

**ABORIGINAL PEOPLES TELEVISION NETWORK INCORPORATED**

**ORAL REMARKS**

**BROADCASTING NOTICE OF CONSULTATION CRTC 2009-411**

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**[CHECK AGAINST DELIVERY]**

Mr. Chairman and Commissioners. I am Jean LaRose, citizen of the Odanak First Nation in Québec. I am here today with Peter Strutt, APTN's Director of Programming. Thank you for allowing us to schedule our appearance today.

This hearing is boiling down to a discussion of issues in three areas:

1. the negotiation of fair value for over-the-air television signals;
2. group licensing; and
3. DTH satellite carriage and Freesat.

We can introduce a little humility because we aren't in the position to comment fully on all aspects of these issues. We can only speak to those aspects that touch on APTN and our mandate.

This mandate, in the broadest terms, is to create a place in Canadian television for Aboriginal Peoples.

We are not here as the proverbial "tail" to "wag the dog". We recognize that the Commission is faced with some large decisions – the largest is what to do about OTA television broadcasters and the contribution these broadcasters have made as the "cornerstone" of the Canadian broadcasting system.

Our goal today is to explain how the Commission's response to this fundamental matter may have an impact on APTN and our mandate. The

tools that we use to fulfill our mandate may need “recalibration” after this hearing is done.

### **Negotiation of Fair Value**

There are two elements of the negotiation of fair value for OTA signals that are especially relevant to APTN.

First, the payment of compensation for OTA signals could lead to a higher retail cost for basic service. APTN is a part of the basic package, so a higher basic cost could affect us.

In the past, we proposed a smaller, Canadian-only basic service. We believe that such a service continues to make sense. It would clearly be in the interest of consumers, and it would help give priority to the foundation Canadian services that provide a “first level” of service.

If the Commission were to adopt this approach, we strongly encourage that the basic service be offered on contiguous channels. We are pleased to see that in this proceeding BDUs are finally acknowledging that priority placement within the basic band has a “value” to broadcasters. In the past, when APTN requested priority basic channel placement, the Commission was told that channel placement is largely irrelevant and has no value.

We do not think that a smaller basic service requires the detailed re-regulation of cable rates. The Commission has heard in this proceeding that BDUs do not believe that Canadians want a small basic service. If that is the case, then BDUs should be ready to commit to a smaller basic service at a reasonable monthly fee. After all, BDUs are adamant that consumers wish to purchase a much larger package of services. They

must have the data to show that few consumers would switch to a smaller service – so BDU revenues would be protected.

Also, BDUs don't have to worry about changing over every subscriber to the small basic package, as has been suggested. This is a red herring. Only subscribers that want such a package would be affected.

We think that the BDUs are correct: the vast majority of Canadians want services above the basic level of service. But, having a smaller, affordable basic service will provide price guidance to consumers and pride of place to foundation services. We see such a service as furthering the objectives of the *Broadcasting Act* to give priority to Canadian programming services, and on an affordable basis.

The second element of the “signal value” question we want to raise relates to the fact that these negotiations – it has been suggested – could be far reaching. VOD and the use of local avails in US services, for example, are just two parts of the current regulatory debate that could be put “on the table”. We have participated in CRTC proceedings examining these and other issues because APTN has an interest in these issues.

APTN will not be represented in any negotiations between BDUs and the larger broadcast groups; but the outcome of negotiations has the potential, to affect APTN.

We would not suggest that wide ranging negotiations between these two powerful groups should not take place – that would be the case of the tail wagging the dog. Also, in the current “attack ad” environment, any negotiation would be an improvement.

Rather, as the Commission has suggested, any negotiated agreement will have to come back to the Commission for an evaluation of the public interest. Our point is that once the giants have reached an agreement – after the celebrations have died down – we expect that there will be a need to consider some protective or rebalancing measures for smaller players in the system. This should be a public process.

### **Group Licensing**

In the area of group licensing, we wish to speak in terms of the principles that we support.

First, group licensing conditions make good sense. It supports efficiency. It allows a broadcaster to focus resources on areas in which those resources are best spent, and to gain credit for doing so across all of its services.

Second, if group licensing is more efficient, then it should allow broadcasters to make regulatory commitments that are at least comparable, if not greater, than what applies now across all services.

The group licensing model should include Canadian Programming Expenditure requirements across each group, and including OTA services. The different ownership groups do not own the same services. It makes sense, therefore, for group CPE obligations to be set separately for each ownership group, probably through the licence renewal process.

**[Peter:]**

Third, group licensing should support the independent production sector. At APTN, a large part of our programming comes from independent producers. This includes our “higher budget” dramatic programming, which is leading the way in creating opportunities for Aboriginal Peoples.

A key point about these productions is that they are often “multi-broadcaster” projects. Because they are produced by independent producers, different broadcasters have the opportunity to buy-in to the project for different exhibition rights.

To give you an idea of what we are talking about, our current drama programs *Rabbit Fall* and *Cashing In* were both created as co-productions between APTN and other broadcasters. For new productions, APTN is now working on 5 different dramas with different broadcasters representing about \$8 million in new projects featuring significant Aboriginal participation.

We are concerned that if larger broadcasters have less incentive to rely on independent producers, this will lead to fewer opportunities for APTN, and other smaller broadcasters, to participate in these projects. As it stands now, we leverage our role in such productions to ensure meaningful Aboriginal participation. This leads directly to the creation of more, higher-budget productions with Aboriginal participation than would otherwise have happened.

Also, to date, apart from APTN, the independent production sector is the most important sector for Aboriginal Peoples in the broadcasting system.

Policy changes that diminish the role of the independent production sector, will cause unintended harm to Aboriginal Peoples in the broadcasting system – if there is no rebalancing elsewhere.

Fourth, we believe that the Commission should set CPE obligations without including licence fee top ups from the CMF. The CMF is undergoing a “change in focus” – towards supporting the most popular types of programming. That being the case, we don’t think it is right that broadcasters that get to access the most CMF dollars because they offer broadly-based programming should, in effect, have their CPE obligations reduced through the monies they receive from the CMF.

It will be much more transparent to calculate CPE obligations without reference to the CMF.

**[Jean:]**

Lastly, group licensing should continue to place material obligations on large broadcasters to create high-quality programs of “national interest” when Canadians watch television.

From our perspective, dramatic programming and children’s programming are the most important programming categories that benefit from regulatory support.

### **Satellite Distribution**

In the area of satellite distribution, once again, we can only share with you our experience.

APTN has benefited from a kind of Freesat model that we have implemented with the assistance of ExpressVu, and the support of the Northern distribution funding provided by the Department of Canadian Heritage. About four years ago, concluded that it was not feasible for us to continue to maintain our network of terrestrial transmitters across the North, or to upgrade them to digital. Replacing our transmitters with satellite distribution in some communities, and cable distribution in others – without charging residents to receive our service – became the objective.

Admittedly, the economics of APTN's Northern distribution – close to 100 transmitters in small and isolated communities – are not the same as the economics in Southern Canada. Still, our experience may provide some guidance to evaluate the Freesat concept: it seems to be working in the North, but it is a subsidized program.

In our case too, I would point out that our satellite program has not been and will not be offered in cabled communities – ever.

Our second point about satellite distribution is that questions of satellite capacity seem somewhat malleable.

As you are no doubt aware, APTN distributes three different SD feeds (Eastern, Western and Northern) and a distinct HD feed. APTN makes all of our three SD feeds available across Canada using C-band satellite services provided by Shaw Satellite. We are very pleased that Shaw supports our activities in this area through CRTC-approved expenditures on Canadian programming directed to APTN.

We are also very pleased to note that ExpressVu distributes two of our three SD fees to subscribers in the different regions of Canada. APTN also obtains satellite service from ExpressVu for the distribution of our HD feed. A majority of BDUs in addition to ExpressVu now distribute APTN HD, and we are reasonably satisfied with its success.

APTN has been working with Shaw to find ways to offer more of our feeds as well as the HD feed to its subscribers. I do find it ironic that Mr. Shaw has been waiting for so long for a phone call from CTV's owners, because I've been writing and calling to try to speak to him personally about these carriage issues – and about how APTN and Shaw can better work together – for a couple of years now.

Our perspective, therefore, on the question of satellite capacity is that it is a somewhat scarce resource that satellite carriers deal with carefully – as they should. Ultimately, though, we think that it has to be up to the Commission to ensure that all Canadians are properly reflected on DTH services, and that an appropriate use is made of Canada's satellite frequencies, which are a public resource.

Thank you very much for your attention. We would be pleased to answer any questions you may have.