



## Broadcasting Decision CRTC 2017-139

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Reference: 2016-278

Ottawa, 10 May 2017

### **Aboriginal Peoples Television Network Incorporated** Across Canada

*Application 2015-0702-1*

### **APTN – Licence amendment**

*The Commission **approves**, subject to the conditions below, an application by Aboriginal Peoples Television Network Incorporated (APTN Inc.) to amend the broadcasting licence for the national, English- and French-language specialty Category A service APTN, to allow it to make available for distribution a high definition (HD) version of its service, together with the standard definition (SD) regional feeds of its service, provided that at least 95% of the programs on the HD feed are also broadcast on an SD regional feed.*

*Approval of the proposed condition of licence is conditional upon APTN Inc. indicating, within 30 days from the date of this decision, that it agrees to continue to broadcast, on the HD version of its service, in each broadcast week, at least 5 hours and 30 minutes of news or current affairs programming and at least 18 hours of programming in Aboriginal languages.*

*Further, to allow the Commission to evaluate the impact of the flexibility granted to APTN's HD feed at next year's licence renewal, the applicant must file separate logs for its national HD feed and its regional SD feeds.*

### **Application**

1. Aboriginal Peoples Television Network Incorporated (APTN Inc.) filed an application relating to the national, English- and French-language specialty Category A service APTN. Specifically, it requested that APTN no longer be subject to the standard condition of licence<sup>1</sup> requiring that at least 95% of the programming offered by the standard definition (SD) and high definition (HD) versions of APTN be the same. In place of the existing condition, it proposed that APTN be subject to the following condition:

The licensee is authorized to make available for distribution a high definition version of its service, together with the standard definition regional feeds of its service,

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<sup>1</sup> Set out as condition of licence 9 in Appendix 1 to Broadcasting Regulatory Policy 2011-443

provided that not less than 95% of the programs<sup>2</sup> on the high definition version of its service are also broadcast on a standard definition regional feed of the service. Further, all of the programs making up the 5% allowance shall be provided in high definition.

2. APTN currently broadcasts three separate regional SD feeds (East, West and North) and one HD feed. The SD feeds offer some programming that is the same across all feeds, but time-shifted for the appropriate time zone, and other programming that is unique to each feed. The unique programming includes programming in Aboriginal languages appropriate to the region served and, in the case of the eastern feed, a significant amount of French-language programming. The HD version currently largely duplicates the eastern feed.
3. The applicant stated that with greater flexibility and more focused thematic programming and promotion, its HD feed would have greater potential to reach a larger audience. According to APTN Inc., this flexibility would allow it to better meet its mission of building bridges and greater understanding between Indigenous peoples and the broader Canadian population. The programming on the HD feed would be scheduled at different times than the programming on the SD feeds and would consist of a selection of programs that are best suited to the HD format and a general audience of Indigenous peoples and others. The applicant also stated that, with a more consistent approach to its programming, it could potentially increase its audiences, resulting in a projected increase in national advertising revenues of approximately \$1 million annually.
4. This application was originally filed with the Commission as a Part 1 application. It was subsequently published for further comment in Broadcasting Notice of Consultation 2016-278. The Commission did not receive any interventions regarding this application in either proceeding.

### **Commission's analysis**

5. APTN plays a key role in fulfilling certain objectives of the *Broadcasting Act* (the Act), specifically those set out in sections 3(1)(d)(iii) and 3(1)(o), which relate to the creation and presentation of programming that reflects Indigenous peoples in Canadian society. In light of this role, APTN has been granted mandatory distribution on the basic service of broadcasting distribution undertakings (BDUs) (e.g., cable and satellite services) across Canada and receives a mandatory wholesale fee of \$0.31 per month from each Canadian who receives its service. Services with mandatory distribution are held to a very high standard since changes to these services may have a significant impact on the programming received and the fees paid by all Canadian subscribers.
6. In its most recent review of services with mandatory distribution, set out in Broadcasting Regulatory Policy 2013-372, the Commission found that APTN continued to reflect

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<sup>2</sup> For the purposes of this definition, the term "program" has the same meaning as that set out in the *Specialty Services Regulations, 1990*.

attitudes, opinions, ideas, values and artistic creativity that would not otherwise be seen on television in both official languages, as well as in 30 different Aboriginal languages and dialects. It noted that APTN is the only outlet for most of the independent Indigenous production in Canada.

7. Based on APTN Inc.'s responses to questions from the Commission, it appears that, should the Commission approve the application, APTN Inc. would make two changes to its HD feed that would raise concerns in light of the important mandate of the service. It would remove:
  - news programs; and
  - all Aboriginal-language programming.
8. APTN Inc. indicated that, although such programs might not be offered on its HD feed, it would continue to offer news and Aboriginal-language content that is targeted to specific Aboriginal-language groups on each of its regional SD feeds. The HD feed is currently offered—and would continue to be offered—as an additional feed for carriage by BDUs at their option and would not serve as a replacement for any regional feed. The applicant further asserted that providing an HD service that is intended to be more attractive to a broader Indigenous and non-Indigenous audience is entirely consistent with its mandate—which it characterized as reflecting the perspectives and creative expression of Indigenous peoples in Canada—and with its 9(1)(h) status.
9. Although the present application relates only to the HD version of the APTN service, when the Commission examines an application for changes to a service that receives mandatory distribution and a mandatory wholesale fee, it does so based on the contribution that a programming service as a whole makes to the broadcasting system. Accordingly, the Commission does not agree with APTN Inc.'s view that the national HD feed is merely complementary to the three regional SD feeds. APTN's complete nationwide offering, including its regional SD feeds and its national HD feed, must contribute to the mandate for this service to meet the criteria for mandatory distribution.
10. With respect to news programming, the Commission finds that APTN could not adequately reflect the attitudes, opinions, ideas and values of Indigenous Canadians if the HD feed did not feature any news or current affairs programming. Although APTN Inc. indicated that it would accept a condition of licence requiring it to broadcast a daily newscast, the Commission finds that this condition should specify a minimum of 5 hours and 30 minutes per week of such programming, which is the amount of news programming APTN currently offers on its HD feed. However, the programming offered to meet this requirement should be broadened to permit APTN to offer news and/or current affairs programming.
11. In regard to the broadcast of Aboriginal-language programming, the Commission is concerned that relegating all such programming solely to the SD feeds in favour of English- and French-language programming of more broad appeal would be inconsistent with APTN's mandate to reflect the perspectives and creative expression of Indigenous

Canadians. When viewers have the option, they prefer to watch programming in HD rather than SD. Forcing viewers to switch to an SD feed to watch Aboriginal-language programming would be inconsistent with the mandate of a service that has mandatory distribution on the digital basic service.

12. Accordingly, the Commission finds that, consistent with its mandate, APTN should continue to offer at least the same amount of Aboriginal-language programming that it has offered in HD, namely, 18 hours per week.<sup>3</sup> These 18 hours would count towards its existing requirements to broadcast Aboriginal-language programming and need not entail any new production since APTN could use programming already being broadcast on other feeds. APTN would also have the flexibility to schedule such programming at whatever time it deems appropriate, regardless of how this programming may be scheduled on its other feeds.

## Conclusion

13. In light of the above, the Commission **approves**, subject to the applicant's agreement to abide by the condition of licence set out below, the application by Aboriginal Peoples Television Network Incorporated to amend the broadcasting licence for the national, English- and French-language specialty Category A service APTN.
14. The Commission **directs** APTN Inc. to indicate, within 30 days from the date of this decision, whether it agrees to be subject to the following condition of licence:
  - (a) Subject to section (b), the licensee is authorized to make available for distribution a high definition version of its service, together with the standard definition regional feeds of its service, provided that 95% of the programs on the high definition version of its service are also broadcast on at least one standard definition regional feed of the service. Further, all of the programs making up the 5% allowance shall be provided in high definition.

For the purposes of this condition, "program" has the same meaning as that set out in the *Specialty Service Regulations, 1990* or any successor regulations.
  - (b) The licensee shall broadcast at least 5 hours and 30 minutes of news or current affairs programming on the high definition version of its service in each broadcast week, which may be unique to the high definition version of the service and excluded from the calculation of programs taken from the standard definition feeds set out in section (a).
  - (c) The licensee shall broadcast at least 18 hours of programming in Aboriginal languages on the high definition version of its service in each broadcast week. This programming may be taken from its standard definition feeds and will

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<sup>3</sup> At the time the original Part 1 application was filed with the Commission in December 2015, APTN broadcast 18 hours of Aboriginal-language programming in HD. According to the service's current schedule, APTN now broadcasts 12.5 hours of such programming in HD.

count towards the requirements set out in condition of licence 4. Such programming may be offered at any time over a 24-hour broadcast day.

15. Upon receiving APTN Inc.'s agreement, the above condition of licence will be appended to its licence, and this condition will supersede the existing standard condition of licence regarding HD programming. If APTN Inc. does not respond within 30 days or indicates that it is not willing to abide by this condition of licence, the application will be treated as denied.
16. Further, to allow the Commission to evaluate the impact of the flexibility granted to APTN's HD feed at next year's licence renewal proceeding, the Commission **directs** APTN Inc. to file separate logs for its national HD feed and each of its regional SD feeds.

Secretary General

### **Related documents**

- *Notice of application received*, Broadcasting Notice of Consultation CRTC 2016-278, 21 July 2016
- *Applications for mandatory distribution on cable and satellite under section 9(1)(h) of the Broadcasting Act*, Broadcasting Regulatory Policy CRTC 2013-372, 8 August 2013
- *Standard conditions of licence, expectations and encouragements for specialty and pay television Category A services*, Broadcasting Regulatory Policy CRTC 2011-443, 27 July 2011