

**Broadcasting Notice of Public Hearing 2007-10**

**Review of regulatory framework for broadcasting  
distribution undertakings and discretionary  
programming services**

**Aboriginal Peoples Television Network Incorporated  
Oral Comments**

**April 21,2008**

**CHECK AGAINST DELIVERY**

Mr. Chairperson and Commissioners, I am Jean LaRose the Chief Executive Officer of Aboriginal Peoples Television Network Incorporated.

As you know, APTN is one of the few "9(1)(h)" services. We owe this status to the CRTC and to the efforts of Aboriginal Peoples who have made APTN possible.

Almost all participants in this proceeding have supported the continuation of "9(1)(h)" status as a regulatory tool. In our case, this regulatory tool has had a great impact for Aboriginal Peoples in broadcasting.

We understand that the other services represented on this panel face greater distribution challenges than APTN, especially as independent services, and I wish my comments today to be taken with that context in mind.

APTN supports Canadian independent programming services. Independent services provide the diversity in ownership, programming and perspectives that is essential to reflect Canadian society, and, as the *Broadcasting Act*

says, the special place of Aboriginal Peoples within that society.

APTN has supported some industry consolidation in the past, but we know that there is significant value to the system in maintaining strong independent broadcasters. A healthy independent sector has direct benefits for APTN:

1. We share programming and resources with other independents. S-Vox and Pelmorex, for example, have consistently supported APTN.
2. For Aboriginal Peoples seeking to enter the broadcasting system – the more doors to knock on in the more communities the better.
3. Individually, independent programmers don't have much, if any, bargaining power. Acting together, as we are today, we can increase our ability to prosper in the existing, highly competitive broadcasting environment.
4. Independent broadcasters have been leaders in specialty broadcasting. Without the example of other

independents that went before, like Vision TV, the idea of a stand-alone independent Aboriginal broadcaster would probably have been written off as a impossible. We have benefited directly from the experiences of past leaders.

The Commission's regulatory framework should protect the contribution that independent programming services make to the system.

Let me move to review some of the more specific points that are important to APTN in this proceeding.

### The Basic Service

The Commission has asked what the proper size is for the basic service.

We believe that Canadians should be offered a Canadian basic service at an affordable price on contiguous channels. We propose that the Commission take the opportunity to establish a simple, foundation Canadian basic service. I will return to this point later.

## Fee-for-carriage

When you take into account our view about the basic service – that it should be affordable – you can better understand our concern that a fee-for-carriage for local over-the-air signals will likely add a new cost to the basic level of service.

We do support a broadcaster consent regime for distant television signals, which could include a fee-for-carriage. But, the focus should be on limiting the importation of distant signals, rather than on compensating local signals after the fact for lost revenue.

When the CRTC is looking at the question of distant signals, we shouldn't forget that remote and underserved communities should be treated differently. We are not proposing to stop the distribution of distant signals in these communities.

## Access

We support continued access rules for Canadian programming services that make a meaningful contribution to Canadian programming. We also support the preponderance rule proposed by this panel.

## Genre protection

For our service, genre protection is not as big a concern as it may be for others. APTN is a general interest, first level of service for Aboriginal Peoples. We are not a specialty service.

APTN endorses all efforts by Aboriginal Peoples to participate in the broadcasting system.

The one area in which we have noted a concern is to ensure that new entrants don't have an undue economic impact on our ability to fulfill our mandate for Aboriginal Peoples. If APTN can't fulfill our mandate, and if new entrants in Aboriginal broadcasting aren't viable and able to "pick up" in areas where APTN is no longer able to meet the mandate,

then the result is a net loss to the system and to Aboriginal Peoples.

In this way, we think you can see that it is not a “genre” that APTN strives to protect, but rather our ability to advance the position of Aboriginal Peoples in the system – that is our role.

### New BDU Technologies

APTN agrees with the other members of this panel that advertising rights on VOD and SVOD should remain with the broadcaster.

Without this restriction, the CRTC will have created, new, almost unlimited, VOD and SVOD programming services owned by the BDUs, with the power and business motive – advancing their own services - to shut out Canadian broadcasters.

There is no reason why the full capabilities of VOD and SVOD – including dynamic advertising – cannot be fully exploited by the broadcasters and the BDUs working

together under fair, negotiated access agreements for broadcasters.

Similar logic applies to the use of local avails. For foreign services, there is absolutely no benefit to the system to allow BDUs to sell local avails. All it would do would be to expand advertising inventory and move advertising dollars from broadcasters to BDUs.

Lastly, I would just like to point out that the impact on broadcasters of allowing BDUs to access local avails cannot be offset by a fee for carriage, if that line of thinking is explored.

This is because only some broadcasters will access a fee-for-carriage, in specified circumstances; but all broadcasters will be hurt by lost revenue – and lost opportunities – from the flood of inventory represented by BDU-sold local avails.

### APTN's Proposal

At the risk of sounding presumptuous, I would like to table a proposal that builds on Commissioner Morin's basic service

“equation” (Canadian content + Canadian expenditure – wholesale fee).

A simple response to competitive pressures would be to start with a more affordable basic service that is composed only of Canadian programming services, and only of those services that meet key Canadian content and Canadian programming requirements. Why not offer Canadians a smaller basic package that has only local Canadian channels, Canadian specialty channels making core commitments to Canadian reflection (as indicated by their Canadian content and expenditure obligations), such as the independents represented at this table and the Weather Network, national news services, and the few other services, such as CPAC, and the other 9(1)(h) services that are recognized as being of exceptional importance?

The proposed new Canadian basic package should be offered on low, contiguous channels by all BDUs. This would leverage the characteristics of digital distribution to advance Canadian programming, and stop abusive stratospheric placement of basic services, such as we see happening now by some BDUs.

A simplified, affordable and Canadian basic service could be the new cornerstone for a renewed television system. It would serve as the foundation for the more flexible bundling and packaging that BDUs are requesting. It would place the consumer first. The cost of a basic package should go down, and, at the same time, that service would reflect our own country first – not some other country!

### Looking to the Future

In my presentation I have focused on the issues that raise serious concerns about any future BDU regulatory environment. We see that change is coming. This hearing is likely to replace some of the more detailed distribution and linkage rules with smarter regulation.

The term, “competition”, we know, is not in the *Broadcasting Act*, but it is an economic reality that needs to be recognized. Still, competition has its limits.

The competitive market, unregulated, does not necessarily lead to optimal outcomes in a cultural industry such as ours.

In a fully competitive, dog-eat-dog market, APTN would not exist. Obviously, we think that would be a huge loss.

I have proposed an approach that some could dismiss as self-serving. I would argue that almost everything proposed to the panel over the past 2 weeks has been self-serving. After all, for many of us, the outcome of this hearing will determine our survival. Our proposal supports the most important elements in our system, it puts Canadian services first, and it can be implemented easily, on an industry wide basis.

I am concerned that if we place undue emphasis on competition, ahead of broadcasting policy objectives, we will very soon find that we have given up far more than we will have gained. Case in point, I will just say the following: mortgage rate fiasco in the United States. A fully free and unregulated market cannot, and will not, regulate itself, except maybe in the "long term" and usually after some cataclysmic event that has forced it to adjust. I probably don't need to remind you what one famous economist had to say about waiting on the "long term".

For me, I like to see results in my own lifetime – and I am happy to say that APTN is a good example of good policy achieving results.

We have tools at our disposal to make a real difference. We should not hesitate to use them.

Thank you for your attention.