



Aboriginal Peoples
Television Network

Sharing our stories with all Canadians.

FILED ELECTRONICALLY

December 5, 2008

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

Dear Mr. Morin:

Re: Canadian Broadcasting in New Media
Broadcasting Notice of Public Hearing CRTC 2008-11

1. Aboriginal Peoples Television Network Incorporated (“APTN”) is Canada’s national Aboriginal television broadcasting network. APTN provides a first-level of service to Canada’s Aboriginal Peoples and reflects the experiences of Aboriginal Peoples to broader Canadian audiences. APTN is controlled, managed and operated, at every level, by Aboriginal Peoples. We bring the perspectives of Aboriginal Peoples to all that we do. It is with these perspectives that we present these comments on Canadian broadcasting in new media.
2. APTN requests to appear at the public hearing in connection with this matter. We believe that we offer a unique perspective on new media broadcasting services, especially with respect to the use of these services in some of Canada’s most remote and underserved communities, and the impact of these services on Aboriginal expression.

Executive Summary

3. The following is a brief overview of our comments:
 - (i) *Defining broadcasting in new media* – The definition of “new media” for regulatory purposes needs to reflect all of the elements of the broadcasting system as set out in the *Broadcasting Act*. According to the Act, the broadcasting system is comprised of public, private and community elements. A regulatory focus only

on professionally produced or commercially oriented programming does not, in our view, adequately reflect the Commission's mandate.

(ii) *Impact of New Media on the Broadcasting System* – The broadcasting industry is at the beginning of the transition from single platform broadcasting to multiple platform broadcasting. New media broadcasting has not yet had a significant impact on our ability to fulfil our core mandate. But, we expect that it will start to have that impact over the next five years. All broadcasters must be positioned within this time frame to exploit all distribution platforms for programming.

(iii) *Are Regulatory Incentives or Measures Desirable?* – Appropriate regulation and supervision of new media within the broadcasting system is not only desirable – it is the Commission's duty under section 5(1) of the Broadcasting Act. In our view, the Commission should focus on the following regulatory projects:

- Support broadcasters' new media initiatives as a part of their role in the broadcasting system;
- Continue to support new media production as a part of the broadcasting system, as is currently being done with the independent production funds and comparable initiatives;
- Prevent by-pass of the regulated system by Canadian broadcasting services – all broadcasters have a duty to contribute in an appropriate manner to the creation and presentation of Canadian programming;
- Prevent by-pass of the Canadian system by non-Canadian broadcasting services – the Canadian broadcasting system must be effectively owned and controlled by Canadians.

A range of regulatory mechanisms are available to assist in these projects.

(iv) *Issues concerning access to Canadian content in new media* – The CRTC should continue to monitor the access that Canadians in all regions of the country have to

high speed Internet access services. While high speed Internet access is available and continues to be rolled out in many remote and underserved communities, there is a real concern that the available bandwidth may not support standard broadband services.

Community new media broadcasters and content producers need to be fully engaged in the production and distribution of new media content. These organizations are well placed to produce and deliver high value content, reflecting Canadian diversity to new media platforms.

- (v) *Appropriateness of new media exemption orders* – The wide exemption order for Internet distributed services continues to be appropriate for services that do not seek regulatory support of any kind, or that do not play a significant role in the broadcasting system.

For example, APTN supports reserving new media funding generated by the broadcasting system to licensed broadcasters. APTN also believes that the Commission should carefully monitor the activities of existing licensed broadcasters in new media and the development of Internet-based services that are delivered by BDUs over their own networks. In the longer term, as technology develops, we believe that it will be possible for new media broadcasting to be regulated in a way that contributes directly to the Canadian broadcasting system.

The following discussion provides our rationale and supporting information with respect to the points summarized above. Our discussion follows the same order and headings as outlined above, which also reflects the CRTC's *Notice of Public Hearing* in this matter.

Defining Broadcasting in New Media

4. The CRTC has asked whether it is first necessary to define what is meant by “new media broadcasting” in order to frame the discussion in this proceeding. In reviewing its previous rulings with respect to new media, the Commission notes that it has held that the

definition should be applied in a “technologically neutral way”, and that CRTC is not concerned with “user generated” content. APTN supports both of these positions.

5. APTN believes that the definition of “new media broadcasting” for regulatory purposes needs to reflect our objectives for broadcasting, as reflected in the express terms of the broadcasting policy for Canada set out in the *Broadcasting Act*. The starting point for most regulatory discussions about new media broadcasting should be the provisions of the *Broadcasting Act*.
6. There is undoubtedly a valid concern that any effort to regulate “new media” should not be overbroad. The Internet is an incredible tool for empowering the individual – given the vast content that is available literally at the push of a few buttons. It would be undesirable to restrict the content that is available to Canadians. Also, it would be undesirable for the Commission to attempt to regulate the “un-regulatable” on the Internet. Not only would the effort be a waste of resources, but it could affect the integrity of the overall regulatory framework for broadcasting.
7. APTN believes that guidance can be found within the framework in the *Broadcasting Act* to guard against overbroad regulation. To help avoid these undesirable outcomes. We turn, in particular, to subsection 3(1)(b) of the Act which provides that:

(b) the Canadian broadcasting system, operating primarily in the English and French languages and comprising public, private and community elements, makes use of radio frequencies that are public property and provides, through its programming, a public service essential to the maintenance and enhancement of national identity and cultural sovereignty;

Quite apart from the very broad definition for “broadcasting” set out in the *Broadcasting Act*, it is apparent that the focus in the Act is on the system as a whole and not on discrete technological elements within the system. From a regulatory viewpoint, therefore, we believe that the CRTC should be looking at the integration of new media within the broadcasting system as a whole – and not at the regulation of new media broadcasting as its own, distinct, unique industry in its own right.

8. This may be a somewhat philosophical point, but we believe that the Commission's focus should be on how the broadcasting system helps to fulfill broadcasting policy objectives – when new media broadcasting is included within that system. In other words, we do not need to start “from ground zero” in considering how new media broadcasting relates to “traditional” broadcasting. The existing elements of the broadcasting system are already engaged in new media broadcasting and, presumably, should be exploiting the opportunities of that sector in a way that advances Canadian broadcasting policy objectives.
9. In more practical terms, the Commission has suggested as one possibility that it should be primarily concerned with new media broadcasting content that consists of “professionally produced” or “commercially oriented” programming. We do not believe that this narrow focus would adequately reflect the Commission's mandate. The CRTC must ensure that all elements of the broadcasting system, including the public and community elements, receive appropriate attention from the regulator.
10. The Commission's focus on new media should start with the existing broadcasting system, and how that system is exploiting and being transformed by new means of communication – particularly via the Internet. In other words, the Commission should look primarily at the activities of licensed Canadian broadcasters in new media environments and ensure that these broadcasters have the resources and regulatory support to thrive.

Impact of New Media on the Broadcasting System

11. For APTN, specifically, the impact of “new media” is just beginning to be felt. We exploit new media to:
 - (i) expand the reach of our proprietary programming through our network website;
 - (ii) provide an on-line archive for programming by and about Aboriginal Peoples, especially for Aboriginal-language programming;

- (iii) encourage a parallel Aboriginal on-line production community for emerging producers through a separate Internet portal targeted at that community; and
 - (iv) promote our network and build a community of interest in an on-line environment.
12. We are currently exploiting Internet distribution opportunities for our news and public affairs programming. Because we own this programming – it is produced in house – we possess the necessary rights to place it on-line. Moreover, news and current affairs programming has been well suited for Internet distribution since it is primarily information based, rather than based on high audio-visual content values.
13. Increasingly, it will be imperative for all broadcasters to exploit multiple media windows for content. Also, transmission quality is improving markedly on the Internet. The Internet now delivers a near-to-TV quality experience that is appropriate for programming with greater audio-visual impact than news and public affairs programming.
14. We fully expect that within the near future, APTN will be repackaging our existing online content (news and public affairs programming, primarily) to make it more accessible for download – through, for example, creating news clips and summaries and current affairs segments. We have found that some of our viewers have already been doing this for us – and our programming finds its way, without our active promotion, onto generic video enabled websites like Youtube and Facebook. We believe that our mandate is furthered by very wide distribution of our news and public affairs programming so we are motivated to encourage the multiplication of our content by users across web platforms.
15. Until now, it has not been practical, primarily for economic reasons, for APTN to acquire Internet distribution rights for the programming that we acquire from independent producers and third party distributors, such as our dramatic programming. This is, however, obviously a natural outlet for us to keep current with our audience. At this point, the primary impediment to broader on-line distribution of this programming is the

negotiation of affordable and fair compensation arrangements with programming suppliers.

16. In some instances, producers have the experience, motivation and resources to launch their own on-line initiatives in connection with their programming content. APTN has supported such initiatives in the past (for example, in connection with the children's program, *Anash and the Legacy of the Sun-Rock* and the related award winning website – anashinteractive.com). Since APTN is not focused primarily by commercial objectives, it is not necessary for APTN itself to necessarily take the lead in new media initiatives. The objective is to expand the reach and impact of Aboriginal expression by whatever means are available.
17. Our new media initiatives reflect these broader cultural objectives. For example, our website, digitaldrum.ca, is a kind of on-line meeting place for Aboriginal cultural expression (in English and French, and featuring audio-visual content in Aboriginal languages). Digitaldrum serves both as an archive for APTN's own programming, and programming contributed to APTN, and as an open forum for creators. .
18. Digitaldrum is very much a starting point for new media initiatives. We are currently developing a companion on-line service (digitalnations.ca), which will be focused on the exchange of audio-visual content among users and continuing to build an a on-line Aboriginal creative community.
19. While commercial considerations are not the primary motivation for our on-line activities, we are, of course, fully aware of the need to be relevant, informative and entertaining for our audience. This is especially the case as we endeavour to serve the youth audience.
20. Aboriginal youth rely more than the older population on the Internet as their primary source for entertainment. APTN has conducted focus groups over the past years to better understand Aboriginal youth and their connection (among other things) to Aboriginal media. While it appears that Aboriginal Peoples may continue to use television and radio

more than the population at large, still, more than one-third of youth participating in our study reported that Internet was their primary source of entertainment.¹

21. To reach a large part of this audience – indeed to be seen to be relevant to this audience – we believe that it is very important for APTN to have a more significant on-line presence, with more content directed specifically at youth.
22. We have found that new media has not yet had a significant impact on APTN or on our ability to fulfil our core mandate. Looking forward, we believe that in the next five years, new media will begin to have that impact. This impact will be felt directly through audience diversion (especially among youth), and indirectly as the result of the need to allocate resources to new media platforms to maintain APTN’s relevance in meeting our mandate. We believe that it is appropriate for APTN to have the objective, over the next five years, to be the primary source, in Canada, for high-quality Aboriginal audio-visual content on-line, as well as in the more traditional broadcasting environment.

Are Regulatory Incentives or Measures Desirable?

23. Appropriate regulation and supervision of new media within the broadcasting system is not only desirable – it is the Commission’s duty under section 5(1) of the *Broadcasting Act*. That section provides that the Commission shall regulate and supervise all aspects of the Canadian broadcasting system with a view to implementing Canadian broadcasting policy, as set out in the Act. Taking into account the Commission’s analysis of the meaning of “broadcasting” within the Act (it is technologically neutral and does include forms of “new media”), it is apparent that the Commission is required to look at these forms of new media within the regulatory framework of the *Broadcasting Act*.
24. This does not, mean, though, that the Commission must “regulate the Internet” with a heavy hand. The Commission must take into account section 5(2) of the *Broadcasting Act* in exercising its authority. Section 5(2) of the Act provides that CRTC regulation should not “inhibit the development of information technologies and their application or the delivery of resultant services to Canadians”.

¹ Focus groups conducted in 2008 for APTN by Strategic, Inc.

25. As a starting point, the Commission should take a pragmatic approach and begin with the new media activities of the most significant components within the broadcasting system – i.e. licensed broadcasters themselves: both programmers and distributors.
26. APTN believes that the focus should be on existing licensed broadcasters because it is these broadcasters that have traditionally owned distribution rights for audio-visual products, at least in the television sector. Broadcasters have also played the primary role in financing the production of this content (acknowledging the important role that government subsidy plays in the Canadian system). Thus far, in the larger US market where audio-visual production is self-supporting, there is no apparent material decline in the central role that the broadcaster plays in commissioning, financing and distributing audio-visual content. What is happening, though, is that broadcasters are leveraging that content across many delivery platforms to see a return on investment.
27. The environment in Canada, we believe, needs to “mimic” the market mechanisms developing south of the border while recognizing the reality that there is a need for a subsidy in the Canadian system to support high quality audio-visual production.
28. The Commission should focus on the following regulatory projects:
 - (i) Support broadcasters’ new media initiatives as a part of their formally regulated role in the broadcasting system – but there must be a new form of “regulatory bargain” to support these activities;
 - (ii) Continue to support new media production as a part of the broadcasting system, as is currently being done with the independent production funds and comparable initiatives;
 - (iii) Prevent by-pass of the regulated system by Canadian broadcasting services – all broadcasters have a duty to contribute in an appropriate manner to the creation and presentation of Canadian programming;

- (iv) Prevent by-pass of the Canadian system by non-Canadian broadcasting services – the *Broadcasting Act* provides that the Canadian broadcasting system must be effectively owned and controlled by Canadians.
29. A range of regulatory mechanisms are available to assist in these projects. At this point in the adoption of new media technologies, APTN believes that the CRTC primarily should play a role in assisting the emergence of Canadian content on-line, rather than dictating where and how that content should be presented. Innovation and experimentation still lead the way in the on-line environment.
30. Support for broadcaster’s role in new media can take two (at least) approaches. First, many broadcasters, APTN included, continue to rely on regulated revenue streams. We believe that new media initiatives, their costs, their potential revenues and their contribution to broadcasting policy objectives, should be included in the Commission’s analysis of the regulated environment. In APTN’s case, our activities in the new media sector arise directly from our activities in the regulated broadcasting sector and, as time passes, we expect that each will become more and more integrated with the other. All of these activities should be looked at and encouraged and supported by regulatory mechanisms. To be direct: the Commission needs to support, within its mandate, the acquisition and full exploitation of “ancillary” broadcasting rights by broadcasters in new media environments.
31. In exchange for regulatory support, it is reasonable to expect that broadcasters will adopt similar presentation strategies for Canadian content in new media as they do in traditional media. As a starting point, the Commission should expect licensed broadcasters to provide equivalent exposure and support to Canadian content on line, as they do for Canadian content broadcast by traditional means. The Commission should expect that Canadian broadcasters offer comparable levels of content in the new media environment to the levels that they provide in the primary broadcasting sphere. It is not necessary for the Commission to set out, in advance, how that content will be measured in every instance. Instead, it needs to put the onus on the broadcaster to show that it is meeting the expectation, and how that is being measured.

32. Also, we believe that if the CRTC is to expect broadcasters to play a leading role in new media, which it should, then the systems that the CRTC puts in place to advance new media must support that role. It is for that reason that APTN has submitted in another proceeding (with respect to the provision of funding by the independent production funds to new media initiatives²) that the funding of new media from resources that are generated by the licensed broadcasting system needs to be redirected back through the licensed broadcasting system. It is self-defeating to flow a subsidy from expensive, licensed activities, to relatively inexpensive, unregulated and unlicensed activities.
33. With respect to by-pass, APTN's concern in this area is that we can fully expect, within the next decade, that Internet distribution will continue to advance as a means to deliver audio-visual content. As a matter of principle, and relying on the technological neutrality of the *Broadcasting Act*, APTN does not see a function difference between Internet distribution of programming and other forms of distribution, such as cable, satellite or telco BDU. Increasingly, they will be the same thing.
34. For programming providers, we believe that it is appropriate for the Commission to expect the delivery of levels of Canadian expression in new media that are comparable to those programmers deliver in the traditional environment. If the Commission's expectations regarding the delivery of that content are not met, then it would also be appropriate for the Commission to intervene with appropriate regulation.
35. With respect to distribution undertakings, APTN is concerned about the potential for IPTV distribution to become an alternative, unregulated mode of audio-visual distribution virtually indistinguishable from existing distribution modes. In situations where IPTV distribution is simply mimicking traditional forms of distribution, they should be regulated on comparable terms. In fact, this is already the case for telco IPTV distribution networks. Where third party distributors do more than merely offer a "dumb pipe" to the Internet: i.e. where they market (i.e. buy rights to distribute and then sell access to them) programming services via the Internet, the CRTC should regulate these services in a manner that is comparable to the regulation of existing BDUs. For example,

² Reference to public notice.

if such a distribution service were to offer traditional “basic” services to subscribers – such as local broadcast services – then that service should also offer other mandatory basic services. If IPTV distribution were used solely to offer pay “on demand” style programming, then that service should comply with the general Canadian rules applicable to pay “on demand” services.

36. Regulation in this manner is not as intrusive as many would have the Commission believe. This is because the providers of these services operate within a territorial market for programming rights. It is possible to regulate the exploitation of these rights because they are dealt with in an orderly market. We would also note that where, for example, a programmer such as APTN – or any other broadcaster anywhere in the world – were offering its own programming via the Internet, subscribers would have the ability to obtain that programming through their “dumb pipe” Internet service independently of the distributor. In other words, there is no reason to inhibit the access of subscribers to programming they wish to obtain independently via means of telecommunication they themselves control.
37. Regarding non-Canadian programming services available on the Internet, APTN understands that the Internet offers Canadians the ability, in essence, to travel “around the world” to access programming on their own that would otherwise be unavailable. At the same time, direct access to the Canadian broadcasting system has been regulated in the past to protect distinctive characteristics of the Canadian market. It would be appropriate for the Commission to continue to regulate direct access to the Canadian system based on non-Canadian programming services’ commitments to respect a distinctive Canadian programming rights market, and access to those rights through Canadian distributors. Encouraging the development of an orderly Canadian market for programming distribution rights will help the Commission to avoid by-pass of the Canadian system by non-Canadian services.

Issues concerning access to Canadian content in new media

38. Our focus in this submission is on the experiences of Aboriginal Peoples in the broadcasting system. From that perspective, the question is whether key broadcasting

policy objectives are being met for Aboriginal Peoples – or are they likely to be met – within the new media broadcasting environment?

39. In a variety of different proceedings, APTN has pointed out that subsection 3(1)(d) of the *Broadcasting Act* sets out what are probably the most fundamental elements of Canadian broadcasting policy.³ That section makes it clear that the system should (in summary form):

- enhance Canadian life at all levels (political, social, cultural and economic),
- encourage the development of, and act as a conduit for Canadian expression,
- provide opportunities and reflect experiences of all Canadians (with acknowledgement of the “special place” of Aboriginal Peoples within Canadian society) and,
- just as importantly, be readily adaptable to scientific and technological change.

We believe that new forms of media, as they develop within the broadcasting system, should be regulated and supervised by the CRTC, within its mandate, in a way that encourages the achievement of these important objectives. (There are others, of course, but these objectives appear to us to capture the heart of Canada’s broadcasting policy.)

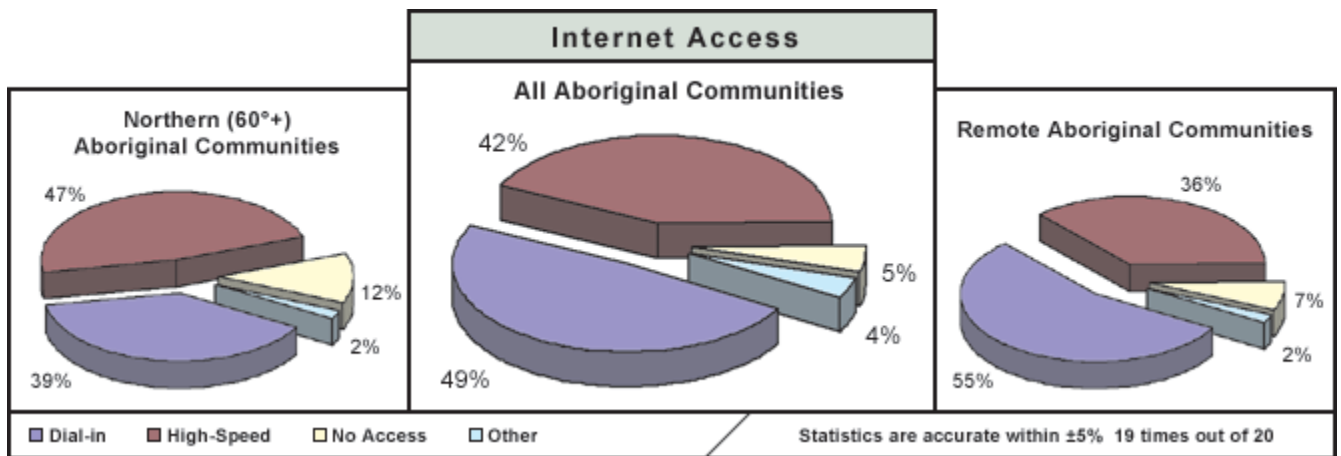
40. Regarding the reflection of Aboriginal Peoples in new media initiatives, it is imperative for the CRTC to ensure that the regulatory environment supports the participation and reflection of Aboriginal Peoples in new media. For example, all funding and distribution rules should support the production and distribution of Aboriginal expression and Aboriginal language programming. Aboriginal participation in new media has two

³ For reference, the section reads: (d) the Canadian broadcasting system should (i) serve to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada, (ii) encourage the development of Canadian expression by providing a wide range of programming that reflects Canadian attitudes, opinions, ideas, values and artistic creativity, by displaying Canadian talent in entertainment programming and by offering information and analysis concerning Canada and other countries from a Canadian point of view, (iii) through its programming and the employment opportunities arising out of its operations, serve the needs and interests, and reflect the circumstances and aspirations, of Canadian men, women and children, including equal rights, the linguistic duality and multicultural and multiracial nature of Canadian society and the special place of aboriginal peoples within that society, and (iv) be readily adaptable to scientific and technological change;

aspects (at least) that the Commission should consider: access to quality networks that can support broadband applications, and availability of Aboriginal expression in a new media broadcasting environment.

Access to High Speed Networks

41. The CRTC should also continue to monitor the access that Canadians in all regions of the country have to standard Internet access services. While high speed Internet access is available and continues to be rolled out in many remote and underserved communities, there is a real concern that the available bandwidth may not support future broadband services.
42. Unfortunately, there is a continuing lack of data regarding Aboriginal Peoples and the use of traditional media, let alone new media. Data that is available, such as data concerning the penetration of Internet services into Aboriginal communities, is now 4 or 5 years old – a considerable length of time given the rapid growth of Internet distribution and Internet services.
43. Based on that data, in 2004, a majority of Aboriginal communities did not have access to a high speed broadband service, as reflected in the following chart.⁴



⁴2004 Report on Aboriginal Community Connectivity Infrastructure, Aboriginal Canada Portal (aboriginalcanada.gc.ca/acp/site.nsf/en/ao31351.html).

The proportion is highest within remote communities in which, in 2004, more than 62% of communities had to rely on dial-up access (which is virtually unusable for more than minimal web use) or had no access at all.

44. We are hoping to update some of this information perhaps with information collected by Statistics Canada in the course of the 2006 census – which information may become available early in 2009. Impressionistically, we believe that there is reason to believe that Internet access among Aboriginal communities is increasing to be closer to Canadian norms.⁵ Still, there are characteristics of what is considered high speed access within remote areas that have significant implications for broadband services.
45. For example, Nunavut's *Qiniq* initiative has been instrumental in rolling out high speed services across that Territory through a public private partnership managed by Nunavut Broadband Development Corporation⁶. Service is provided by means of satellite connected to a local wireless broadband network. But, importantly, there are limitations on this high speed service. High speed service offered by on the Qiniq network starts at 286 kbps burstable (at \$60 per month), and the highest available residential bandwidth is 786 kbps burstable (at \$400 per month). As the CRTC has noted, most advanced broadband applications require more sustained bandwidth download speeds.⁷
46. There is, therefore, a continuing digital divide between urban and rural communities and, even more significantly, between urban and remote satellite-reliant Aboriginal communities.

⁵ On August 29, 2008, the federal government announced funding to expand broadband infrastructure in Northwest Territories and Nunavut through the National Satellite Initiative. While this funding is important, and significant, it is part of the “sunsetting” National Satellite Initiative that is now coming to an end. The provinces of British Columbia and Saskatchewan have also recently announced initiatives to expand broadband coverage for First Nations communities in remote and underserved areas (see *\$22.5 Million to Help Connect First Nations* – Government of British Columbia Press Release dated November 18, 2008, and *Premier Announces 100 per cent High Speed Internet Coverage for Saskatchewan* – Government of Saskatchewan Press Release dated November 26, 2008).

⁶ Extensive information regarding this impressive Public Private Partnership, which employs an innovative satellite backbone and local service provider approach, may be found at the Nunavut Broadband Development Corporation website (www.nunavut-broadband.ca). Detail regarding the service offering is located at www.qiniq.com.

⁷ CRTC, *Perspectives on Canadian Broadcasting in New Media – A compilation of research and stakeholder views*, May 2008.

47. It is important to underscore this point because it has implications for Aboriginal Peoples. First, without substantial investment in infrastructure, probably combined with technologic improvements to the Internet, Aboriginal Peoples in the most remote areas will not be in the position to participate fully in new Internet-based media services. Second, for broadcasting purposes, it seems unlikely that Internet access will soon provide a substitute for satellite-delivered broadcasting signals (whether delivered direct-to-home or indirectly through a cable BDU) in these remote communities. “Traditional” broadcasting and recorded media will continue to be the primary source for high quality audio-visual content.
48. APTN believes strongly that CRTC policy – whether in the broadcasting or the telecommunications spheres – should continue to promote connectedness in remote and underserved areas. Access to new media technologies – enabled by modern infrastructure – will continue to be a means of empowering Aboriginal Peoples. For example, the telecom deferral accounts that have been earmarked for payment to consumers⁸ (resulting in a minimal benefit to individuals) might have been better spent to achieve the greater societal benefit of enhancing service to the most remote and underserved communities.

Aboriginal Expression in New Media Broadcasting

49. Evaluating the extent and use of “Aboriginal content” available on-line is even more difficult than evaluating the current connectedness of Aboriginal communities. APTN is probably the largest producer and broadcaster of Aboriginal-produced audio-visual content in Canada. CBC also offers Aboriginal-related audio-visual programming on-line (through www.cbc.ca/aboriginal/). As noted above, we currently offer all of our proprietary new and current affairs programming for download on line. Some of this material is being “repurposed” by users through Youtube and other web content platforms.
50. In addition to APTN, there are of course other Aboriginal producers and aggregators of Aboriginal-focused audio-visual programming such as:

⁸ *Telecom Decision CRTC 2008-1.*

- www.nationtalk.ca, an Aboriginal-focused newswire with some audio-visual content and a significant amount of high quality audio news items;
- www.isuma.tv, an internet video portal for indigenous filmmakers – filmmakers from around the world (and many from Canada) upload their productions to the site, which are then presented in channels for streaming download to viewers;
- www.knet.ca, the home site for The Kuhkenah Network (K-Net) (which supports the development of broadband and high-speed networks, services and access in the Keewatinook Okimakanak First Nation communities across Northwestern Ontario) offers some uploaded video content from users;
- www.learnmichif.com, which started as a basic website for on-line Michif language instruction, is now more broadly focused on the promotion of Métis culture, complete with high quality video content and podcasts; and
- www.innuplaces.ca, (*Pepamuteiati nitassinat*), an initiative of the Sheshatshiu Innu First Nation, catalogues and displays information Innu place names in Labrador using Google maps (for now) and multimedia resources.

This by no means meant to be an exhaustive list. It does reflect, though, the diversity of content that is available and the empowering capacity of new media broadcasting.

51. In some ways, this kind of use of new media could be compared to “community access programming”, although content creators exercise a much greater degree of control over distribution and access than was ever the case with traditional community access media. While this material is not always “professionally produced”, technically speaking, it often has high production values. There is no doubt that this material has a very important role to play in populating the Internet with Aboriginal Peoples – and exploiting the Internet as a tool to advance Aboriginal languages, cultures and expression.
52. For this reason, we believe that the Commission should not focus solely on “professionally produced” content in its evaluation of new media broadcasting. Undoubtedly, high-quality audio-visual content requires focused attention in new media

broadcasting, and support within the framework of the *Broadcasting Act*. But, at the same, time, support to new media broadcasting at the community level is also a part of our broadcasting system. APTN sees opportunities in new media to increase the diversity of available voices, but it is imperative that public and community broadcasters be fully engaged, as broadcasters, in the production and distribution of new media content. These organizations are well placed to produce and deliver high value content to new media platforms.

Appropriateness of new media exemption orders

53. Our submission will focus on the Commission's existing exemption order for new media (*Public Notice CRTC 1999-197*), which exempts all broadcasting services that are "delivered and accessed over the Internet". We may wish to comment on aspects of the exemption order for mobile television broadcasting undertakings after considering other submissions in this proceeding.
54. APTN acknowledges that the existing exemption order for new media has been appropriate to ensure that new media broadcasting evolves in Canada in tandem with its world-wide development. It would have been counterproductive to attempt to establish a Canadian "walled garden" to exclude content that would otherwise be available to Canadians via the Internet. We believe it will continue to be counterproductive to do so in the future.
55. At the same time, it needs to be recognized that the Internet as a means of programming distribution is beginning to mature. There are two developments, in particular, that are especially important: first, Internet programming distribution rights are increasingly segregated by geographic markets (based on traditional audio-visual markets), reflecting increased effectiveness of Internet distribution tools; and second, the IP platform is now suitable for distribution of broadcast quality content to end users on a wide basis. When these two aspects are combined, it can be seen that we are very near to (if not at) the point that broadcasting quality content may be purchased and distributed in Canada for Canadian distribution and for viewing by Canadians in the very same way that television content is now distributed and viewed.

56. For example, it is well within today's technology for a BDU to offer a proprietary IP VOD platform for delivery to subscribers over the Internet using its own high speed Internet service. According to the Commission's existing new media order, if a BDU offers a VOD service using "standard" broadcasting digital technology to end users, this service must be licensed and abide by certain regulatory rules. If, on the other hand, the service is delivered using the exact same infrastructure by using IP technology and accessed via the Internet (for example, via an IP set top box that is sold as a part of a traditional cable box, for example), then the service is unlicensed and unregulated. This same technological issue applies not only to VOD services but to linear services as well.
57. It can be seen that these technological developments have the potential to quickly overwhelm the existing broadcasting system and existing broadcasters. This is the case even though some of the original reasons for not regulating new media broadcasting (lack of geographic control and lack of impact on broadcasters) are no longer applicable – or at least as applicable as they were. At the same time, APTN entirely endorses the wide accessibility of content through the Internet.
58. There is, APTN believes, a middle path between attempting to "regulate the Internet", and doing nothing and allowing the Canadian broadcasting system to gradually collapse. The way forward, we believe, is for the Commission to continue to focus on supporting Canadian broadcasters, and supporting a distinctive Canadian marketplace for programming rights with the expectation (and regulation, if necessary) that if an entity exploits Canadian rights to programming it should make an appropriate contribution to the Canadian broadcasting system. By supporting these two objectives, the Commission can ensure that entities continue to exist that have as their primary mandate the production of high quality Canadian audio-visual programming, and that non-Canadian programming that is brought into the broadcasting system fosters Canadian programming objectives.
59. As a starting point, APTN believes that it is appropriate for the CRTC to ensure that benefits that accrue from within the broadcasting system – such as production funds supporting programming – are allocated to players that operate within that system. There

should, we believe, be a form of bargain between new media broadcasters and the system. If a new media broadcaster wishes to benefit from the support for its activities that arise from within the broadcasting system (such as production monies), then that broadcaster should contribute back to the broadcasting system. It is for this reason, for example, that APTN has expressed concerns regarding the loosening of new media funding requirements by independent production funds.⁹

60. A second area for the Commission to consider, as outlined above, is the distribution of content by licensed broadcasters, including BDUs that use their own Internet infrastructure. It now seems likely that these kinds of entities will be the first to acquire rights to Canadian programming for Internet distribution in a way that is comparable to traditional broadcasting and to offer that programming in broadcast quality. If necessary, the CRTC should consider licensing these kinds of new media broadcasting services.
61. As we noted above, it is reasonable for the CRTC to expect that licensed broadcasters, including BDUs, adopt similar presentation strategies for Canadian content in new media as they do in traditional media. If such broadcasters not do so, then it would be appropriate for the CRTC to consider regulating those activities. In other words, we are suggesting that it would be inappropriate for broadcasters, including BDUs – which owe their current privileged position in the broadcasting system to regulation – to use that privileged position to develop new media broadcasting services in a way that undercuts that very system. This kind of development would clearly be inconsistent with the vision set out in the *Broadcasting Act*.

Yours truly,



Jean LaRose
Chief Executive Officer

⁹ APTN Submission to the CRTC dated September 5, 2008 in response to *Public Notice CRTC 2008-58* (Amendments Regarding Certified Independent Production Funds – New Media Projects).