



**Filed Electronically**

October 19, 2007

Mr. Robert A. Morin  
Secretary General  
Canadian Radio-television and  
Telecommunications Commission  
Ottawa, Ontario  
K1A 0N2

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. Aboriginal Peoples Television Network Incorporated (“APTN”) is pleased to provide comments in the above-referenced proceeding to review the regulatory framework for BDUs and discretionary programming services. This proceeding is focused on the rules and regulations that govern the licensing and distribution of discretionary programming services. APTN is not a discretionary service, but some proposed amendments could have an impact on our service. APTN is providing comments on the issues that are most relevant to our service.
2. We understand that the Commission has proposed a regulatory framework that moves away from some of the current detailed regulations, and that aims at reducing regulation to the minimum essentials to achieve the objectives of the Act. It is intended to rely on market forces wherever possible.
3. The desirability of eliminating “unnecessary” regulation that no longer furthers the objectives of the *Broadcasting Act* is obvious. But, it is not always obvious what is “unnecessary” in terms of the achievement of broadcasting policy objectives. It is a question, we believe, of determining priorities among those objectives – establishing principles and aims – and then setting out a framework that is based on those principles and targetted at meeting those aims. Some of the Commission’s work in setting principles and aims is already done in the text of the *Broadcasting Act*. It is well known, though, that the Act includes many different policy objectives, and that it is often a question of setting priorities among those objectives.
4. APTN believes very strongly that advancing the position of Aboriginal Peoples within the broadcasting system should continue to be a priority for the CRTC. APTN would strongly oppose any proposed regulatory amendments that would undermine this priority

and that would, in particular, fail to recognize the special place of Aboriginal Peoples within Canadian society or limit the participation of Aboriginal Peoples in the Canadian broadcasting system.

5. APTN has contributed to the submission that is being filed in this proceeding by the group of independent programming services and supports the comments set out therein. Our submission should, therefore, be viewed as supplementary to the more general comments made by the group of independent programming services, and is intended to focus solely on the distribution requirements that would be applicable to APTN in any new regulatory framework that is established by the Commission as part of this proceeding.
6. Broadcasting Notice of Public Hearing CRTC 2007-10 raises several issues that are particularly relevant to APTN, and we want to ensure that our unique voice is heard in respect of the following four specific issues:
  - the importance of maintaining APTN’s status as a “9(1)(h) service” that is distributed as part of the basic service by all Class 1 and 2 BDUs, as well as DTH distributors and MMDS systems;
  - the critical role that channel placement plays in the success of a programming service like APTN;
  - the need to regulate the use of electronic programming guides on digital distribution systems – in a digital environment, position and promotion with the EPG environment is equivalent to channel placement in an analog environment; and
  - the need to maintain the financial contribution that BDUs make to the production of Canadian programming.

#### APTN’s Status as a 9(1)(h) Service

7. In APTN’s view, ensuring the availability of a national Aboriginal television network across Canada, as part of the basic service, is essential to the fulfillment of the policy objectives of the *Broadcasting Act*, regardless of the nature of the regulatory framework that is established following this proceeding. APTN firmly believes that the continued distribution of APTN as part of the basic service furthers the objective of serving the needs and interests of Aboriginal Peoples and is a necessary means to recognize the special place of Aboriginal Peoples in Canadian society, as required under section 3(1)(d)(iii) of the Act.
8. If the question the Commission asks itself is whether “the market” will ensure that the broadcasting system will adequately serve Aboriginal Peoples, we think that the broadcasting system’s record provides the answer. To be direct: Aboriginal Peoples have been poorly-served by commercial broadcasters in Canada.

9. The Commission is well aware of the results of the *Task Force for Cultural Diversity on Television*, which conducted a survey of the on-screen representation of Aboriginal peoples in 2004. Without the programming offered by APTN, Aboriginal Peoples were virtually absent within the Canadian broadcasting system. We don't think we need to belabour this point here since we have made it many times before.
10. By issuing a licence to APTN to operate as a national service and by granting that service mandatory distribution as part of the basic service, the Commission has made the single most important decision with respect to Aboriginal Peoples in the broadcasting sector, and has dramatically transformed television broadcasting for Aboriginal Peoples in this country.
11. APTN's status as a 9(1)(h) service has been instrumental in enabling us to providing programming by and about Aboriginal Peoples to homes in every region of Canada. Our distribution status has also allowed us to achieve a stable source of funding for APTN. As a result, we are nourishing Canada's Aboriginal television production industry, providing employment opportunities and mentorship programs and the like for Aboriginal Peoples (in our organization and elsewhere), and helping preserve Aboriginal languages by presenting them in tangible, spoken forms to national audiences. These achievement are made possible solely because the Commission has ensured that APTN has secure funding and wide distribution on a national basis.
12. APTN strongly supports the Commission's decision, outlined in *Broadcasting Public Notice CRTC 2006-23, Digital Migration Framework*, to require BDUs to maintain a basic service in a digital distribution environment. In that Public Notice, the Commission recognized that establishing requirements for the carriage of certain core programming services as part of a the basic service furthers the attainments of the policy objectives of the *Broadcasting Act*.
13. The obligation that all BDUs have to offer a basic service ensures that all subscribers have access to a core group of services. Through the BDU Regulations and its decisions regarding the basic level of service, the Commission has ensured that Canadians have access to priority television signals and other services that further important policy objectives under the Act, such as those addressed to the reflection of Canada's linguistic plurality.
14. APTN believes that in order for our national network to continue to meet the needs of Aboriginal Peoples throughout Canada, the Commission must ensure that it will continue to be made available to Canadians as widely as possible and at an affordable price as digital and HD technology is rolled out. This means that the Commission's current rules which apply to the carriage of APTN on an analog basis should continue to apply in a digital environment, and also to APTN's high definition (HD) version, once it becomes APTN's principal service.

15. The Commission has stated that HD technology is a replacement technology for standard digital distribution. Once APTN phases out our existing “analog” service (which, of course, is transmitted to BDUs across the country in a compressed digital format), the replacement HD level of service should have the same status as APTN's analog level of service.
16. The key for APTN is that, in order to devote the resources to develop a replacement HD version of our service, the regulatory framework put in place by the Commission should fully support the position of Aboriginal Peoples and APTN's important mandate within the broadcasting system as it develops. Specifically, we believe that the HD framework should ensure that Aboriginal Peoples, APTN and the independent Aboriginal production industry are able to fully benefit from the advent of HD programming on APTN.
17. The Distribution Order applicable to APTN should include the requirement for larger BDUs to distribute the replacement HD version of our national service (not, we emphasize, the transitional service that is scheduled for launch in the next year) on the same basis as they distribute the analog and digital versions of our service.<sup>1</sup> APTN proposes that the appropriate terms of carriage for our replacement HD service would be established at the time the service is licensed.

#### Channel Placement

18. Another issue of concern to APTN relates to the channel placement of our service and channel realignments. APTN has never been provided with a meaningful opportunity by any BDU to discuss the channel placement of our service or any realignments that have involved APTN before they have been implemented. Typically, we are simply notified after the fact by the BDU that has realigned our service of the new channel position that our service will occupy.
19. For APTN, this has meant that our service has been placed on an increasingly higher channel position on many BDU systems. This has had, and continues to have, a material adverse impact on APTN and undermines our value as a basic level service. In some cases in systems located in western Canada, APTN has been placed so far up the dial – in the 100s on an analog system! – that it is not clear that all of the subscribers that reside in the territory of the BDU can actually receive our service. In addition, as incredible as it may seem, some BDUs do not carry the APTN feed that is suitable for their particular time zone – which is mystifying to APTN but not a requirement for the BDU although the CRTC decision renewing APTN's licence stated that the Commission would expect the BDU to carry the appropriate service for the region.
20. It is interesting that BDUs often are willing to move our service to an excessively high channel, but fail to move services in which they hold an equity interest, which includes

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<sup>1</sup> APTN intends to launch a transitional HD service early next year, under a condition of licence, and it is proposed that carriage of the transitional service would be subject to negotiation of carriage arrangements between APTN and distributors.

lower priority exempt services like teleshopping channels, to similar heights. One can presume that the rationale underlying the decision by these BDUs to maintain lower channel positions for their own services is to ensure that they receive the maximum level of viewership possible. BDUs fully understand that viewers are less likely to surf up to services that are located above the analog tiers on a cable distributor's channel line-up.

21. In the recently release Dunbar-Leblanc Report, titled *Review of the Regulatory Framework for Broadcasting Services in Canada*, the authors acknowledged that if channel placement is found to be an important determinant of a programming undertaking's success, then the Commission should consider "requiring that Canadian services, particularly those that satisfy high Canadian content thresholds, receive better placement on the BDU dial than non-Canadian services or Canadian services with lower Canadian content levels".
22. APTN, of course, consistently achieves among the highest Canadian content levels, and most of this content is categorized as Canadian priority programming that is not found elsewhere in the system. APTN is also directed specifically at providing a basic level of service to Aboriginal Peoples, who are recognized expressly in the *Broadcasting Act*. APTN fully supports the recommendation made in the Dunbar-Leblanc Report.
23. We believe that the unilateral decisions by several BDUs to place APTN on excessively high channels has been an appalling practice and is an issue that should be addressed in the new regulatory framework that will be established by the Commission in this proceeding.

#### The Electronic Program Guide

24. APTN fully recognizes that in a digital distribution environment, the notion of "channel placement" as it is understood in an analog environment does not exist. The "channel" that is allocated to an individual programming service within a BDU's network is mapped onto a programming menu and can be assigned any number by the BDU.
25. The key issue, in a digital environment is the placement of the channel locator and related information within the EPG. A number of BDUs, including ExpressVu, MTS, Sasktel, and a small handful of cable distributors, have placed APTN on a "channel" that is next to the national broadcast networks or on the first screen along with the local television stations. This has been an effective marketing and promotional tool for APTN on this limited number of BDUs. Unfortunately, the larger cable BDUs and the other DTH distributor have refused to accede to our requests to make better use of the EPG for the promotion of APTN, and our national service has continued to suffer as a result.
26. This is, we believe, one area where digital distribution technologies could be used to improve the terms of APTN's carriage. In this respect, the Commission could require BDUs to ensure that services, which have been mandated for distribution as part of the digital basic service, be grouped together. Digital technology eliminates the often-heard excuse that there is no more room below the analog tiers and would enable BDUs to, at

the very least, ensure that the distribution of all services that are mandatory to digital basic are available on adjacent virtual channels.

27. It is APTN's submission that the time has come for the Commission to establish rules relating to the use of the EPG, as part of its new regulatory framework for BDUs.
28. As the Commission moves toward a regulatory environment that relies to a greater degree on market forces to regulate the broadcasting industry, and where the primary interface between BDUs and their customers is the EPG, we believe it is imperative for the Commission to establish a set of ground rules relating to the use of the EPG that would ensure that each programming service is distributed in a fair and equitable manner.
29. The EPG is, after all, an integral part of a digital broadcasting distribution undertaking, and as such is subject to the Commission's authority under the *Broadcasting Act*. The Commission has throughout its history established regulatory requirements relating to all aspects of a licensee's broadcasting distribution undertaking, and has asserted jurisdiction over things like basic rates, subscriber drops, headend locations, billing inserts and access to inside wire. The reason that the Commission has been able to assert jurisdiction over these varied matters is because each one forms an integral part of the undertaking that licensee is authorized to carry on. Similarly, the EPG is an integral part of the operation of a broadcasting distribution undertaking and is therefore subject to the Commission's regulatory authority under the *Broadcasting Act*.
30. APTN strongly disagrees with the notion, expressed by some, that the EPG is, somehow, a separate "telecommunications service" that is distinct from the core offering of a BDU. This is like saying that a magazine's table of contents is not a part of the magazine. Manifestly, the EPG is the gateway to, and is part and parcel of, the entire broadcasting service offered by a BDU. To hold otherwise would be to determine that the Commission does not regulate an undertaking as a whole, which is definitely not the case (as shown above in the list of areas noted above that the Commission regulates as a part of a BDU undertaking).
31. The Commission should establish rules relating to the use of the EPG to ensure that services like APTN, which play an important role in furthering the objectives of the Act, are effectively marketed and promoted to subscribers in a way that promotes broadcasting policy objectives.

#### BDU Contributions to Canadian Programming

32. Pursuant to sections 29 and 44 of the *Broadcasting Distribution Regulations*, each Class 1 and 2 cable BDU and each DTH BDU is currently required to contribute 5% of its gross revenues derived from broadcasting activities to the production of Canadian programming. APTN fully supports the inclusion of this contribution mechanism in any new regulatory framework for BDUs that may be implemented as a result of this proceeding.

33. APTN, like most broadcasters, accesses the funds that are contributed to the made available Canadian Television Fund (CTF) for a number of our programs. APTN is not, however, limited to accessing funding from the Aboriginal language envelope. APTN does access that envelope, to be sure, but APTN also produces programming in English (and accesses the English-language envelope) and in French (and accesses the French-language envelope).
34. In each case, we rely on these funds to provide programming that is of particular interest to Aboriginal Peoples residing in Canada. For Aboriginal-language production, APTN is easily the most important broadcaster for these kinds of productions. In the absence of this specific envelope of funding, this programming would probably not exist and APTN would be unable to develop programming in a variety different of Aboriginal languages. While the English-language and French-language envelopes we access are quite small, our ability to access this funding has similarly led directly to the presence of an increasing number of Aboriginal Peoples on screen and in production roles in Canada. APTN's contribution and our broadcast window is often the missing component that gets an Aboriginal production to air. Our increasing ability to access the English and French envelopes, while still very minimal when compared to the entire amount of funding available in these envelopes, is worth protecting. That funding needs to remain in place as our programming opportunities, on our own or with other broadcasters as partners, continue to expand.
35. Given the absolutely critical role that BDU contributions make to the production of programming that is aired on APTN, we encourage the Commission to ensure that this source of funding continues to be available in to broadcasting system.

### Summary

36. APTN appreciates this opportunity to file comments in this important proceeding. We look forward to reviewing the first-round comments of other parties and will consider whether to file reply comments during the second phase of this proceeding on November 16, 2007.
37. APTN has stated in past proceedings supporting various media acquisitions that such entities, when strong and well-funded, can be strong partners for APTN. APTN has also stated that judicious policy decisions by the Commission will ensure that the objectives of the *Broadcasting Act* are always met and protected. APTN believes that these proceedings clearly show the need for some policy actions that will ensure that the balance between market forces and good public policy remains in place.

38. APTN wishes to appear at the public hearing to be held on February 4, 2008 to address the points made in this submission.

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