



Broadcasting Public Notice CRTC 2005-88

Ottawa, 9 September 2005

Determinations on a request by the Canadian Cable Telecommunications Association for an amendment to the Commission's policy regarding the use by cable broadcasting distribution undertakings of local availabilities contained in the signals of U.S. satellite programming services

In this public notice, the Commission rejects a request by the Canadian Cable Telecommunications Association (CCTA) that the Commission amend its policy regarding the use by cable broadcasting distribution undertakings (BDUs) of local availabilities contained in the signals of certain U.S. satellite programming services. Specifically, the CCTA requested that cable BDUs be permitted to use the local availabilities for the insertion of commercial advertising, as well as other messages promoting BDU or BDU-affiliated non-programming services, including telephony services.

The Commission's decision with respect to the CCTA's request has a bearing on further determinations announced today in two other broadcasting proceedings. In Proposed amendments to conditions of licence, Broadcasting Decision CRTC 2005-460, the Commission denies the application by Vidéotron ltée, on behalf of itself and two subsidiaries, for amendments to the conditions of licence of various cable BDUs in Quebec. The proposed amendments would have permitted the BDUs to insert commercial advertising, including messages promoting affiliated broadcasting services, in 50% of the local availabilities contained in the signals of three U.S. satellite programming services. In Tools to promote and improve the visibility of services whose national distribution is required pursuant to section 9(1)(h) of the Broadcasting Act, Broadcasting Public Notice CRTC 2005-89, the Commission sets out its determinations regarding appropriate mechanisms, including the use of local availabilities, to promote and improve the visibility of Canadian programming services, the carriage of which by BDUs is mandatory pursuant to section 9(1)(h) of the Broadcasting Act.

Background

1. The current policy governing the use of local availabilities by Canadian broadcasting distribution undertakings (BDUs) was first articulated by the Commission in *Proposal to insert certain promotional material in the local availabilities of U.S. satellite services*, Decision CRTC 95-12, 18 January 1995 (Decision 95-12). "Local availabilities" refers to the approximately two minutes per hour of air time set aside in the programming of certain U.S. satellite programming services for use by distributors in the United States.

Although the programming services routinely include their own commercial or promotional messages in their satellite signals during these two minutes per hour, U.S. distributors are permitted to strip out this material and substitute it with their own advertising or promotional messages.

2. In Decision 95-12, the Commission stated that it was not prepared to consider applications to use local availabilities for the broadcast of commercial advertising. The Commission, however, did authorize Rogers Cable TV Limited, by condition of licence, to insert, at its option, certain promotional material as a substitute for the messages contained in the local availabilities of non-Canadian satellite services. Over the years, the Commission has approved other applications by BDUs so that today, the majority of them, including direct-to-home (DTH) BDUs, have conditions of licence authorizing the use of local availabilities for the distribution of promotional material.
3. The policy requires that at least 75% of the local availabilities be made available for use by licensed Canadian programming services for the insertion of messages promoting their respective services, or be used by BDUs for the distribution of unpaid Canadian public service announcements and of messages promoting the community channel. A maximum of 25% of the local availabilities may be used by BDUs for the promotion of discretionary programming services and packages, customer service information, channel realignments, cable FM service and additional cable outlets.
4. On various occasions, the Commission has provided clarification regarding certain aspects of its policy. In *Application to insert certain promotional material in the local availabilities of U.S. satellite services*, Decision CRTC 98-271, 10 August 1998, the Commission concluded that BDUs should not be prohibited from charging a fee to recover the costs they incur in inserting promotional material of licensed programming services in the local availabilities of U.S. satellite services. In *Advertising Internet services on community channels or during "local availabilities"*, Public Notice CRTC 1999-93, 27 May 1999, the Commission clarified that "the list of services that a BDU may promote, which are referred to in the condition of licence, does not include a non-programming service that is available on a commercial basis." In *Building on Success - A Policy Framework for Canadian Television*, Public Notice CRTC 1999-97, 11 June 1999 (Public Notice 1999-97), the Commission determined that BDUs "may not charge Canadian programming services an amount in excess of their share of the direct costs associated with the insertion of promotional material in the local availabilities of foreign satellite services." Further, in *Subsidiaries of Shaw Communications Inc. and Bragg Communications Incorporated – Non-compliance concerning the use of local availabilities*, Broadcasting Decision CRTC 2003-383, 11 August 2003, the Commission clarified that "the relevant condition of licence pertaining to local availabilities does not permit mentions 'in passing' of services that may be offered by a broadcasting distribution undertaking, such as Internet or telephony services, that are not specifically mentioned in the condition of licence."

Request by the Canadian Cable Telecommunications Association for a policy amendment

5. On 28 October 2002, the Canadian Cable Television Association, now known as the Canadian Cable Telecommunications Association (CCTA) requested that the Commission amend its local availabilities policy to allow cable BDUs use of the local availabilities contained in the programming of twelve U.S. satellite services¹ for the distribution of commercial advertising and messages promoting affiliated non-programming services offered by cable BDUs, including telephony services. The CCTA estimated that the annual revenues generated through this use of local availabilities would be in the range of \$35 million to \$40 million. In a letter dated 21 May 2003, the CCTA amended its request by proposing that 25% of such revenues be directed to the Canadian Television Fund (CTF).
6. The CCTA argued that cable BDUs need the additional revenues to respond to pressures from legal and illegal competition and to offset costs associated with expanding regulatory obligations. It also argued that the proposed policy change would result in the harnessing of “unrealized economic value” for the Canadian broadcasting system, as 25% of the additional revenues, or as much as \$10 million, would be directed to the CTF annually. The CCTA asserted that there would be no material negative economic impact on licensed Canadian programming services, as the revenues generated by this use of local availabilities would only represent 2% of the advertising revenues generated by the Canadian television market. It also stated that the promotion of affiliated non-programming services would have no impact on these advertising revenues.
7. In response to the CCTA’s proposal, the Commission issued *Proposal by the Canadian Cable Television Association to amend the policy regarding the use of local availabilities - Call for comments*, Broadcasting Public Notice CRTC 2004-47, 9 July 2004 (Public Notice 2004-47). Subsequently, in *Call for responses to submissions on the Canadian Cable Telecommunications Association’s proposal to amend the policy regarding the use of local availabilities*, Broadcasting Public Notice CRTC 2004-47-1, 21 January 2005 (Public Notice 2004-47-1), the Commission invited interested parties to file comments on the submissions received in response to Public Notice 2004-47. This was in order to ensure that the issues received the broadest possible examination.

Other related proceedings

8. In Public Notice 2004-47, the Commission noted that it had received an application from Vidéotron ltée (Vidéotron), on behalf of itself and two subsidiaries, for amendments to the conditions of licence of various cable BDUs in Quebec. The Commission also announced receipt of the Vidéotron application in Broadcasting Public Notice CRTC 2004-48, 9 July 2004 (Public Notice 2004-48). The proposed amendments would permit the BDUs to insert commercial advertising, including messages promoting affiliated

¹ A&E, BET, CNN, CNBC, Court TV, Game Show, Golf, Headline News, The Learning Channel (TLC), Speed Channel, Spike TV and WTBS-TV

broadcasting services, in 50% of the local availabilities contained in the signals of three U.S. satellite programming services. The Commission stated that, because the Vidéotron application raised issues similar to those raised by the CCTA proposal, it would consider that application in the light of the submissions received pursuant to its call for comments on the CCTA's proposal for changes to the policy.

9. In Public Notice 2004-47, the Commission referred to another proceeding having a bearing on the potential use of local availabilities, namely the proceeding announced in *Channel placement of certain services whose national distribution has been required pursuant to section 9(1)(h) of the Broadcasting Act - Call for comments on tools to promote and improve the visibility of these services*, Broadcasting Public Notice CRTC 2004-46, 9 July 2004 (Public Notice 2004-46). This was issued concurrently with Public Notices 2004-47 and 2004-48.
10. Two years earlier, in *Call for comments on the channel placement of services whose distribution has been required pursuant to section 9(1)(h) of the Broadcasting Act*, Broadcasting Public Notice CRTC 2002-49, 16 August 2002, the Commission had sought comment on questions concerning the channel placement of programming services, in particular the Aboriginal Peoples Television Network (APTN) and TVA, whose distribution by BDUs as part of the basic service has been required pursuant to section 9(1)(h) of the *Broadcasting Act* (the Act). These services are generally referred to as the "9(1)(h) services." In Public Notice 2004-46, the Commission announced its determination that, instead of mandating the channel placement of the 9(1)(h) services, it would require all distributors to assist in improving the visibility of such services through improved promotion. The Commission accordingly sought comment in Public Notice 2004-46 on what specific tools could be used to promote and improve the visibility of these mandated services. One of the proposed promotional tools considered was preferential access by the 9(1)(h) services to the local availabilities contained in U.S. satellite programming services.
11. The Commission's determinations on the Vidéotron application described above are contained in *Proposed amendments to conditions of licence*, Broadcasting Decision CRTC 2005-460, issued today. In *Tools to promote and improve the visibility of services whose national distribution is required pursuant to section 9(1)(h) of the Broadcasting Act*, Broadcasting Public Notice CRTC 2005-89 issued today (Public Notice 2005-89), the Commission sets out its determinations regarding the appropriate mechanisms, including the use of local availabilities, to promote the national 9(1)(h) services.
12. In the following section of the present notice, the Commission examines the key issues raised by the CCTA's proposal, as canvassed by the more than 50 interested parties who filed comments in response to Public Notices 2004-47 and 2004-47-1. Of the submissions received, approximately 30% were in support of the CCTA's proposal. These included the views of individual cable BDUs, their industry associations and

representatives of the Canadian advertising industry. The balance of the submissions (approximately 70% of the total), including many filed by individual programmers and program producers, related interest groups and industry associations, and several telecommunications companies, generally expressed opposition to the proposed policy amendment.

Key issues raised by the CCTA's proposal, as addressed by interested parties

Economic need

13. In its submission, the CCTA argued that cable BDUs required the additional revenues they would earn through use of the local availabilities to respond to pressures from legal and illegal competition and to offset costs associated with expanding regulatory obligations. The Canadian Cable Systems Alliance Inc. agreed with the CCTA and added that access to the local availabilities was of particular importance to small and medium-sized cable companies.
14. The Canadian Association of Broadcasters (CAB), however, cited economic data gathered by the CRTC which, it claimed, demonstrated that the cable industry has enjoyed increasing revenues and profitability since 2001 and did not need the additional revenues that the local availabilities would represent. The Directors Guild of Canada (DGC) and the Canadian Film and Television Production Association (CFTPA) were also unconvinced by the CCTA's economic need argument, and considered that the CCTA had failed to demonstrate that implementation of its proposal was warranted at this time, or that it would result in any net benefit to the Canadian broadcasting system.
15. In their submissions, Bell ExpressVu,² Cybersurf Corp., Saskatchewan Telecommunications and TELUS Communications Inc. commented on the CCTA's claim that cable BDUs required the additional revenues that would be generated by their use of local availabilities to enable them to respond to competitive pressures. They all expressed the view that there are more appropriate mechanisms than a change to the local availabilities policy to address the CCTA's concerns regarding competition or any other issues that the CCTA might associate with differences in how cable BDUs and other BDUs are regulated. Aliant Telecom Inc. (Aliant) predicted that additional competitive issues could result from the CCTA's proposed policy change. However, both Aliant and Bell ExpressVu indicated that, if the Commission decided to make a change to the policy, then all BDUs should be permitted to take advantage of the change. MTS Allstream Inc. was likewise concerned that the policy change would result in cable BDUs gaining an advantage over other BDUs and suggested a number of measures to ensure that all BDUs would be able to access the local availabilities under the same conditions.

² Bell ExpressVu Inc., (the general partner), and BCE Inc. and 4119649 Canada Inc. (partners in BCE Holdings G.P., a general partnership that is the limited partner), carrying on business as Bell ExpressVu Limited Partnership.

Estimated commercial advertising revenues and impact on specialty and conventional television

16. As mentioned above, the CCTA estimated that the commercial advertising revenues cable BDUs might earn through use of the local availabilities would be in the range of \$35 million to \$40 million. It asserted that “[no] advertising revenue would be transferred from programmers to BDUs” and that the “[local availabilities] inventory is too small relative to the overall advertising market to have any material impact on the overall revenue or advertising rates of programmers.” Cogeco Cable Inc. was also of the opinion that the proposed policy change would have an insignificant impact on broadcasters.
17. The CAB and CTV Inc. (CTV) commissioned their own studies to include with their submissions. The CAB’s study estimated that the proposed change in policy would generate commercial advertising revenues for BDUs in the range of \$45 million to \$61 million. In the CAB’s view, the additional advertising revenues to be earned by the cable industry would have a negative impact on the advertising revenues of all sectors of the broadcasting industry, including radio. CTV’s estimates were that these revenues would be in the range of \$76 million to \$97 million. CTV claimed that there would be a negative impact on the advertising revenues earned by programmers as a result of the CCTA’s proposed policy change.
18. The Canadian Broadcasting Corporation (CBC) identified the loss of advertising revenues by Canadian broadcasters, and the decrease in promotional opportunities for Canadian programming services and programs, as reasons for denying the proposed policy change. Specifically, the CBC estimated that implementation of the CCTA proposal would result in a \$7 million to \$10 million loss in its advertising revenues, a loss that would negatively affect the CBC’s ability to fulfil its mandate and regulatory obligations.

Impact on spending on Canadian content

19. Under the CCTA’s proposal, cable BDUs would direct to the CTF 25% of the additional advertising revenues earned from the sale of commercial messages inserted in local availabilities. The CCTA argued that this commitment would produce a net increase in the resources available for the development of Canadian programming.
20. Conversely, the CAB argued that the CCTA proposal would result in a net decrease in spending on Canadian programming. It noted that 25% of the additional advertising revenues would, according to the CCTA’s estimates, represent approximately \$10 million. It claimed that the direction of this amount to the CTF by cable BDUs would not offset the reduction in the spending capability of Canadian specialty and conventional television services on Canadian programming. This reduction would, in their view, be triggered by the decrease in advertising revenues they would experience as a consequence of the CCTA’s proposed policy change.

21. Global Television Network Inc. (Global), Jim Pattison Broadcast Group,³ Newfoundland Broadcasting Company Limited and Thunder Bay Electronics Limited addressed what, in their view, the likely negative impact would be on smaller broadcasters, and highlighted specifically the link between advertising revenues and the ability of smaller broadcasters to provide local programming.

Impact on viability of new Canadian services

22. In its original submission, the CCTA had stated that there would be no material negative economic impact on licensed Canadian programming services, as the revenues generated by this use of local availabilities would only represent 2% of the advertising revenues generated by the Canadian television market.
23. In its comment, the CAB countered that the advertising inventory available in the schedules of the more than 60 new digital specialty services that have launched since 2001 is not completely utilized. According to the CAB, the access gained by the Canadian advertising industry, under the CCTA's proposal, to the local availabilities of popular U.S. satellite programming services, would negatively affect the ability of the digital specialty services to monetize their available advertising inventory.

Impact on the availability of promotional opportunities for Canadian services

24. The CCTA stated that, in “an environment in which programming services appear to value the use of [local availabilities] less than is claimed in their interventions and in which many programmers have access to availabilities on their own properties, it is neither necessary nor appropriate to provide these services with significant discounts.” The CCTA stated that it was willing to accommodate promotion of 9(1)(h) services in the local availabilities, but was of the opinion that “the promotion of 9(1)(h) services would not meaningfully increase their audience share.”
25. Star Choice Television Network Incorporated was also of the view that sufficient cross promotional opportunities for specialty services exist, making promotion on the local availabilities unnecessary. Further, it considered that the Canadian advertising market was healthy enough to handle the inventory represented by the local availabilities of U.S. satellite programming services.
26. The National Broadcast Reading Service Inc. and Friends of Canadian Broadcasting argued that the policy change would reduce promotional opportunities for Canadian programming services and programs. They proposed instead that the 75% share of local availabilities currently set aside for use by licensed Canadian programming services for the promotion of their respective services, for the promotion of the community channel and for unpaid Canadian public service announcements be divided for use equally between messages promoting the 9(1)(h) services and messages promoting Canadian drama programs.

³ Jim Pattison Broadcast Group Ltd. (the general partner) and Jim Pattison Industries Ltd. (the limited partner), carrying on business as Jim Pattison Broadcast Group Limited Partnership.

27. The CAB and CBC also believed that the CCTA proposal would result in a reduction in the promotional opportunities for Canadian programs. Aboriginal Peoples Television Network Incorporated (APTN) noted the importance of promotional opportunities for Canadian programming services. The CAB added that approval of the CCTA's proposal would create an incentive for cable BDUs to promote U.S. satellite programming services, rather than Canadian services, in order to increase the viewership and the commercial value of the local availabilities contained in these U.S. services.
28. Bell ExpressVu also considered that, because of the reduction of promotional opportunities for Canadian programming, the policy change would result in higher subscription rates, triggered by higher affiliation fees charged by the U.S. services in response to the increased value of the local availabilities to Canadian cable companies.
29. CHUM Limited (CHUM) specifically noted the negative impact on promotional opportunities for new digital services, while Astral Media inc. focused on the importance of promotional opportunities for pay services.

Impact on Commission policies

30. In its submission, the CAB argued that the CCTA proposal would have a negative impact on the attainment of the objectives underlying the Commission's incentive policy for English-language drama. It also argued that the proposal would "shatter" the Commission's policy linking the provision of local programming to the privilege of broadcasting local advertising. According to the CAB, implementation of the proposed policy change would permit the sale of Canadian advertising "without providing any Canadian programming in the services in which the advertising would appear."
31. The CCTA rejected the CAB's argument that its proposal was contrary to the policy principle linking local advertising to the provision of local programming. According to the CCTA, "the principle is exclusive to the granting of licences to programmers." The CCTA added that local advertisers would continue to advertise on local news and other local television programs to reach large local audiences, and that "BDUs already make a significant contribution to local programming and to the communities in which they serve."

Impact on the structure of the Canadian broadcasting system

32. The CCTA submitted that its proposal would provide a new source of revenue for BDUs, improving "their ability to compete without requiring any substantial changes to the structure of the Canadian broadcasting system."
33. The Association of Canadian Advertisers agreed with the CCTA. It stated that the advertising medium in Canada is underdeveloped and that the proposed policy change would help expand advertising revenues without creating any additional fragmentation of audiences. Local and regional advertisers advocated that access to the local availabilities not be restricted to national advertisers.

34. In its submission, Quebecor Media Inc. argued that the impact on the French-language market would be negligible. It added that, even were the Commission to conclude that the policy change would not be beneficial nationally, implementation of the proposal should nevertheless be considered in the French-language market where non-Canadian programming is less popular among viewers than Canadian programming.
35. In its comment, Only Imagine Inc. stated that it perceived no net benefit accruing to the Canadian broadcasting system as a result of the proposed policy change, but recognized that there were substantial potential benefits inherent in the local availabilities and that the Commission should be open to alternative applications.
36. For their part, CHUM and CTV characterized the CCTA proposal as a fundamental shift in the financial underpinnings of the Canadian broadcasting system. In addition, CTV predicted that allowing cable BDUs to sell commercial advertising for insertion in the local availabilities of U.S. satellite programming services would cause conventional television licensees, including those operating distant Canadian stations, to seek access to local advertising markets, but with reduced or no local service obligations. It added that specialty services would also likely seek such access, but without any attendant local service obligations.

Promotion of non-programming services on broadcasting services

37. The CCTA argued that “there are no compelling broadcast policy arguments to support restrictions on distributors using the avails they have acquired to promote affiliated non-core products, such as Internet, telephony or wireless services.” In their comments on this matter, CHUM and Pelmorex Communications Inc. both agreed that cable BDUs should be able to promote affiliated telecommunications services using the 25% of the local availabilities that they are currently permitted to use in the promotion of their own packages and services.
38. Aliant, Cybersurf Corp. and MTS Allstream Inc. expressed concern that permitting cable BDUs to promote affiliated telecommunications services would have an anti-competitive impact.

Uncertainty regarding the future impact of the proposed policy change

39. In its submission, the CAB argued that the CCTA proposal represented “the thin edge of the wedge.” According to the CAB, the policy change should be assessed not just in the context of its immediate impact, but in the context of its future impact. The CAB stated that “increasing the number of U.S. channels carried on cable, including a number of highly rated U.S. cable channels...would increase the number of channels that could become part of [local availabilities], and that would also increase the negative impact.” The CAB also envisaged cable BDUs seeking an increase in the number of minutes they are permitted to use for the distribution of commercial messages.

40. Ethnic Channels Group Limited and Fairchild Television Ltd. were of the opinion that the viability of existing and future Canadian third-language services had already been compromised by the Commission's new approach to assessing requests for the delivery of foreign third-language television channels to Canadian viewers (see *Improving the diversity of third-language television services – A revised approach to assessing requests to add non-Canadian third-language television services to the lists of eligible satellite services for distribution on a digital basis*, Broadcasting Public Notice CRTC 2004-96, 16 December 2004). In their view, were the CCTA proposal to be adopted and, at some future date, its scope expanded to include the local availabilities contained in non-Canadian ethnic third-language services, the impact on Canadian third-language services would be exacerbated.
41. In responding to the CAB's argument that the proposed policy change represented the "thin edge of the wedge", the CCTA claimed that such a view was "based on a highly exaggerated prediction of the eventual economic impact of changes" that would result from the CCTA's proposal. It added that such changes as predicted by the CAB would be unrelated to its proposed use of local availabilities, and that any future proposals "should be judged on their merits at the time."

Commission's analysis and determinations

Economic need

42. Margin of profit before interest and tax (PBIT margin) and return on average net fixed assets (RANFA) are two of the measurements used by the Commission to assess the financial health of a BDU. For the cable industry as a whole, the PBIT margin and RANFA have both increased over the past two years due to continued revenue growth, a reduced rate of growth in operating expenses, and a decrease in depreciation expenses. The PBIT margin of Class 1 cable BDUs increased to 23.2% in 2004 as compared to 17.5% in 2003 and 15.4% in 2002. The RANFA of Class 1 cable BDUs reached a level of 20.4% in 2004 as compared to 14.2% in 2003 and 11.5% in 2002.
43. From the Commission's perspective, the cable industry has benefited greatly from its ability to bundle its services, that is, to combine video, Internet and, in some cases, wireless services, into different packages. The industry also appears well positioned to ensure continued growth, and to expand its ability to bundle services, through its entry into the telephony business.
44. For these reasons, the Commission finds little basis for the CCTA's argument that the cable industry needs the additional revenues that would be realized were the CCTA's proposed policy change implemented.

Estimated commercial advertising revenues and impact on specialty and conventional television

45. As noted earlier, the CCTA estimated the potential revenue impact of its proposal to be in the range of between \$35 million and \$40 million per year, while CTV estimated a range of between \$76 million and \$97 million per year. The CAB projected a revenue impact of between \$45 and \$61 million per year. The Commission notes that the general methodology used by the CCTA to estimate the revenue impact of its proposal was essentially the same as that used by the CAB. Although CTV's analysis differed from that taken by the other two parties, the Commission generally considers either approach to be valid. The Commission, however, does not agree with all of the assumptions and comparisons made by the parties, particularly those of CTV and the CCTA.
46. The Commission used both approaches, with adjustments and updates, to produce an estimate of the revenues that cable BDUs might earn through the sale of commercial advertising on the local availabilities. In the Commission's view, these revenues would range from between \$43.6 million and \$52.0 million annually. The Commission notes by way of comparison that the overall advertising revenues earned in 2004 by private conventional television stations and by Canadian specialty services, respectively, were \$1.9 billion and \$708 million.
47. The Commission thus acknowledges that the revenue impact of the CCTA's proposal would be relatively small in comparison with the advertising revenues of Canada's conventional television and specialty television industries. However, as the Commission makes clear below, it would be concerned by any negative impact that the CCTA's proposal might have on the ability of existing programming services to meet their obligations under the Act, the plans of potential new entrants to pursue broadcasting licences, the ability of newly-launched services to become established, the attainment of any of the Commission's policy objectives and the structure of the Canadian broadcasting system.

Impact on spending on Canadian content

48. The Commission notes that English-language private conventional services expended, on average, 26% of their advertising revenues on Canadian programming in 2004. In the same year, English-language specialty services spent an average of 42% of their revenues on Canadian programming. Although the Commission notes the CCTA's proposal that 25% of the additional revenues earned by cable BDUs from their use of local availabilities be directed to the CTF, it remains concerned that implementation of the CCTA's proposal would result in decreased expenditures on Canadian content by the licensees of conventional and specialty television services.

Impact on viability of new Canadian services

49. The Commission has authorized over 290 Category 2 services to date, approximately 60 of which have launched. Each of these newly launched Canadian services is competing to sell the audience targeted by its niche programming to Canadian advertisers. Approval of the CCTA's proposal would provide Canadian advertisers seeking specific demographics with access to the local availabilities contained in the schedules of several popular U.S. satellite programming services. The Commission is concerned that this expansion of advertising inventory within the Canadian broadcasting industry could hamper the ability of these newly launched Category 2 services to establish themselves and could discourage other Category 2 services from launching.

Impact on the availability of promotional opportunities for Canadian services

50. Although a number of submissions filed in this proceeding emphasized the importance of promotional opportunities for Canadian broadcasting services, the Commission does not consider that the information on the public record is sufficient to make a definitive determination as to the impact that would be experienced by Canadian services were they no longer able to have access to the promotional opportunities represented by the local availabilities of U.S. satellite programming services.
51. The Commission has nevertheless long recognized the importance of promoting Canadian programs. In Public Notice 1999-97, the Commission introduced measures to encourage the promotion of Canadian programs, including the designation of Canadian entertainment magazines as priority programming and the exemption of all promotions of Canadian feature films and other Canadian programs from the definition of advertising material. In that notice, the Commission also pointed to "the existing provision for BDUs to replace local availabilities on U.S. satellite services with promotional material" as an "adequate opportunity for Canadian services to promote themselves."
52. In the Commission's view, as the transition to a digital environment unfolds, and as the choice in program content available to Canadians expands, the importance of maintaining the promotional opportunities available to Canadian services and programs also increases.

Impact on Commission policies

53. With respect to the CAB's concerns for the impact of the CCTA proposal on the effectiveness of the Commission's English-language drama incentives, the Commission notes that these incentives were designed to increase the production and broadcast of, the viewing to, and the expenditures on, high quality, original, English-language Canadian drama programming. Broadcasters have access to additional advertising minutes in exchange for commissioning and airing incremental hours of Canadian drama. The drama incentive program was based on the expectation that the additional advertising minutes would have commercial value.

54. The Commission's analysis of the economic impact of the sale of commercial advertising in the local availabilities reveals that there would be an impact, though relatively small, on the advertising revenues of specialty and conventional services, as the advertising market would not immediately expand to accommodate the additional advertising inventory. However, the Commission considers that even a modest negative impact on licensees could reduce the effectiveness of the incentive program, as advertising spots may be devalued as a result of the overall increase in advertising inventory.
55. Further, the Commission notes that, at the time it introduced its incentive policy for English-language drama, it was aware of the possibility that the resultant increased advertising inventory might have some negative impact on smaller conventional and specialty services. Accordingly, it introduced safeguards to minimize that impact, including a cap of 14 minutes per hour placed on the amount of advertising broadcast by the larger conventional television licensees. In the Commission's view, the increased advertising inventory that would be created through implementation of the CCTA's proposal could reduce the effectiveness of these safeguards.
56. The Commission, by longstanding policy, makes the provision of local programming a precondition of access to the local advertising market. This policy is intended to ensure that local broadcasters provide local programming. The policy, in conjunction with the simultaneous substitution regulation, also protects television licensees who provide local programming in a given market from competition for local advertising revenues that might otherwise result from the solicitation of local advertising by the licensees of distant television stations whose signals are imported into the market by cable and other BDUs. It is the Commission's view that approval of the CCTA's proposal would result in broadcasters competing with BDUs and, indirectly, with U.S. satellite programming services, for local advertising revenues. This, in turn, would weaken the protection that currently surrounds the advertising revenues of local and regional television stations, and thus their ability to meet their Canadian programming commitments, including local programming.

Impact on the structure of the Canadian broadcasting system

57. BDU licensees may also hold licences for programming services or operate exempt programming undertakings. They are not permitted, however, to generate revenues directly through the sale and distribution of commercial advertising on their BDUs, but rely instead on subscriber fees. Conventional broadcasters, on the other hand, essentially generate revenues through the sale of national advertising and, dependant upon their adherence to local programming requirements, of local advertising. Canadian specialty services generally earn revenues through a combination of subscriber fees and access to national commercial advertising.
58. The Commission has determined that permitting cable BDUs to place commercial messages in the local availabilities would represent a fundamental change to this important aspect of the Canadian broadcasting system. It is the Commission's determination that the CCTA has not demonstrated clear and substantial net benefits to the Canadian broadcasting system to justify such a fundamental change.

Promotion of non-programming services on broadcasting services

59. The Commission considers that the CCTA has failed to make a compelling case under the Act to justify the use by cable BDUs of local availabilities, as contained in the U.S. satellite programming services, for the promotion of telephony or other non-programming services. Furthermore, the Commission considers that the CCTA has failed to demonstrate conclusively that a BDU's use of local availabilities to advertise its own or affiliated non-programming services would be without a competitive impact. It is the Commission's further determination that such impact would generally be difficult to redress.

Conclusion

60. The Commission, for all of the reasons stated above, rejects the CCTA's proposal and will maintain its policy respecting local availabilities, as first announced in Decision 95-12, clarified in the subsequent public notices and decisions that are summarized in paragraph 4 of this notice, and revised in Public Notice 2005-89 of today's date.
61. In their submissions, the CAB, Ethnic Channels Group Limited and Fairchild Television Ltd. expressed concern regarding the impact that approval of the CCTA's proposed policy change might have in the future, particularly if its scope were to be expanded to include additional U.S satellite programming services or extended to include classes of BDUs other than cable. The Commission notes that, as a consequence of its determination set out above, no further consideration of the matters raised by these parties is necessary.

Secretary General

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<http://www.crtc.gc.ca>