

INDEPENDENT BROADCAST GROUP (IBG) LE GROUPE DE DIFFUSEURS INDÉPENDANTS (GDI)

Filed electronically

April 2, 2009

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

Dear Mr. Morin:

**Re: Reply
Broadcasting Public Notice CRTC 2008-102
Call for comments on a proposed framework for the sale of commercial
advertising in the local availabilities of non-Canadian services**

A. Introduction

1. These are the reply comments of the Independent Broadcast Group (IBG)/ Le groupe de diffuseurs indépendants (GDI) in the above-referenced proceeding. The IBG/GDI is an affiliation of small and independent pay and specialty licensees. Our participants include: Aboriginal Peoples Television Network (APTN); Channel Zero Inc., Ethnic Channels Group Limited, Fairchild Television Ltd., TV5 Québec Canada, Stornoway Communications and the S-VOX Group of Companies.
2. IBC/GDI continues to oppose the sale by broadcasting distribution undertakings (BDUs) of commercial advertising in the local availabilities of non-Canadian services. In this submission we will address the following points:
 - (a) BDUs have not provided the detailed technical, costing and business case information requested by the CRTC to fully evaluate the proposed policy;
 - (b) information provided by BDUs with respect to the supposed benefit to other broadcasters of BDU-driven advertising sales is minimal and not reliable; the proposed financial contribution to be made by BDUs is very

small compared to what broadcasters would provide with access to advertising revenue;

- (c) the data provided by broadcasters and others regarding the impact on the overall advertising market is very compelling - Canadian broadcasters and Canadian programming will lose from the sale of advertising by BDUs in local avails - the viability of some of our largest broadcasters, not to mention the smaller independent voices represented by the IBG/GDI, would be put at risk; and
- (d) there is a clear alternative to what the BDUs have proposed that will ensure the broadcasting system evolves coherently to take advantage of new advertising technologies: Canadian programming services should, and will with CRTC support, negotiate commercial arrangements with BDUs that support advanced advertising, and a fair allocation of risks and rewards.

B. Information Requested by CRTC Not Provided

- 3. Simply put, the BDUs have not provided the detailed information requested by the CRTC to demonstrate that permitting the sale of advertising in non-Canadian services would result in an overall benefit to the broadcasting system. Rather, it is now apparent that BDUs do not have concrete plans to use local avails to develop “new forms of advertising” that will benefit the broadcasting system as a whole. Their clear intention is largely to exploit traditional forms of advertising in non-Canadian services in the near term (say, for the next three to five years). At the same time, they hold out the theoretical possibility that at some indeterminate point in the future the “new forms of advertising” BDUs have promised might materialize.
- 4. The CRTC requested BDUs, expressly, to provide the following information:
 - (i) BDUs’ plans for deployment of upgrades to networks to undertake new forms of advertising including precise costs and timing of upgrades;
 - (ii) terms of the potential business case of the sale of new forms of advertising, including an estimated cost per minute for advertising sales and estimated incremental advertising revenue;
 - (iii) the type of advertising to be inserted and limitations; and
 - (iv) the potential negative impact on television and radio programming undertakings in comparison to potential benefits once the new forms of advertising are in place.

The purpose for this information is to permit the CRTC and interested parties to evaluate, among other things, whether access to local avails on non-Canadian services truly is required at this time to support the technological costs to implement advanced advertising, the validity of the assertions by BDUs of the enhanced value of this advertising, and whether the estimations made by BDUs of the impact on other broadcasters are realistic and supported by good data.

5. The BDUs that have participated in this hearing have provided almost no concrete information, and the information that has been provided is not supported by detailed analysis and assumptions.
6. BDUs have provided mere “ballpark” figures of the cost to implement digital, targeted advertising. Obviously, it is in the interests of the BDUs to inflate these costs for the purposes of their submission to the CRTC to support the case that BDUs require access to local avails to support the technological investment. In any event, almost no information is provided to support the costs claimed by those BDUs that put forward a total estimated amount (Rogers and Shaw), both of which claimed capital costs in excess of \$100 million based on investments made over a period of years. In fact, among the BDUs responding to the Commission’s public notice, only those two BDUs even put forward a *suggestion* as to the cost of network upgrades to support advanced forms of advertising. The remainder, including Cogeco, Quebecor, MTS Allstream, Bell and Bragg, didn’t even suggest a possible cost.
7. Similarly, the BDUs do not present any coherent business plan for the use of local avails for advanced advertising, as requested by the CRTC. Instead, Cogeco states, for example, that:

[W]e have simply not reached the point where we can provide specific answers to the Commission on a preferred scenario for the more appropriate forms of advertising, the technical deployments or upgrades required, the cost of such deployments or upgrades or a workable business model.

Bragg states:

Bragg is not in a position to provide specific details with regard to the business case for new forms of advertising or details regarding the estimated total value of advertising in the local availabilities under this proposal.

Bell states:

The Companies are unaware of any recent research that addresses the Commission’s request for details regarding

the potential business case specific to new forms of advertising in the avails.

CCSA states:

The central problem we face in describing the business case is that CCSA Members have no experience with television advertising sales in these small markets: it is impossible to predict, with any reliability, television advertising spot rates or inventory take-up rates in those markets.

Quebecor states:

[I]l est prématuré pour Vidéotron d'élaborer un plan d'affaires dans le marché du Québec.

Even Rogers, which has gone further than other BDUs, provides only minimal concrete information. Rogers states that it estimates that its potential avails revenue would be approximately \$20 million per year. No concrete information is provided on how this figure is arrived at. On closer inspection, Rogers' calculations are speculative in nature - and not the kind of detailed business case one would expect from a company that is seriously considering making a more than \$100 million investment!

8. Information provided concerning the type of targeted advertising to be provided is similarly minimal. It is actually quite apparent that BDUs have no firm plans to roll out advanced targeted advertising in the near future. Rather, the Rogers submission makes it quite clear that, at most, even with a change in policy to permit the use of local avails, BDUs are focused on providing enhanced interactive advertising based on the Enhanced TV Binary Interchange Format (EBIF) standard - which has already been developed for use within existing cable infrastructure. In other words, this kind of advertising is being developed for the express purpose of avoiding the network wide upgrades that fully-addressable targeted advertising might possibly require in the longer term.¹
9. Rogers, for example, refers to the kind of interactive, advanced targeted advertising that the Commission had in mind in initiating this proceeding as "Phase 3 - Fully Addressable Targeted Advertising". This kind of advertising - the type that initiated this proceeding - is not yet in serious development. Rogers notes that it must "overcome significant scaling issues" and that "there are major challenges associated with collecting data at the individual household level (and in the future, individuals within the household) on a real-

¹ See *Multichannel News*, "Cable (Finally) to Start Delivering ITV to Millions: Thank EBIF not OCAP". (March 2, 2009).

time basis across millions of viewers...”. Indeed, there are significant challenges to be faced - and no BDU has suggested that the challenges will be faced within any particular specific time frame.

10. Not the least among these challenges is how subscriber information will be collected, processed and sold while protecting the privacy of individual subscribers. In many ways, this issue is the “elephant in the room” that none of the BDUs acknowledge. The fact that BDUs have not done so - and have not, for example, indicated what proportion of subscribers might “opt out” of the opportunity from being targeted by their cable or DTH service provider with advanced advertising - indicates that this kind of advertising is not imminent. The real objective for BDUs is to obtain access to traditional forms of advertising on local avails based on the promise of unspecified future technology.
11. The overall picture, therefore, that emerges is that there is no connection between the use of local avails in non-Canadian programming services, and any specific plans that any BDU might have to implement advanced forms of advertising. BDUs wish to sell advertising in non-Canadian services because it would be a new source of income for them. But, BDUs don’t want to be tied to providing the type of interactive advanced advertising they had indicated previously is possible because they have no apparent concrete plans to roll out that kind of technology.
12. In both *Public Notice CRTC 2008-100* and in *Public Notice CRTC 2008-102*, the CRTC clearly stated that it did not possess the necessary information required to assess the costs, potential revenues, time lines, technological infrastructure or business case associated with the sale by BDUs of “new forms of advertising” in local avails. The CRTC placed a clear onus on BDUs to produce concrete data and information regarding: what is meant by “new forms of advertising”, the state of digital technology, deployment plans, the cost of system upgrades and the time line for developing these “new forms of advertising”. The BDUs have clearly failed to provide this base line information despite the CRTC’s direct requirement that they do so.
13. It would be imprudent to create a new regulatory regime for local avails based on the “promise” of new technology, when so little information has been provided to substantiate that promise.

C. Benefits to the System

14. Information provided by BDUs with respect to the overall benefits to other broadcasters and to the broadcasting system to be derived through the sale of local avails is also scarce.
15. As we understand it, there are two possible benefits. First, it is suggested, that BDUs will contribute 6% of the revenue they generate from the sale of

local avails and that this will result in a net increase to funding to Canadian programming. Second, it is suggested that implementing advanced advertising will help to either increase - or to preserve (it is not clear which) - the value of broadcasting inventory overall, and that all broadcasters will benefit from this increased value.

16. With respect to the 6% contribution to Canadian programming (through the BDUs' regulated contribution), it is notable that none of the BDUs, with the exception of Rogers, quantify that contribution. They do not do so because, according to them, it is impossible for them to provide even a rudimentary business plan. It is also clear when concrete numbers are put forward that a mere 6% of revenue is not nearly sufficient. The amount specified by Rogers, for example, as the total annual contribution by all BDUs (of "close" to \$3 million per year), would amount to the cost of producing a single Canadian Movie of the Week! And even this amount is overstated because cable BDUs are permitted to allocate 2% of their 6% contribution to their own cable programming services.
17. It is not surprising, therefore, that BDUs do not take into account the impact of the sale of local avails in non-Canadian services on Canadian broadcasters. It must be recognized, in a competitive advertising market, that the influx of new advertising inventory into the Canadian market will have an impact on the broadcasters that already occupy that market.
18. Every advertising dollar that is diverted from a Canadian broadcaster has a direct and immediate impact on the level of support within the broadcasting system to Canadian programming. According to the CRTC's financial summaries, for the broadcast year ended August 31, 2008, pay, pay-per-view, specialty and video-on-demand services together spent approximately 34% of their gross revenue on Canadian programming. Many of these services are, of course, subject to conditions of licence that require them to spend 40% and upwards of their gross revenue on Canadian programming. Conventional television services also spend significantly on Canadian programming. Close to 29% of the revenue of conventional television services (not including CBC) was spent on Canadian programming in the 2008 broadcast year according to the CRTC's financial summaries. The 6% of revenue proposed to be contributed by BDUs pales in comparison.
19. At its most fundamental level, every advertising dollar that is diverted from a Canadian broadcaster to a BDU can be expected to result in a 23 to 28% net loss in the resources made available within the system to the production of Canadian programming. None of the BDUs have addressed this basic issue. Moreover, this funding would be diverted from the entities that have the direct responsibility to pay for Canadian programming: Canadian broadcasters; and transferred to funding agencies, or to the BDUs own programming channels (that often function as tools for self-promotion rather than alternative community expression).

20. The only possible factor that might offset this overall loss to the system is the theoretical “lift”, to use Rogers’ term, on the value of existing advertising inventory that might arise through the implementation of advanced advertising. In this area only one BDU, Rogers, has made any attempt to quantify what this might mean - and this effort amounts to mere conjecture. Rogers states, with no supporting data, that advanced advertising might provide, for example, a “20% lift to just 15% of the ad inventory”, thus resulting in \$100 million more in additional advertising revenue within the system.
21. This suggested “lift” to increase overall advertising revenue is completely misleading and is based on pure speculation. The assumed “lift” fails to account for other factors:
- (i) the “lift” to some advertising inventory does not guarantee that “non-advanced” advertising inventory (for example radio advertising, and advertising on television services that are not able to negotiate access to BDU systems on commercially reasonable terms) will retain its value; the presence of some advanced advertising inventory, particularly on popular non-Canadian services, can be expected to exert downward pressure on “non-advanced” Canadian advertising inventory;
 - (ii) BDUs assume that the benefit of new advertising inventory will accrue to the broadcaster - in fact, it can be expected that enabling advanced advertising through BDU infrastructure will result in additional costs to broadcasters and advertisers - the advertising will be more expensive because it costs more to deliver to the target audience; it is not at all clear how much additional “clear” revenue for the broadcasting system will be generated after infrastructure, data and other transaction costs are paid;
 - (iii) third, the BDUs have provided no timeframe during which the supposed “lift” will occur; if the “lift” takes place only upon the roll out of Phase 3 of the advanced advertising model, then it may well be a decade until this kind of benefit is experienced - and projections of benefits 10 years down the road can hardly be relied upon to make policy now;
 - (iv) fourth, the “lift” that BDUs think will arise from targeted advertising is not reflected in the experience of Canada specialty broadcasters that already target the kind of demographic market segments that BDUs intend to sell to advertisers with advanced advertising; in other words, the historical experience with “targeted” programming services does not support BDUs projections for “targeted” advertising; and

- (v) lastly, the “lift” does not account for structural changes taking place within the system as integrated BDUs become even more powerful in the advertising market, with packaging, promotion and branding power, and independent broadcasters become less powerful; in this setting it is very likely that increases in advertising value will be enjoyed by the largest, integrated players - the BDUs.

- 22. The suggestion, therefore, that implementing advanced advertising in the manner suggested by the BDUs (starting with advertising on non-Canadian services) will lead to increased advertising revenue within the broadcasting system is not supported by the information provided by the BDUs. They have failed to take into account numerous factors that weigh against an overall net benefit, or the actual distribution of any such benefit within the system.
- 23. While it is likely that the sale of local avails by BDUs will result in more revenue to BDUs, it is highly unlikely that the value of advertising sold within the entire broadcasting system will increase in the kind of magnitude suggested by the BDUs, if at all.

D. The Advertising Market is Largely Fixed - It's a Net Sum Game

- 24. In comparison to the minimal information on the advertising market provided by BDUs, the submissions from all categories of broadcaster, from producers, artists, public policy groups and others show that the supposed “new forms of advertising” proposed by the BDUs for non-Canadian local avails are highly unlikely to result in incremental new advertising revenue to the broadcasting system. Instead, it is most likely that BDU advertising revenue will be earned at the expense of established broadcasting advertising revenue.
- 25. The principal flaw with the BDU analysis of the advertising market is that it supposes that advertisers have unlimited resources and will spend additional dollars on advertising that is perceived to offer greater value.
- 26. In fact, the actual total advertising market, as indicated by the detailed information filed by CTV and CanWest, CBC, Pelmorex and others, is remarkably static. Moreover, advertising within the broadcasting sector has also been relatively stable as a percentage of total advertising expenditures, while Internet advertising has made some inroads on broadcast advertising in the most recent years.
- 27. What has not been static is the share of advertising between different forms of broadcasting. In Canada, advertising expenditures (on a percentage basis) have slowly shifted from conventional services to specialty services.
- 28. The point to be taken from this phenomenon is that the growth of the specialty broadcasting sector in Canada, and the multiplication of new radio services

over the past decade or so, have not resulted in an increased advertising pie within the broadcasting sector when advertising expenditures in broadcasting are measured as a percentage of all advertising expenditures. Rather, the tendency has been for one form of broadcast advertising - for example advertising on Canadian specialty services - to make headway at the expense of the traditional conventional television broadcasting sector.

29. Based on this past experience, it can be expected that the introduction of new forms of advanced advertising within the broadcasting sector will, similarly, not result in a larger advertising pie. Rather, it will result in the shift of advertising spending from traditional broadcast advertising to more advanced broadcast advertising. If, therefore, the leaders in advanced broadcast advertising are the BDUs, acting on their own and promoting their own local avails, then it follows that advertising revenue will be diverted from Canadian broadcasters to BDUs.
30. The Commission need only look to the experience of advertising within the specialty broadcasting sector to gain an appreciation of what impact new forms of targeted advertising will have within the system. Specialty broadcasters already reach audiences that are targeted and segregated along the lines desired by advertisers. Advertisers have, it is true, seen the value in reaching these segregated audiences and the size of the specialty broadcasting sector is now nearing 7% of the total broadcast advertising market after only ten years.
31. But, it should be noted, the cost of advertising on a specialty service is not higher than the cost of advertising on a more broadly based conventional television service. Advertisers do not necessarily pay a premium to reach a segregated audience. But, they see value in dividing their advertising revenue between different services in order to reach different audiences.
32. Similarly, it can be expected that the introduction of more targeted forms of advertising will not necessarily result in a higher per spot cost to the advertiser. Rather, the value to the advertiser in reaching that particular audience will remain the same. But, a new mechanism to reach that audience will have been created and the advertising market will be further fragmented.
33. This analysis may be different for truly interactive or transactional advertising that allows a viewer to pull information or order services directly through the television interface. In that case, it may well be that an advertiser is prepared to pay more in order to access its target audience on an interactive basis. But, based on past experience, this will not result in a larger advertising pie, but only more intensive diversion of advertising dollars from traditional forms of broadcast advertising.
34. When the characteristics of the actual advertising market are taken into account, it can be seen that the sale by BDUs of local avails in non-Canadian programming services is very likely to have an immediate detrimental impact

on Canadian broadcasters. More advertising inventory will have been introduced into the broadcasting system. Total advertising expenditures in broadcasting can be expected to remain at close to historic levels. But, revenue will be diverted from Canadian broadcasters to BDUs.

35. BDUs have suggested that the overall impact of the sale of advertising in local avails is likely to be small in comparison to the size of the overall broadcast advertising market. Based on the actual results of the Canadian advertising market in 2007/2008, and detailed assumptions regarding the allocation of value to local avails, it is estimated in the Armstrong Consulting report included with the CTV and CanWest joint submission that the actual diversion of monies from Canadian broadcasters to non-Canadian local avails in this period would have been in the neighbourhood of \$73.3 to \$81.4 million per year. The report prepared by the Canadian Association of Broadcasters estimated that the total impact would be a diversion of approximately \$64.3 million per year, based on a more conservative methodology that followed the approach that was largely accepted by the CRTC in the past.
36. Both of these estimates, it is to be noted, are based on detailed analyses of the actual performance of broadcasting services within the Canadian advertising market. The BDUs have provided no information regarding their evaluation of the impact of the sale of local avails on the Canadian advertising market. The only BDU that has even provided an estimate of advertising sales is Rogers and all that Rogers has done is to state, without supporting information or detailing assumptions, the total revenue it believes it could generate from the sale of local avails.
37. There is no basis, therefore, on which the CRTC or any parties to this proceeding can accept the estimate provided by Rogers. As we stated above, it would be imprudent to establish a new regulatory regime based on such scant information.
38. The impact on Canadian broadcasters of a loss in total revenue of between \$64 and \$81 million each year will be significant. CanWest and CTV point out, from their vantage point as the operators of conventional services, that even relatively small changes to their advertising revenue over the 2008 broadcasting year would have made a significant difference to the profitability of the conventional sector during that period. There is no doubt that the conventional sector is especially exposed to further fragmentation in the market for advertising at this time.
39. The IBG/GDI is also aware of the potential impact that the influx of new advertising inventory is likely to have on independent specialty services that rely on advertising targeted to niche audiences. In this respect, the Commission previously stated in reviewing the CCTA proposal to use local avails that it was particularly concerned about the potential impact that an influx of new advertising inventory on non-Canadian “specialty” style broadcasters

would have on the more fragile Category 2 broadcasting services licensed by the CRTC.

40. IBG/GDI believes that this should continue to be a concern for the Commission. The Commission should take into account, however, not just Category 2 services, but rather the broader group of independently-owned and operated programming services represented by IBG/GDI.
41. IBG/GDI represents services that, by their very nature, are focused on providing specialized programming and, as a consequence, do not enjoy the level of advertising revenue that more broadly-based, and longer-established services enjoy. Comparatively small declines in advertising revenue within this group are likely to have a real impact on operations and the viability of these services. In addition, as independent services, members of our group are not in the same position as larger broadcast groups to sell advertising opportunities across multiple platforms and media.
42. IBG/GDI's members represent independent voices within our broadcasting system and contribute important editorial and programming diversity on that basis. The proposal to permit BDUs to sell advertising within the local avails of non-Canadian services will shift resources within the system to integrated and consolidated media ownership groups at the expense of smaller, independent undertakings, such as those represented by IBG/GDI.
43. In this regard, among other factors that the Commission should consider, is the fact that most non-Canadian programming services enjoy a privileged position in the broadcasting system due to the time frame within which they were authorized than do many new entrants and independent services. These non-Canadian services are frequently packaged on high penetration, analog tiers. In comparison, new Canadian specialty and pay services since 2000 have had to enter the market as digital only, fully discretionary services, without the huge marketing advantage that early entrants to the system enjoyed. Non-Canadian services did not earn their privileged position. Rather, that position arises from the fact that they were selected to act as packaging partners to boost the attractiveness of new, high penetration analog tiers.
44. It is not, IBG/GDI believes, fair to smaller, independent Canadian services, including digital only Category 1 and Category 2 services, to extend the distribution and packaging advantage that many of these non-Canadian services already enjoy into the advertising sector. This will only further disadvantage Canadian digital services that cannot rely on high penetration levels arising from legacy analog distribution.
45. The competitive impact of advertising sales on non-Canadian services is also a particular concern for Canadian third-language ethnic broadcasters. As we have pointed out in our first submission in this proceeding, Canadian ethnic programming services compete directly with BDUs to acquire the rights to

distribute third-language programming services. The ability of a Canadian broadcaster to offer advertising within third-language services is the most significant differentiating factor between independent Canadian broadcasters and BDUs when negotiating with programming rights owners to bring third-language programming into Canada. Allowing BDUs to sell advertising in third-language services will have an immediate impact on the ability of third-language broadcasters to attract new programming partners.

46. It is noteworthy that BDUs do not provide any analysis of the impact of the sale of local avails on advertising in different types of services, including digital-only Category 1 and 2 services and third-language services. In our view, this is because small declines in advertising revenue due to direct competition from non-Canadian specialty services can be expected to have a disproportionately large impact on smaller independent services, such as many Category 1 and 2 services, and on the intense competition for third-language programming rights.

E. The Alternative

47. IBG/GDI's opposition to the use of local avails in non-Canadian services should not be interpreted as opposition to the development of advanced forms of advertising in Canada. The contrary is true: IBG/GDI believes that advanced advertising should be implemented - and there is every reason to believe that it will be implemented - through commercial negotiations between Canadian broadcasters and Canadian BDUs, carried on in an open and even handed manner with the assistance of the CRTC, if necessary.
48. Canadian broadcasters and advertisers are prepared to work with BDUs to develop advanced advertising in Canada in a way that is consistent with Canada's broadcasting environment and respects Canadian standards surrounding the protection of private consumer data. There is a responsive advertising market in Canada, and that market is fully capable of adopting new technologies and putting business arrangements into place through negotiations.
49. The true market solution to advanced advertising is already present in the existing environment. BDUs must work with Canadian broadcasters to develop a business model that leverages the rights and input of all players in the programming value chain: the advertiser, the programmer, and the interactive platform provider.
50. If the promise of the new technology is realized in the future (something that is still, evidently, a long way off in its more advanced forms), then BDUs will be well positioned to offer access to that technology and the related consumer data (assuming that privacy concerns can be adequately addressed) on a service basis. If the value offered by the new technology is sufficient, then the market will provide incentive to BDUs to make the necessary investments. It is

clear, for example, that in the U.S. the service-based model is a key part of the cable industry's thinking.²

51. In comparison, if cable advertising in popular non-Canadian services becomes the starting place for the implementation of advanced advertising, then the power balance will, at the outset, be heavily skewed to favour the BDUs. BDUs will compete directly with Canadian programmers in the sale of advertising inventory and will have a clear motivation to prefer that inventory, and the services in which the inventory is contained, over the potential inventory that Canadian programmers could offer. Non-Canadian programming services would, as a result, become the most valued advertising platform. This turns the Canadian advertising market on its head.
52. The best way to ensure that this does not happen is to start with a system that places advertising in Canadian programming services ahead of advertising in U.S. services. The primary objective should be for BDUs to develop business models with Canadian programmers that work in the Canadian market - i.e. to enhance the value of Canadian advertising inventory.
53. Under an approach that requires BDUs to work with Canadian broadcasters to implement advanced advertising, BDUs will have every commercial incentive to work with Canadian broadcasters - including, of course, the Canadian broadcasting services that BDUs or their sister companies own. If BDUs develop local avails in non-Canadian services as the starting point for advanced advertising, then that same incentive will simply not be present.
54. Canadian broadcasters in this proceeding have indicated that advanced advertising can be implemented through negotiated arrangements. IBG/GDI made that case in our initial submission. CTV/CanWest also put the matter succinctly:

We are willing to work in cooperation with BDUs to develop interactive and targeted digital advertising, in a manner that is mutually beneficial to both parties, but in order to do this, broadcasters, not BDUs, must control access to that inventory.

As did CBC:

² One comment, reported in USA Today is representative of the tone of the discussion in the U.S.:

Canoe Ventures will not sell ads, says spokeswoman Vicki Lins. Rather it will sell the interactive technology through its members to programmers such as ESPN and CBS and to ad agencies. They then can use it with buyers interested in interactive ads.

USA Today, "Interactive Ads are Clicking with Viewers" (November 7, 2008).

In a broadcasting environment characterized by rising costs, declining revenues and a global economic crisis, Canadian broadcasters have every incentive to work with BDUs to exploit any possible new revenue opportunities associated with VOD or any other innovative technology. There is neither a need nor a sound policy reason to permit BDUs to secure such opportunities for themselves alone.

55. It is notable that in the U.S., cable companies clearly understand that the advanced advertising technology they have developed is a tool that can be offered as a service to U.S. broadcasters and advertisers to add value within their system. In Canada, it is regrettable that BDUs see advanced advertising as an opportunity primarily as a means to advance their own position in the broadcasting system in relation to advertising in non-Canadian services at the expense of Canadian broadcasters and, ultimately, Canadian programming.
56. IBG/GDI does not agree that there is any business or policy reason to accept that self-defeating approach.

F. Promotion of Canadian Services

57. One aspect of the Commission's proposed policy that could bear closer examination is the proposal that BDUs make a more concerted effort to promote non-affiliated Canadian services and programs using local avails in non-Canadian services. The use of local avails by BDUs for this purpose - as a quid pro quo for the very valuable promotion of their own broadcasting and telecommunications activities - is now well established.
58. It is clear, however, that BDUs do not make these promotional opportunities available to Canadian programming services "at cost", as required by the CRTC. It is for this reason, IBG/GDI understands, that the CRTC has proposed that BDUs be required to offer promotional opportunities to broadcasters at no cost.
59. IBG/GDI supports this initiative. At the very least, the CRTC should step in to prevent the current abuses of the CRTC's rules that have developed within the system. The fact is that promotional opportunities on local avails for Canadian services are simply not affordable for most Canadian services. Moreover, the services are packaged and sold in such a way that they are made even more inaccessible.
60. For example, some BDUs require that promotional opportunities be purchased in 6 month "runs". Other BDUs will not allow promotional spots to be purchased by programming services that are not distributed on their systems: thus, it is impossible for a smaller service that is not distributed by a BDU to reach out to subscribers even to let them know that they exist.

61. This proceeding has highlighted that the CRTC's policy has been distorted, and that serious deficiencies exist in the way in which local avails are currently used to promote Canadian programming services.
62. We believe it would be appropriate for the CRTC to initiate a proceeding focused specifically on this issue: What are the BDUs' actual "costs" associated with placing ads in local avails? How are these "costs" passed on to Canadian programmers? Are the terms and conditions governing the use of local avails preventing fair access to those avails by smaller non-affiliated programming services? A focused examination of these questions would go a long way to addressing the abuses that have become commonplace in the sale (instead of access at cost) and allocation of local avails to Canadian programming services.

G. Conclusion

63. In *Public Notice CRTC 2008-102* the CRTC placed a clear onus on BDUs to provide detailed information that would support their contention that access to local avails in non-Canadian services will lead to the implementation of advanced advertising technologies and ultimately create significant net benefits to the Canadian broadcasting system. The BDUs have not responded with the kind of substantial information that the Commission requested and that should be expected for such a significant change to the structure of the broadcasting system.
64. Instead, it is apparent that most BDUs have no specific plans to implement advanced advertising technologies in the near term, and some have no plans to do so at all, either because their technology will not support it, or because it is not economic to do so in small systems. BDUs intend to use any increased flexibility in the use of local avails primarily to sell traditional advertising in direct competition with, and to the detriment of, Canadian broadcasters. At some point in the distant future, it seems, BDUs *might* take steps to implement advanced forms of advertising.
65. The benefit of this form of advertising to the system as whole is not developed by the BDUs. The suggestion is made that all broadcasters would necessarily benefit from advanced advertising technologies, but no effort is made to describe *how* this would occur.
66. What is clear, though, is that if the BDUs occupy the dominant position in the development of these advertising opportunities to their own benefit, they will also be in the dominant position to dictate the terms on which Canadian programmers might access these advanced forms of advertising. It would be important for the Commission and other participants in this proceeding to see a detailed business case supporting the claimed advantages of advanced advertising in order to test BDU assumptions - and hold BDUs to account for the benefits that they will draw through the sale of advertising on non-Canadian services. However, no such business case has been put forward.

67. In addition to failing to offer detailed business scenarios and costing information to support their case, the BDUs have not adequately addressed the harm that would be caused by the introduction of a flood of new inventory on established non-Canadian services that already enjoy a privileged position in the broadcasting system. Conservatively, it is estimated that the direct impact on advertising revenue to Canadian broadcasters will amount to more than \$60 million each year. This level of impact is sufficient, as broadcasters have pointed out in this proceeding, to undermine the viability of conventional broadcasters and, IBG/GDI believes, many smaller independent digital Category 1 and 2 services that are sensitive to comparatively small declines in advertising revenue. And given the current economic climate, broadcasters are already faced with significant market challenges.
68. There is no evidentiary basis to the assertion that advanced advertising will somehow “grow the advertising pie” to the benefit of all in the broadcasting system. Rather, the historic record is very clear that advertising expenditures rise and fall as a function of total corporate revenue (i.e. economic activity overall), and that advances in one advertising sector occur at the expense of other sectors. In this instance, there is little doubt that the introduction of new advertising inventory on non-Canadian programming services will draw advertisers away from Canadian programming services.
69. In the most direct terms, the 6% contribution that BDUs propose to make to support Canadian programming initiatives, pales in comparison to the nearly 35% contribution that Canadian programmers made to Canadian programming from the very same stream of revenue. There is clearly no net benefit to the system based on this kind of math.
70. There is a market-based alternative to what the BDUs have proposed. The alternative is for Canadian programming services and BDUs to enter into commercial arrangements to exploit new forms of advertising on reasonable commercial terms. Canadian broadcasters are willing to work towards such arrangements. The CRTC should, we believe, ensure that BDUs work first with Canadian programmers to realize the benefits of advanced advertising to benefit the broadcasting system, before even considering the use of that technology to the advantage of non-Canadian services.
71. IBG/GDI is pleased that this proceeding has brought into focus BDUs’ current practices surrounding the use of local avails to promote Canadian programming services. It is now clear that the Commission’s policies limiting BDUs’ charges for local avails to cost recovery have not been respected for some time. IBG/GDI submits that it would be appropriate for the CRTC to look specifically at the practices of BDUs in offering local avails to promote Canadian programming services to ensure that the CRTC’s regulatory requires are fully respected.

72. In light of the above, we urge the Commission not to amend its local avails policy.
73. IBG/GDI appreciates the opportunity to file these reply comments.

Yours very truly,

[filed electronically]

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