



Filed Electronically

May 6, 2009

Mr. Robert A. Morin
Secretary General
Canadian Radio-television and
Telecommunications Commission
1 Promenade du Portage
Gatineau, Quebec
J8X 4B1

Dear Mr. Morin:

Re: Broadcasting Notice of Consultation CRTC 2009-173

1. Aboriginal Peoples Television Network Incorporated (“APTN”) is Canada’s national Aboriginal television service. In the Broadcasting Notice of Consultation set out above, the CRTC has set out proposed terms for the exemption of cable broadcasting distribution undertakings serving between 2,000 and 20,000 subscribers. APTN is pleased to offer these comments on the proposed licensing exemption.

2. In this submission, we will focus on two matters that are particularly significant for APTN:

- (a) the proposed treatment of 9(1)(h) services (which APTN supports); and
- (b) the removal of the requirement for BDUs serving between 2,000 and 20,000 subscribers to contribute a percentage of gross revenue to community expression or other Canadian programming (which we oppose); this proposal may result in more than **\$23 million** being removed from the broadcasting system annually and is not consistent with the attainment of broadcasting policy objectives in the *Broadcasting Act*.

Distribution of 9(1)(h) Services

3. The proposed exemption order preserves APTN’s status as a “9(1)(h)” service, which must be offered as a part of the basic service, for those cable BDUs that serve more than 2,000 subscribers. APTN supports the continuation of this status for all such BDUs.

4. Without regulatory intervention to ensure continued carriage of APTN as a basic service, there is a real likelihood that some BDUs would elect not to distribute APTN on basic. This would make APTN much less accessible to Aboriginal Peoples and all Canadians. Such an outcome would be inconsistent with APTN's role as a first-level service for Aboriginal Peoples in Canada (wherever they may reside), and would marginalize Aboriginal Peoples within the broadcasting system.

5. The proposed exemption order would exempt for the first time a significant number of BDUs, serving a large segment of the Canadian population. The exact number of BDUs that will be affected, and the number of subscribers that will no longer be entitled to the protections of the licensing process, is not known. However, it is highly likely that removing this basic subscriber base from APTN's subscriber base would have a material financial impact on APTN, and on other 9(1)(h) services.

6. For these reasons, APTN endorses the Commission's decision to ensure that the obligations that have traditionally applied to BDUs serving more than 2,000 subscribers as they relate to 9(1)(h) services such as APTN be continued.

Contribution to Canadian Programming

7. While APTN endorses the continuation of regulatory obligations relating to 9(1)(h) services on BDUs serving more than 2,000 subscribers, the Commission has also proposed that these same BDUs no longer be required to make a tangible contribution to community or other Canadian programming. As the Commission is aware, currently, all BDUs serving between 2,000 and 20,000 subscribers must contribute at least 5% of their gross revenue from broadcasting activities to community expression or to eligible Canadian programming funds. The proposed exemption order would remove this requirement.

8. Removing the requirement to support community expression or to make a direct contribution to Canadian programming will have a material impact on smaller communities and on the resources available to fund Canadian programming. It will, without a doubt, have a material impact on the attainment of broadcasting policy objectives.

9. Unfortunately, no data is provided by the Commission in support of the removal of the programming contribution requirements by these BDUs. Some estimates suggest that the proposed exemption order would apply to 20% or more of the existing cable subscriber base. If it is assumed that existing systems with fewer than 2,000 subscribers represent 5% of this total (which is a generous estimate since it was estimated at the time these systems were exempted that they represented only 2% of the subscriber base¹), then the total number of subscribers in systems serving between 2,000 and 20,000 subscribers would represent **15%** of the subscriber base, conservatively.

¹ *Public Notice CRTC 2000-162*, Proposed exemption order for small cable systems.

10. Removing 15% of the cable subscriber base from the pool that is required to contribute to community expression and Canadian programming has the obvious potential to remove up to 15% of the resources currently contributed by these BDUs to community programming and Canadian expression.

11. This is a very large potential impact. The CRTC noted in its recent analysis of cable data for 2008 that cable BDUs contributed approximately \$230 million in 2008 to programming production funds and to community expression. If it is assumed that “all subscribers are equal”, and account, on average, for an equal amount of revenue to all cable systems, regardless of each system’s size, then the proposal to eliminate the required contribution to Canadian programming or community expression will affect 15% of this amount – or, \$34.5 million! It may be argued that subscribers to smaller cable systems account for less revenue to BDUs on a per subscriber basis than subscribers to larger cable systems. Let’s assume, therefore, that the 15% of subscribers served by systems with more than 2,000 but fewer than 20,000 subscribers account for only 10% of all BDU revenue. This still represents a total impact of 10% on the total cable contribution to Canadian programming, or a drop of approximately **\$23 million!**

12. Given the magnitude of the change proposed by the Commission in terms of the resources that would be made available for Canadian programming (community-based or otherwise) we believe that the proposal has not been subject to careful enough examination by the Commission. The proposal will lead to much less community-based programming (in communities that may well have no other source of local television programming) and a material drop in contributions to Canadian programming funds.

13. It is difficult to square this aspect of the proposed exemption order with the Commission’s recent finding in its review of the regulatory framework for distribution undertakings (in *Broadcasting Public Notice CRTC 2008-100*) that the contribution of \$900,000 to Canadian production funds by satellite relay distribution undertakings “is material to the attainment of the objectives of the [Broadcasting] Act”², and therefore should be maintained. APTN agrees wholeheartedly with that finding – since we, among others, rely on that funding. It does, indeed, have a material impact on the programming we broadcast. How can the Commission then propose, in effect, to cut \$23 million annually to expenditures on other types of Canadian programming within the system?

² *Broadcasting Public Notice CRTC 2008-100* (at paragraph 175).

14. Thank you for this opportunity to comment on the proposed exemption order.

Yours truly,

A handwritten signature in black ink, appearing to read "Jean LaRose". The signature is fluid and cursive, with the first name "Jean" being more prominent than the last name "LaRose".

Jean LaRose
Chief Executive Officer