory distribution of CPAC on the digital basic service until 31 August 2018 at a per subscriber monthly wholesale rate of \$0.12.

#### **Sun News Network**

121. Sun News General Partnership<sup>7</sup> (Sun News) filed an application (2012-0687-1) for mandatory distribution of the national English-language specialty Category C service Sun News Network on the digital and analog basic service for five years. Sun News also requested a comparable or better channel placement than U.S. and other foreign news services for the specified period, explaining that its experience with BDUs showed that failing to impose channel placement would likely result in its service being regularly displaced in a manner that would hinder its ability to establish an audience. The licensee proposed that its service be offered at a per subscriber monthly wholesale rate of \$0.09 in francophone markets and \$0.18 in anglophone markets. After the end of the proposed five-year mandatory distribution period, Sun News would revert to its Category C status as a discretionary service without mandatory carriage.
122. Sun News Network is a national English-language specialty Category C service devoted to mainstream national news and information programming.
123. The Commission notes that it received a large number of interventions by individual Canadians supporting the application, as well as a large number of interventions by Canadians opposing the application.
124. In support of its application, Sun News raised the following points:
- as Sun News's target audience is older, has a disproportionately low-to-mid income and often has access to only analog or basic cable for reasons of cost, it needs mandatory distribution to allow its audience an opportunity to see the channel;
  - Sun News produces more Canadian content than almost any other Canadian specialty service, and 72% of its expenses are directly related to the production of original, first-run Canadian programming;
  - Sun News contributes to the promotion of Canadian values and shares stories from coast to coast in both official languages, as well as offering a news

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<sup>7</sup> TVA Group Inc. and Sun Media Corporation, partners in a general partnership carrying on business as Sun News General Partnership

alternative to the significant number of Canadians who do not feel adequately served by other Canadian television news options;

- without mandatory distribution, the service would not achieve a positive net income until 2020 as Sun News's current distribution agreements with cable and satellite providers are inadequate to support the channel both in terms of price and penetration rate, which also impacts advertising revenues; and
- Sun News is disadvantaged compared to the other Canadian Category C news services as it did not enjoy the same carriage rights as were granted to these services when they launched.

125. As regards the argument that Sun News is disadvantaged compared to other Canadian Category C news services, most of which launched over 20 years ago, the Commission notes that Sun News would not have been allowed to enter the market of national news services if the Commission had not opened the genre of mainstream national news to competition in Broadcasting Public Notice 2008-100 and that Sun News opted to launch its service as a competitive or Category C service without carriage rights. As such, the Commission is of the view that the applicant accepted the potential business risk associated with choosing to launch an unprotected and unsubsidized service whose genre had only recently been opened to competition. The Commission also notes the arguments submitted by Rogers and other BDUs to the effect that Sun News operates in the same genre and language as other specialty Category C services such as CBC News Network and CTV News Channel and therefore cannot be considered unique or exceptional.
126. Moreover, the Commission notes that in its application, Sun News did not clearly demonstrate how its service would make an exceptional contribution to the objectives of the Act, nor even make any specific reference to sections of the Act, except to state that the service safeguards, enriches and strengthens the political, social, cultural and economic fabric of Canada by giving voice to a wide range of views.
127. In addition, while Sun News broadcasts a significant amount of Canadian content, the Commission notes that Sun News did not make significant or exceptional commitments to Canadian programming expenditures that would exceed commitments normally made by Canadian news services. In fact, the Canadian content contributions of Sun News are not significantly higher than those of other licensed Canadian news services. Accordingly, the Commission finds that the applicant did not demonstrate that the service is making exceptional commitments to original, first-run Canadian programming in terms of exhibition and expenditures, as required by the Policy.
128. In light of the above, the Commission **denies** the applicant's request for mandatory distribution on the digital basic service. Further, as regards the applicant's request to obtain mandatory distribution on the analog basic service, the Commission notes that it has clearly stated its policies that it would not permit further additions to the



analog basic service to limit its cost to consumers and to promote a migration to digital service.<sup>8</sup> Consequently, the Commission **denies** the applicant's request for mandatory distribution on the analog basic service.

129. Nevertheless, the Commission is of the view that Sun News Network and other Canadian news services play a valuable role in meeting certain objectives of the Act, including that set out in section 3(1)(d)(ii) relating to encouraging the development of Canadian expression by providing a wide range of programming that reflects Canadian attitudes, opinions, ideas, values and artistic creativity and by offering information and analysis concerning Canada and other countries from a Canadian point of view. Further, news programming encourages and informs the means by which Canadians are able to participate fully in the democratic, economic, social and cultural life of their country, their region, their province and their neighbourhood. To do so, such programming needs to come from a variety of independent sources and from a range of viewpoints.
130. As to the specific issue of the distribution of Sun News Network, the Commission considers that there is merit to the arguments raised by Sun News regarding the barriers to entry when launching a national news service and that these barriers constitute a significant obstacle to the exchange of ideas. In this regard, the Commission notes that the service is offered by many BDUs across the country, including DTH undertakings, and that all Canadians have access to at least two BDUs offering the service, including in a number of cases on the digital basic service. Sun News Network currently has more than 4.8 million subscribers. While this distribution is not unreasonable for a service without mandatory distribution, and particularly one as recently launched as Sun News Network, its distribution is generally less favourable than that enjoyed by other Category C news services and often by non-Canadian news services.
131. The information collected by the Commission as part of this proceeding further indicates that other Canadian Category C news services and non-Canadian news services often receive higher per subscriber fees from distributors. This situation is of concern to the Commission, particularly with respect to non-Canadian news services, as the Canadian broadcasting system should offer information and analysis concerning Canada and other countries from a Canadian point of view. Moreover, distribution undertakings should give priority to the carriage of Canadian programming services. In the Commission's view, Canadian news services should be given a pride of place within the multitude of news and information services available to Canadians.
132. Additionally, the Commission is sensitive to the problems of access to the broadcasting system of new mainstream national news specialty Category C services. In 2008, the genre of mainstream national news was opened to competition, which allowed new entrants such as Sun News the ability to launch with relative

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<sup>8</sup> See Broadcasting Public Notice 2008-100.

regulatory ease. The difficulties faced by Sun News and other parties that appeared at the public hearing are however indicative of a larger, more systemic issue with respect to ensuring that Canadian national news services have the opportunity to obtain fair and equitable distribution. This is of particular importance as the programming provided by the Canadian broadcasting system should provide a reasonable opportunity for the public to be exposed to the expression of differing views on matters of public concern.

133. The Commission therefore finds that a policy review is warranted to address issues such as access to distribution, negotiating power, incumbency and other distribution issues encountered by national news specialty Category C services. Accordingly, the Commission has also issued today Broadcasting Notice of Consultation 2013-394 initiating a process to review the framework for all Category C news services.

### **FUSION**

134. Stornoway Communications Limited Partnership<sup>9</sup> filed an application (2012-0705-1) on behalf of a corporation to be incorporated (Stornoway OBCI) for a broadcasting licence to operate a national English-language specialty Category B service to be known as FUSION and for mandatory distribution of the service on the digital basic service. The applicant proposed that its service be offered at a per subscriber monthly wholesale rate of \$0.32 in anglophone markets and \$0.16 in francophone markets.
135. The proposed service would offer multi-platform live interactive (between professionals and citizens) information programming (current affairs, reporting and actualities) that deals with local, regional, national and international matters of interest to Canadians, with a focus on youth and local reflection. The programming would be entirely Canadian.
136. In support of its application, Stornoway OBCI raised the following points:
- the service would make an exceptional contribution to Canadian expression by offering a meaningful, relevant and interactive broadcast alternative enabling all citizens to be part of the ongoing creation of their culture (e.g. Skype technology units from coast to coast would act as local “gateways” for underrepresented communities to engage and participate in the ongoing national dialogue); and
  - as a smaller, privately owned and non-vertically integrated independent broadcaster, mandatory carriage on the digital basic service is fundamental to its ability to finance and deliver this service.
137. The Commission notes that the applicant’s main argument for mandatory distribution of the service is that it would make an exceptional contribution to

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<sup>9</sup> Stornoway Communications General Partnership Inc. (the general partner) and 1403318 Ontario Limited (the limited partner), carrying on business as Stornoway Communications Limited Partnership.

Canadian expression by providing an interactive model of broadcasting not currently available in the licensed Canadian broadcasting system. While the applicant is correct in stating that no currently available licensed service achieves the proposed level of interactivity, the Commission considers that this fact in itself is not enough to conclude that the service's contribution would be exceptional given the many other options outside the traditional broadcasting system, such as online services, that fulfill several of the objectives mentioned by the applicant. In addition, while Stornoway OBCI made a substantial commitment to total hours of original, first-run Canadian programming, the Commission notes that local television stations, community channels and specialty services operating in the news genre already provide some of the types of programming proposed by the applicant.

138. Based on the above, the Commission considers that Stornoway OBCI has not met the criteria set out in the Policy that the proposed service contribute in an exceptional way to Canadian expression, the reflection of Canadian opinions and values and achieving the objectives of the Act and the digital basic service. Accordingly, the Commission **denies** the applicant's request for mandatory distribution on the digital basic service. The Commission also **denies** Stornoway OBCI's application for a broadcasting licence given that its application and business plan were dependent on mandatory distribution.

#### **The Natural Resources Television Channel**

139. The Natural Resources Television Channel (IDRN-TV/IDNR-TV) Inc. (IDNR-TV) filed an application (2012-0713-4) for mandatory distribution on the digital basic service of the national English- and French-language Category 2 (now Category B) specialty programming undertaking The Natural Resources Television Channel. The applicant proposed that its service be offered without a per subscriber monthly wholesale rate.
140. This programming service is devoted to the field of natural resources, with programs dedicated to workers in the industry, the analysis and interpretation of related federal and provincial legislation and programs, the promotion of Canadian expertise and technologies, relations with Aboriginal peoples and financial services and markets in the field.
141. In support of its application, IDNR-TV raised the following points:
- the service would provide 100% Canadian content in both official languages and would focus on the industries that drive the Canadian economy and the communities outside Canada's major population centres, including OLMCs and Aboriginal communities;
  - there is little reflection of the importance of natural resources on most Canadian television services and thus the service would give voice to a vital component of Canadian identity and cultural sovereignty; and

- broad penetration is required to carry the costs of operating the service and producing the original Canadian content.
142. Although the Commission agrees that natural resources have been and continue to be very important to Canada's economy and a common subject of cultural expression, it notes that there is no direct reference to natural resources in the Act. Further, while the service is currently broadcast in some northern regions of Canada where certain OLMCs are found, the Commission notes that IDNR-TV's programming is focused on natural resources rather than on the achievement of specific objectives set out in the Act, such as serving the needs and interests of the regions and the linguistic duality or reflecting the Aboriginal cultures of Canada (sections 3(1)(d)(iii) and 3(1)(o) of the Act). Accordingly, the Commission is of the view that the applicant did not provide sufficient evidence to demonstrate that its service would contribute in an extraordinary manner to achieving the objectives of the Act.
143. With respect to the criterion of extraordinary need for the service established in the Policy, the applicant produced some materials at the hearing, including newspaper articles and some letters, showing a certain limited demand for the service.<sup>10</sup> However, the applicant did not produce any evidence demonstrating need, such as a survey of the prospective audience, and the service is distributed by a very small number of BDUs. Accordingly, the Commission is of the view that the applicant did not provide sufficient evidence to demonstrate extraordinary need among the intended audience for the service.
144. In light of all of the above, the Commission **denies** the applicant's request for mandatory distribution on the digital basic service.

#### **Dolobox TV**

145. Education Through Media filed an application (2012-0715-0) for mandatory distribution on the digital basic service of the national English-language specialty Category B service Dolobox TV. The licensee proposed that its service be offered at a per subscriber monthly wholesale rate of between \$0.06 and \$0.08.
146. The service, which has yet to launch, would be dedicated to the broadcast of user-generated content ranging in length from 30 to 60 minutes, covering a wide range of topics and providing a place for young adults to get connected and stay current. The service would provide content directed to young adults and address a wide range of national and global issues, including technology, fashion, music, the environment, politics, sports and finance.
147. In support of its application, Education Through Media raised the following points:

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<sup>10</sup> Most of these materials are in the public domain and the Commission has decided to accept them and place them on the record of the proceeding.

- the service would make an exceptional contribution to Canadian expression by contributing to the expression of the neglected and underserved youth demographic outside the mainstream, with a strong focus on at-risk youth, Aboriginal youth, new Canadians of all cultures, young women and other groups, such as visible minorities and disabled youth;
- its programming would have a distinctly Canadian flavour and would reflect the ethno-cultural diversity of its producers and audience;
- produced collaboratively with Canadian youth, the service would provide a creative outlet for a new generation of talented young Canadians with entirely unique storytelling perspectives and would include educational and community programs;
- although the service is already generating an audience online, the move to broadcast television would allow urban youth to “better amplify their voices”; and
- the service would no longer seek mandatory distribution after its first licence term, since it anticipated that it would be profitable by the end of that period.

148. The Commission notes that Education Through Media argued that it would make an exceptional contribution to achieving the objectives of the Act by providing an outlet for user-generated youth and educational content not currently available in the licensed broadcasting system. However, the Commission considers that the argument that youth are underserved by traditional television services is in itself not enough to conclude that the contribution of the service would be exceptional, particularly given the availability of a range of other licensed services that offer content of the types proposed by the applicant (e.g. programming relating to national and global issues, including technology, fashion, music, the environment, politics, sports and finances, including those focused on youth). Similarly, with respect to the user-generated aspect of the service, many options, such as online services, can be found outside the licensed broadcasting system that could fulfill the stated need of providing a broadcast space for youth to interact.

149. The Commission has also reviewed the applicant’s business plan, including its financial projections, and finds that the applicant did not demonstrate how the implementation of its business plan depended on mandatory distribution and did not support the timeframe requested for mandatory distribution. The Commission further notes that Education Through Media did not make any specific commitments to Canadian programming expenditures.

150. In light of all of the above, the Commission **denies** the applicant’s request for mandatory distribution on the digital basic service.

## EqualiTV

151. Takten Gyurmey Foundation<sup>11</sup> (Takten) filed an application (2012-0670-7) for mandatory distribution on the digital basic service of the national English-language Category 2 (now Category B) programming undertaking EqualiTV. The applicant proposed that its service be offered at a per subscriber monthly wholesale rate of \$0.25.
152. The programming of this service is devoted to programs dealing with disability issues and to the support of Canadians with disabilities.
153. In support of its application, Takten raised the following points:
- its programming is dedicated to the entire range of people with disabilities, who are upheld by the *Canadian Charter of Rights and Freedoms* as equal to all other Canadians but who are underrepresented in Canadian media; and
  - mandatory carriage of the service would give Canadians with disabilities a chance to contribute to Canadian expression and reflect their attitudes, opinions, ideas, values and artistic creativity.
154. The Commission notes that the application submitted by Takten did not address all the criteria set out in the Policy. Specifically, the applicant did not offer any specific commitments for Canadian program exhibition and expenditures on original, first-run Canadian programming. The applicant did produce some materials at the hearing to indicate that it has resources to produce programming.<sup>12</sup> However, the applicant was only able to show that its plans are in development, but not if and when programs in development would be broadcast. In any event, with revenue projections largely dependent on advertising revenues which appear overly optimistic, the Commission is of the view that the applicant would likely not achieve the revenues to support such programming initiatives. Accordingly, the Commission considers that Takten did not demonstrate that the service would make an exceptional contribution to Canadian expression and reflection, as required by the Policy.
155. The Commission also notes that the current programming of AMI-tv includes programs featuring people with many different types of disabilities. Additionally, all large broadcasters are required to file diversity reports outlining how they advance the portrayal and representation of people with disabilities in their programming. Accordingly, the Commission considers that Takten did not demonstrate that the

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<sup>11</sup> Takten Gyurmey Foundation changed its name on 27 November 2012 to EqualiTV International Foundation.

<sup>12</sup> Some of the materials that Takten produced are in the public domain and some were in response to undertakings at the hearing. The Commission has decided to accept the materials received from Takten and place them on the public record. However, with respect to materials filed by Ms. Merg Kong, an intervener, also received and taken under advisement at the hearing, the Commission has decided to deny the admission of these materials.

service would contribute in an exceptional manner to the fulfillment of the objectives of the Act and the digital basic service.

156. In light of the above, the Commission **denies** the applicant's request for mandatory distribution on the digital basic service.

#### **Canadian Punjabi Network**

157. Canadian Punjabi Network Inc. filed an application (2012-0679-8) for a broadcasting licence to operate a national ethnic third-language specialty Category B service to be known as Canadian Punjabi Network (CPN) and for mandatory distribution of its service on the digital basic service of all BDUs serving areas where more than 5,000 Punjabi speakers reside. The applicant proposed that its service be offered without a per subscriber monthly wholesale rate.

158. The programming of this general interest service would be primarily in the Punjabi language and would focus on the realities of the Canadian Punjabi community, with a high percentage of programs made in Canada. It would offer news originating from several cities, talk shows, women's programs, sports, documentaries and musical and dramatic entertainment. CPN may use English and French in programs teaching those languages to Punjabi speakers and occasional interviews (less than 10% of the schedule) and may use Hindi (less than 20% of the schedule) in musical programming and Bollywood entertainment. The service would devote 70% of its programming to Canadian content over the broadcast day and 80% between 6 p.m. and 11 p.m., averaged on an annual basis.

159. In support of its application, the applicant raised the following points:

- Punjabi is the third most spoken language in Canada and CPN's contribution to ethno-cultural diversity would arise from its vision to provide a reflection of the Punjabi-speaking community as a Canadian phenomenon with its own culture rooted in Canada;
- the service would broadcast shows to help Punjabi-speaking Canadians learn the official languages;
- CPN would devote 50% of its revenues to expenditures on Canadian programming, which exceeds commitments by other ethnic Category A services; and
- the results of a survey of 1,170 Punjabi-speaking Canadians it conducted indicate that 60% of the respondents were very likely to watch the service as described to them and 76% would be very interested in receiving CPN.

160. The Commission notes that the proposed Canadian content exhibition and expenditure requirements exceed those of the majority of Category A services, ethnic or otherwise. The Commission notes that there are currently seven services on the air and available across the country that offer programming in the Punjabi language. In the Commission's view, it is unclear if the programming would be significantly

different or provide more of a contribution to Canadian expression than the Punjabi-language programming currently offered by licensed ethnic services. Accordingly, the Commission considers that the applicant has not provided sufficient evidence to demonstrate that there is an extraordinary need for the proposed service. It is also unclear to the Commission how the proposed programming would make an exceptional contribution to Canadian expression and the reflection of Canadian opinions and values.

161. Further, the Commission notes that CPN's revenue projections are largely dependent on advertising revenues which appear overly optimistic. The Commission is of the view that the applicant would not likely achieve the revenues to support such programming initiatives. Finally, based on the above, the Commission is of the view that the applicant has not demonstrated that the proposed service would contribute in an exceptional manner to achieving the objectives of the Act and the digital basic service, as required by the Policy.
162. In light of the above, the Commission **denies** the applicant's request for mandatory distribution of its service on the digital basic service of all BDUs serving areas where more than 5,000 Punjabi speakers reside. The Commission also **denies** Canadian Punjabi Network Inc.'s application for a broadcasting licence given that its application and business plan were dependent on mandatory distribution

#### **Maximum Television Canada**

163. On Purpose TV Inc. (On Purpose TV) filed an application (2012-0707-7) for a broadcasting licence to operate a national English-, French- and third-language video-on-demand (VOD) undertaking to be known as Maximum Television Canada and for mandatory distribution of its service on the digital basic service of BDUs operating their own VOD undertakings. The applicant proposed that its service be offered without a per subscriber monthly wholesale rate.
164. The programming would initially consist primarily of feature films and television series but would eventually also offer a broad array of programming across all genres, including niche programming.
165. In support of its application, On Purpose TV raised the following points:
- BDUs currently provide a modest inventory of programming based on mostly current television series, movies and events that does not offer a full service solution to customers;
  - its commitment to Canadian programming (5% of English-language feature films, 8% of French-language feature films and 40% of programs other than feature films) and expenditures (15% of the gross annual revenues contributed to the Canada Media Fund) compares favorably to standard requirements imposed on Category A services from large ownership groups;



- there is evidence of growing usage of VOD, pay-per-view, Internet video and over-the-top services by Canadians;
- the proposed service would foster Canadian expression and make Canadian content and voices more widely available; and
- national mandatory distribution is a prerequisite for launching the proposed service as it is completely dependent on BDUs for its distribution, which are not receptive to competition from unrelated VOD services.

166. The Commission notes that the applicant did not provide a clear description of the types of niche interest and third-language programming that would be offered, but rather stated that its programming would initially consist primarily of feature films and television series, which are already widely available on all Canadian linear and VOD services, as well as over-the-top services in Canada. The Commission is therefore not convinced that the proposed programming would contribute in an exceptional manner to the reflection of Canadian opinions and values. The Commission also notes that the applicant did not provide sufficient rationale as to how the proposed programming would constitute an exceptional contribution to achieving one or more of the objectives of the Act. Finally, the Commission notes that aside from pointing to a growing trend towards on-demand services, the applicant did not provide any evidence, such as a consumer survey, to demonstrate the extraordinary need for its proposed service.

167. In light of the above, the Commission **denies** the applicant's request for mandatory distribution on the digital basic service. The Commission also **denies** On Purpose TV's application for a broadcasting licence given that its application and business plan were dependent on mandatory distribution.

**Starlight: The Canadian Movie Channel**

168. 8094039 Canada Corporation (8094039 Canada) filed an application (2012-0714-2) for a broadcasting licence to operate a national English-language specialty Category B service to be known as Starlight: The Canadian Movie Channel (Starlight) and for mandatory distribution of its service on the digital basic service. The applicant proposed that its service be offered at a per subscriber monthly wholesale rate of \$0.45.

169. The programming would be entirely devoted to Canadian movies, particularly feature films intended for theatrical release, and would include Canadian feature films, Canadian feature documentaries, Canadian made-for-TV movies and programs with or about Canadian filmmakers. All feature films intended for theatrical release would be presented without commercial interruption.

170. In support of its application, 8094039 Canada raised the following points:

- the service would focus on Canadian films, its programming being entirely Canadian, thereby making an exceptional contribution to Canadian expression;
- the service would highlight the most expensive representation of Canadian expression (feature films) in both official languages and seek out new filmmakers, including Aboriginal filmmakers;
- the service would devote 70% of its expenditures to Canadian programming and would spend over \$22 million per year on 8-12 new film projects to be produced across the country via a fund operated by the applicant; and
- the results of a survey it commissioned indicated that 90% of respondents would support the licensing of the service and 70% would still support it based on an estimated per subscriber retail rate of \$0.90/month.

171. The Commission acknowledges that the proposed service would contribute to Canadian expression and reflect Canadian opinions and values. However, it notes that the standard conditions of licence for VOD services include a requirement that all new Canadian films be made available and that pay feature film services are expected to license all Canadian films appropriate to their services. The Commission concludes that the applicant did not demonstrate that Canadian feature films are unavailable in the broadcasting system. The Commission also considers that programming on Starlight could duplicate programming already available on Canadian film channels and VOD services and as such would not necessarily contribute in an exceptional manner to the diversity of programming within the system. Accordingly, while the survey provided clearly conveys interest in this service, the Commission finds that there is not sufficient evidence of an extraordinary need for mandatory distribution of the service, as required by the Policy. In fact, the high degree of interest could lead to the conclusion that the proposed service might operate successfully as a discretionary service without mandatory distribution.
172. The Commission further notes that there are already existing certified independent funds, such as Telefilm Canada and The Harold Greenberg Fund, to help fund new Canadian films made by emerging talent and that the applicant did not demonstrate that these funds are insufficient. This is in addition to significant federal and provincial tax credits specifically designed to support audiovisual production, including Canadian movies. Finally, the Commission notes that while the application for Starlight illustrates that the promotion of Canadian feature films to Canadian audiences is an ongoing challenge, the applicant did not present a compelling case that mandatory distribution is the most appropriate tool to address this challenge.
173. In light of all of the above, the Commission **denies** the applicant's request for mandatory distribution on the digital basic service. The Commission also **denies** 8094039 Canada's application for a broadcasting licence given that its application and business plan were dependent on mandatory distribution.

## VisionTV

174. ZoomerMedia Limited (ZoomerMedia) filed an application (2012-0712-6) for mandatory distribution on the digital basic service of the English-language specialty (now Category A) service VisionTV. The applicant proposed that its service be offered at the current per subscriber monthly wholesale rate of \$0.12 in all markets except for the province of Quebec where the current per subscriber monthly wholesale rate is \$0.02.
175. The programming of VisionTV is devoted to interfaith religious programming related to, inspired by or arising from persons' spirituality, including related moral or ethical issues.
176. In support of its application, ZoomerMedia raised the following points:
- based on its current experience in negotiating affiliation agreements with vertically integrated entities, it believes that without mandatory distribution, VisionTV will be moved from the basic service to the extended basic service or to a digital-only discretionary package that draws much fewer subscribers, which would have an immediate impact on its ability to meet its programming obligations and would likely lead to the end of operations due to decreases in subscription, advertising and paid programming revenues;
  - the end of operations of VisionTV would result in the closing of its conventional television stations CHNU-DT Fraser Valley and CIIT-DT Winnipeg and would impact the operations of its Category 1 (now Category A) specialty service The Brand New ONE Body Mind Spirit Love Channel, all of which are supported by the profitable operation of VisionTV;
  - section 4 of the Religious Broadcasting Policy (Public Notice 1993-78) recognized the important role played by VisionTV, the strong support expressed by Christian and other churches towards the service and the Commission's view that this type of balanced service should be available to the largest possible number of Canadians;
  - VisionTV contributes to programming diversity by providing unique programming to an underserved audience (55+ demographic, as well as multicultural and multi-ethnic groups) and significantly exceeds the contribution to the broadcasting system made by other Category A services; and
  - seniors represent a large portion of its audience and many are living on a low income or in poverty and do not have the financial means to subscribe to a more expensive package for continued access to the service.
177. The Commission notes that VisionTV is a national, English-language multi-faith and multicultural specialty service dedicated to programming that promotes understanding and tolerance among people of different faiths and cultures. By reason of its nature of this service, VisionTV consciously and consistently offers

programming relevant to older Canadians, thereby contributing to the diversity of the Canadian broadcasting system. The Commission also notes that VisionTV has been offered on basic for several years and that its audience has come to expect that VisionTV can be accessed on a relatively easy and affordable basis. Over the course of the hearing, the Commission understood from various BDUs that changes to a programming service's placement or packaging, especially one that has been historically provided on basic such as Vision TV, does not constitute a good business practice given that it would disrupt Canadians' viewing habits. Accordingly, based on the above, the Commission would be concerned if VisionTV ceased to be offered as part of the basic service without sound justification.

178. Further, the Commission notes that VisionTV benefits from certain regulatory protections as a Category A service. It can, for example, avail itself of multiple safeguards, including those provided in the Commission's *Code of conduct for commercial arrangements and interactions* set out in Broadcasting Regulatory Policy 2011-601-1. In light of the above, the Commission considers that VisionTV already benefits from the regulatory support necessary to fulfill its mandate and regulatory requirements.
179. The Commission notes that while the attitudinal study conducted by Goldfarb Intelligence Marketing and submitted as part of VisionTV's application demonstrates support for a service that provides multi-faith and multi-cultural programming, it does not demonstrate an extraordinary need for the particular service provided by VisionTV. The Commission further notes that VisionTV is no longer the only Canadian broadcaster to offer faith-based programming as Canadians have access to religious conventional television stations, religious specialty Category B services and a number of other television services that offer religious programming as part of their schedule. Finally, the Commission notes that it denied VisionTV's previous application for mandatory distribution on this basis in Broadcasting Decision 2007-246, concluding that VisionTV was not of exceptional importance in fulfilling the objectives of the Act, and that the applicant has not demonstrated that there have been substantial changes to its circumstances since that time.
180. In light of the above, the Commission **denies** ZoomerMedia's request for mandatory distribution on the digital basic service.

## **Conclusion**

181. In light of all of the above, the Commission **approves** the following applications for mandatory distribution on the digital basic service:

**Aboriginal Peoples Television Network Incorporated**  
*Application 2012-0993-2, received 17 August 2012*

**TV5 Québec Canada**  
*Application 2012-0711-8, received 30 August 2012*

**Accessible Media Inc.**

*Application 2012-0709-3, received 1 June 2012*

**Accessible Media Inc.**

*Application 2012-1095-5, received 30 August 2012*

**Accessible Media Inc.**

*Application 2012-1096-3, received 30 August 2012*

**Vues & Voix**

*Application 2012-1411-3, received 6 November 2012*

**The Legislative Assemblies of Nunavut and the Northwest Territories**

*Application 2012-1574-9, received 13 December 2012*

**Cable Public Affairs Channel Inc.**

*Applications 2012-1107-8 and 2012-1109-4, received 30 August 2012*

182. The Commission also **approves** the following application to obtain a distribution order for the national French-language specialty Category A service ARTV giving it access rights to the digital service of terrestrial BDUs in anglophone markets:

**Canadian Broadcasting Corporation, on behalf of ARTV inc.**

*Application 2013-0002-9, received 3 January 2013*

183. The Commission intends to address the exemption order for terrestrial BDUs serving fewer than 20,000 subscribers set out in Broadcasting Order 2012-408 so as to reflect its decisions in this policy and to harmonize the exemption order with the distribution orders issued today.

184. The Commission **denies** the following applications for mandatory distribution on the digital basic service:

**La Corporation de la télévision francophonie canadienne – ACCENTS**

*Application 2012-0683-9, received 31 May 2012*

**Evan Kosiner, on behalf of a corporation to be incorporated**

*Application 2011-1255-7, received 1 September 2011*

**Avis de recherche incorporée**

*Application 2012-1051-7, received 28 August 2012*

**TVA Group Inc. and Sun Media Corporation, partners in a general partnership carrying on business as Sun News General Partnership**

*Application 2012-0687-1, received 31 May 2012*

**All Points Bulletin Incorporated**

*Application 2012-0689-7, received 30 May 2012*

**Stornoway Communications Limited Partnership, on behalf of a corporation to be incorporated**

*Application 2012-0705-1, received 1 June 2012*

**The Natural Resources Television Channel (IDRN-TV/IDNR-TV) Inc.**

*Application 2012-0713-4, received 1 June 2012*

**Education Through Media**

*Application 2012-0715-0, received 1 June 2012*

**Takten Gyurme Foundation (EqualiTV International Foundation)**

*Application 2012-0670-7, received 20 April 2012*

**Canadian Punjabi Network Inc.**

*Application 2012-0679-8, received 31 May 2012*

**On Purpose TV Inc.**

*Application 2012-0707-7, received 1 June 2012*

**8094039 Canada Corporation**

*Application 2012-0714-2, received 1 June 2012*

**ZoomerMedia Limited**

*Application 2012-0712-6, received 1 June 2012*

Secretary General

**Related documents**

- *Call for comments on the terms and conditions of distribution for Canadian Category C national news specialty services, Broadcasting Notice of Consultation CRTC 2013-394, 8 August 2013*
- *VisionTV – Licence renewal, Broadcasting Decision CRTC 2013-393, 8 August 2013*
- *The Natural Resources Television Channel – Licence renewal, Broadcasting Decision CRTC 2013-392, 8 August 2013*
- *CPAC – Licence renewal and amendments, Broadcasting Decision CRTC 2013-391, 8 August 2013*
- *All Points Bulletin – Licence renewal, Broadcasting Decision CRTC 2013-390, 8 August 2013*
- *Avis de recherche – Licence renewal, Broadcasting Decision CRTC 2013-389, 8 August 2013*
- *Canal M – Licence renewal, Broadcasting Decision CRTC 2013-388, 8 August 2013*

- *AMI-audio – Licence renewal*, Broadcasting Decision CRTC 2013-387, 8 August 2013
- *AMI-tv Français – Specialty Category A service*, Broadcasting Decision CRTC 2013-386, 8 August 2013
- *AMI-tv – Licence renewal and amendment*, Broadcasting Decision CRTC 2013-385, 8 August 2013
- *TV5 and UNIS – Licence renewal and amendments*, Broadcasting Decision CRTC 2013-384, 8 August 2013
- *APTN – Licence renewal*, Broadcasting Decision CRTC 2013-383, 8 August 2013
- *Distribution of the public affairs programming service of Cable Public Affairs Channel Inc. (CPAC Inc.) known as the Cable Public Affairs Channel and of the exempt service operated by CPAC Inc.*, Broadcasting Order CRTC 2013-382, 8 August 2013
- *Distribution of the exempt services operated by the Legislative Assemblies of Nunavut and the Northwest Territories*, Broadcasting Order CRTC 2013-381, 8 August 2013
- *Distribution of the programming service of Avis de recherche inc. known as Avis de Recherche by licensed broadcasting distribution undertakings*, Broadcasting Order CRTC 2013-380, 8 August 2013
- *Distribution of the programming service Canal M by licensed broadcasting distribution undertakings*, Broadcasting Order CRTC 2013-379, 8 August 2013
- *Distribution of the programming service of Accessible Media Inc. known as AMI-audio by licensed broadcasting distribution undertakings*, Broadcasting Order CRTC 2013-378, 8 August 2013
- *Distribution of the digital specialty described video programming service of Accessible Media Inc. known as AMI-tv Français by licensed broadcasting distribution undertakings*, Broadcasting Order CRTC 2013-377, 8 August 2013
- *Distribution of the digital specialty described video programming service of Accessible Media Inc. known as AMI-tv by licensed broadcasting distribution undertakings*, Broadcasting Order CRTC 2013-376, 8 August 2013
- *Distribution of the programming service of ARTV inc. by licensed terrestrial broadcasting distribution undertakings*, Broadcasting Order CRTC 2013-375, 8 August 2013
- *Distribution of the programming service of TV5 Québec Canada known as TV5/UNIS by licensed broadcasting distribution undertakings*, Broadcasting Order CRTC 2013-374, 8 August 2013

- *Distribution of the programming service of Aboriginal Peoples Television Network Incorporated known as the Aboriginal Peoples Television Network (APTN) by licensed broadcasting distribution undertakings*, Broadcasting Order CRTC 2013-373, 8 August 2013
- *Canadian Broadcasting Corporation – Licence renewals*, Broadcasting Decision CRTC 2013-263, 28 May 2013
- *Applications for mandatory distribution on cable and satellite distribution systems pursuant to section 9(1)(h) of the Broadcasting Act and applications for the licence renewal of independent conventional, pay and specialty television services*, Broadcasting Notice of Consultation CRTC 2013-19, 21 January 2013
- *Amended exemption order for terrestrial broadcasting distribution undertakings serving fewer than 20,000 subscribers – Implementation of the regulatory framework relating to vertical integration and other amendments*, Broadcasting Order CRTC 2012-408, 26 July 2012
- *Extension of the mandatory distribution order for The Weather Network/Météomédia*, Broadcasting Order CRTC 2009-340-1, 24 January 2012
- *TVA Group Inc. – Licence renewals*, Broadcasting Decision CRTC 2012-242, 26 April 2012
- *Regulatory framework relating to vertical integration – Correction*, Broadcasting Regulatory Policy CRTC 2011-601-1, 14 October 2011
- *Licence renewals for the Canadian Broadcasting Corporation’s French- and English-language services – Notice of hearing*, Broadcasting Notice of Consultation CRTC 2011-379, 17 June 2011
- *Criteria for assessing applications for mandatory distribution on the digital basic service*, Broadcasting Regulatory Policy CRTC 2010-629, 27 August 2010
- *Mandatory distribution order and licence amendment for La Magnétothèque*, Broadcasting Order CRTC 2009-542, 31 August 2009
- *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services – Regulatory policy*, Broadcasting Public Notice CRTC 2008-100, 30 October 2008
- *Reconsideration of Broadcasting Decision 2007-246 pursuant to Order in Council P.C. 2007-1604*, Broadcasting Decision CRTC 2008-12, 21 January 2008
- *New digital specialty described video programming undertaking; Licence amendments; Issuance of various mandatory distribution orders*, Broadcasting Decision CRTC 2007-246, 24 July 2007
- *Licence renewal for CPAC; and issuance of a distribution order*, Broadcasting Decision CRTC 2002-377, 19 November 2002
- *Parliamentary and Provincial or Territorial Legislature Proceedings Exemption Order appended to Parliamentary and Provincial or Territory Legislature*



*Proceedings Exemption Order: Amendments to previous order in force,*  
Broadcasting Public Notice CRTC 2002-73, 19 November 2002

- *The distribution of the proceedings of the House of Commons on CPAC,* Public Notice CRTC 2001-115, 6 November 2001
- Decision CRTC 2000-380, 11 September 2000
- *Report on the establishment of a national French-language arts television service,* Public Notice CRTC 1999-187, 19 November 1999
- Decision CRTC 99-42, 22 February 1999
- *Religious Broadcasting Policy,* Public Notice CRTC 1993-78, 3 June 1993

## Dissenting opinion by Commissioner Candice Molnar

In this decision, the majority has determined that the services of TV5 Quebec Canada should be granted mandatory distribution on the basic service of all broadcasting distribution undertakings at a cost of \$0.28 per month per subscriber in francophone markets and \$0.24 per month per subscriber in anglophone markets. I disagree. Quite simply, the services do not meet the criteria for mandatory distribution.

To be clear, the services proposed by TV5 Quebec Canada and approved by the majority include the long established TV5, which focuses upon the world's francophone communities and includes just 15% Canadian programming, and a new feed called UNIS, which is proposed to provide francophone official language minority communities (OLMCs) as well as Quebec regions outside of Montréal with greater participation and reflection within our broadcasting system. Although TV5 and UNIS are, in my opinion, separate and distinct services, TV5 Quebec Canada made delivery of UNIS conditional upon TV5 being awarded mandatory distribution on a national basis. It was an all or nothing offer. It should have been nothing.

Certainly TV5 cannot be considered to meet the criteria for mandatory distribution,<sup>13</sup> which includes a requirement to make exceptional commitments to original, first-run Canadian programming in terms of exhibition and expenditures. What's more, the Commission previously denied TV5 mandatory distribution and determined that TV5 "is not of exceptional importance in fulfilling objectives of the Act."<sup>14</sup>

So is UNIS so exceptional that it warrants granting mandatory distribution to both UNIS and TV5? From an OLMC perspective, in my opinion, the record indicates otherwise. UNIS did not have the full support of all OLMC organizations. In fact, the *Fédération des communautés francophones et acadienne du Canada*, among others, preferred an alternative application that, in their view, would better serve OLMCs.

TV5 Quebec Canada's commitment to OLMCs falls well short of exceptional. Under the application as approved by the majority, just 15%<sup>15</sup> of funds generated through mandatory distribution will be committed to original, first-run Canadian programming originating outside of Quebec. Furthermore, that level of commitment would only be reached after five years of operation.

It is noteworthy that not only did the majority approve mandatory distribution for both TV5 and UNIS, but it effectively imposed the full cost of UNIS on the anglophone market. TV5 has been available in the francophone market at a wholesale rate of \$0.28 for years.<sup>16</sup> Nevertheless, the majority determined that, despite the addition of UNIS, the francophone market would see no cost increase.

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<sup>13</sup> Broadcasting Regulatory Policy 2010-629

<sup>14</sup> Broadcasting Decision 2007-246, paragraph 88

<sup>15</sup> 55% Canadian programming expenditures (CPE) \* 75% of CPE devoted to original, first-run Canadian programming \* 60% of original first-run programming devoted to OLMCs \* 60% of productions devoted to OLMCs would originate outside of Quebec = 15%

<sup>16</sup> Broadcasting Decision 2007-246, paragraph 84

But wouldn't it be appropriate for the francophone market to at least share in the cost of serving francophone OLMCs and Quebec regions outside of Montréal? The majority determined otherwise.