



**Filed Electronically**

May 8, 2008

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 Public Hearing CRTC 2007-10,  
Review of the Regulatory Frameworks for Broadcasting  
Distribution Undertakings and Discretionary Programming Services**

1. These are the final comments of Aboriginal Peoples Television Network Incorporated ("APTN") in the above-referenced proceeding.
2. APTN is a member of the group of Independent Programmers that have filed a joint final submission in this proceeding. APTN endorses that filing. In this submission, we will focus on the issue of the composition of the basic level of service, which is an especially important question for APTN. We will also address some of the regulatory questions the Commission has asked regarding SVOD and VOD services.

### **Contiguous Channels**

3. In our oral presentation to the CRTC, APTN supported the establishment of a new, Canadian foundation basic service. We stated that the CRTC should take advantage of the opportunity presented by this hearing to ensure that BDUs offer Canadians a strong Canadian basic level of service – that is presented as a basic level of service on contiguous channels.
4. APTN has noted that some cable BDUs have argued that it may be difficult to provide such a service in an analog environment due to trapping technology. As a preliminary point, we would note that trapping technology sets aside certain designated channels as "basic" or "tier" channels – it does not pre-determine the programming services that are offered on those channels. Cable BDUs have complete discretion – subject to the existing provisions of the *Broadcasting Distribution Regulations* with respect to the "basic band" – to decide which "basic" channels are offered on channels below, and above, the analog traps.

5. Looking forward, as more BDUs migrate the existing tiers of analog specialty services to digital distribution, the remaining analog basic services will be further disadvantaged unless they are offered as a coherent, contiguous analog package. APTN is not sure how analog services like APTN will be presented by BDUs in this hybrid environment, but we believe it could be disastrous to our viewership if BDUs "stranded" the remaining analog services as "sporadic analog islands" within a digital ocean. The outrageous bumping of APTN and other basic level services to channel 100 and beyond – in an analog environment – shows that this is not a theoretical concern.
6. This kind of channel placement abuses the idea of a basic level of service. APTN does wish to note, however, as we have indicated in earlier submissions in this proceeding, that some cable BDUs have worked with APTN to ensure more predictable and "lower" channel placement – immediately after the analog traps for specialty services. Rogers Cable, for example, has worked with APTN to secure consistent channel placement at channel 70 across Rogers' systems. ExpressVu has also placed both APTN channels together at 269 and 270 immediately following the Canadian OTA channel offerings.
7. In any event, this current proceeding, which is expected to result in greater digital distribution of channels in place of analog distribution, will undoubtedly change the composition and presentation of the basic level of service. The CRTC is now well placed to shape how the basic level of service is presented in a digital environment.
8. The digital environment is largely free of the trapping challenges that are present in the analog environment. In a digital environment there is no technical reason why basic services should not be offered to all subscribers as a single, coherent, package on contiguous channels. There is, in fact, good policy reasons for channels to be offered on this basis:
  - For subscribers, clear presentation of what is the basic service will enhance subscriber choice. We note that BDUs have emphasized that relatively few subscribers choose the "basic only" service. But, the choice of "basic only" is not made very clear to subscribers when basic channels are spread out from channel 1 to channel 105 – with huge gaps in between.
  - For programming services that are offered on basic, such as APTN, packaging together with other popular basic channels will enhance the exposure of APTN to potential viewers. APTN is supported by all basic subscribers, it is reasonable that all basic subscribers should be made aware of this fact (i.e. that APTN is a basic service), and provided with a meaningful opportunity to access APTN's programming.
  - For distributors, while digital basic service on contiguous channels would be a requirement, distributors would be free to continue to offer various "virtual packages" of channels grouped by themes, etc., within their programming guides. For example, APTN notes that digital programming guides already contain numerous digital "stops" for the same channel. BDUs' own VOD services, for

example, are frequently promoted through numerous virtual channel placements within the electronic programming guide. Ensuring that, at a minimum, basic services are offered as a coherent basic package, will not limit these enhanced presentation opportunities for BDUs.

9. APTN recommends the following regulatory approach to the packaging of the basic service:
  - In a digital environment, all basic services should be offered together in a single package (clearly delineated as the basic service) and presented on contiguous channels.
  - In an analog environment, during the transition from analog to digital, once previously analog specialty services are distributed on a "digital only" basis – and analog trapping is no longer as significant an issue – BDUs should be required to consolidate the basic level of service to contiguous analog channels (for so long as an analog service is offered).

These changes will enhance consumer choice – by making it clear which channels are the basic service, and preserve the regulatory integrity of the basic level of service.

### **Composition of the Basic Service**

10. The CRTC faces challenging policy choices in addressing the composition of the basic level of service.
11. APTN is encouraged that almost all participants in this hearing continued to support the policy that certain programming services, such as APTN, fulfill such important public policy objectives that the distribution of these services on basic – pursuant to "9(1)(h)" orders – should continue in the future distribution environment. There is also, we believe, broad consensus that local television signals (subject only to the "fee for carriage" issue), including CBC signals, be distributed as a part of the basic service.
12. After those foundation services, there is a divergence of opinion as to which services warrant basic carriage, and which do not. BDUs favour broad packaging discretion for the basic service. BDUs note that most subscribers choose services in excess of the basic level of service, in any event, so a smaller basic service is not required.
13. APTN, respectfully, disagrees with this analysis. APTN continues to support the requirement that BDUs offer subscribers a smaller, all Canadian, foundation basic service. There is nothing that would prevent BDUs, after they have provided this Canadian basic service, from offering any number of "expanded basic" service options to the consumer. If, indeed, informed consumers will almost always subscribe to more than what is offered as a basic service, as BDUs claim, then they would be free to do so and the BDUs should have no concerns about offering a smaller basic package.

14. APTN recognizes that the basic carriage formula presented by Commissioner Morin has some drawbacks. But, it is nonetheless a viable option of a means of determining which Canadian services, above and beyond the absolute minimum, should also be distributed as basic level services. Moreover, adopting such a formula at least provides an analytical framework which could serve as a starting point to consider which services could be basic services.
15. For example, APTN has noted that the independently-owned specialty services have helped APTN to fulfill our own objectives. If the CRTC agrees that independent ownership should be encouraged and maintained in the system, then it would also be appropriate for the CRTC to consider whether some of these services should also be protected as basic level services. In that context, a point system – coupled with other policy objectives, such as enhancing programming diversity or providing Canadians with access to a diversity of core information services at an affordable price – could be useful in determining which services could best fulfill policy objectives at an affordable price.

### **VOD and SVOD**

16. In APTN's view, VOD and SVOD services should be regulated, as closely as possible, to ensure that this mode of programming distribution achieves similar policy objectives to linear distribution. It is, after all, the same programming that is being offered to Canadians on the same television set using the same networks. It would be counterproductive for the Commission to exclude these kinds of services from making the same level of contribution that linear services make.
17. VOD and SVOD services should, APTN believes:
  - offer at least a preponderance of Canadian programming titles within each of the CRTC's established television programming categories (i.e. drama, sports, news, etc.) – some exceptions could be made for certain types of programming (e.g. third-language programming) for which sufficient Canadian inventory may not be available;
  - give more prominence to Canadian titles than to non-Canadian titles through menu structure and ancillary information;
  - obtain all programming rights from licensed Canadian broadcasters that operate in the genre of programming that is offered (e.g. it would be self-defeating to preserve Canadian genre protection to ensure that Canadian specialty services survive, but to undercut those same services by allowing parallel VOD or SVOD services without restriction) – no BDU should be permitted to obtain programming rights for VOD and SVOD programming directly on its own;
  - restrict advertising to ensure that advertising sales accrue to the benefit of the Canadian rights holder – i.e. the Canadian broadcaster – in other words, absent

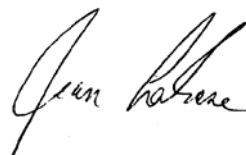
agreement with the Canadian rights holder, the VOD service (if it remains a BDU-affiliated licensee) should not be permitted to sell advertising.

18. With respect to the technical differences between VOD and SVOD, these are minimal from the point of view of the distributor or the consumer. They are simply extensions of the same phenomenon differentiated only by the means of payment. SVOD is, arguably, somewhat akin to a traditional programming service in that the service offering is more likely to consist of programming selected from similar genres or similar program distributors (e.g. "Treehouse on Demand"). From a practical perspective, and from the perspective of their impact on the regulated system if they are allowed to operate outside that system, there is little reason to differentiate between them.
19. There is similarly little to differentiate "Network PVR" from VOD and SVOD. The key difference in the U.S. appears to be the disputed (and thus far unsuccessful) claim that carriers do not need permission from copyright owners to provide network PVR services. From a functional point of view, these services provide the same programming and kinds of access as VOD and SVOD.
20. For all of these services, the key consideration must be, "How should these services be adapted to the Canadian environment so that they do not undermine the regulated system." APTN believes that the simplest manner to achieve this aim is to ensure that VOD and SVOD services are controlled by licensed programming services (in the sense that programming rights are obtained from these services) rather than by BDUs. Also, Canadian content requirements (in the sense of the "must offer" requirement) must be comparable between VOD and SVOD services – and "NPVR" services, which are the same thing by a different name – and Canadian linear services providing similar programming.
21. APTN continues to support the request that the CRTC hold a detailed hearing on these services and the related technologies to ensure that they are integrated within – and do not irreparably damage – the regulated Canadian broadcasting system.

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22. We thank the Commission for the opportunity to participate in this important hearing.

Yours truly,



Jean LaRose  
Chief Executive Officer