



Broadcasting Notice of Public Hearing CRTC 2006-5

Ottawa, 12 June 2006

Review of certain aspects of the regulatory framework for over-the-air television

The Commission will hold a public hearing commencing on Monday 27 November 2006 at 9:00 a.m. at the Conference Centre, Phase IV, 140 Promenade du Portage, Gatineau, Quebec, to consider the matters addressed in this notice as part of a review of certain aspects of the regulatory framework for over-the-air television.

The Commission invites written comments on the matters for consideration set out below. The deadline for filing written comments is Wednesday 27 September 2006.

Background

1. On 11 June 1999, the Commission issued *Building on Success – A Policy Framework for Canadian Television*, Public Notice CRTC 1999-97 (the 1999 Policy), which was built upon the following five principles:
 - ensure quality Canadian programs at times when Canadians are watching;
 - reflect the diversity of Canada's regions and peoples;
 - support an economically successful broadcasting industry;
 - require regulation only where the goals of the *Broadcasting Act* (the Act) cannot be met by other means; and
 - ensure that regulations are clear, efficient and easy to administer.
2. In order to reflect these principles, the 1999 Policy introduced a number of regulatory measures including:
 - a) The group renewal of all the conventional television licences held or controlled by a single entity.
 - b) The expectation that applicants in transfers of ownership or control will propose tangible benefits of at least 10% of the value of the transaction.
 - c) The requirement that the largest multi-station ownership groups broadcast an average of 8 hours per week of priority Canadian programs during the 7 p.m. to 11 p.m. viewing period.
 - d) The requirement that licensees demonstrate how they will reflect the concerns of local audiences. The provision of local news, however, was no longer required.

- e) Time credits of 150% or 125% for Canadian drama programs, with the credits calculated against the priority program requirement – not against the Canadian content requirement.
- f) Removal of specified expenditure requirements on Canadian programming for most over-the-air (OTA) private television licensees.
- g) The expectation that all licensees make specific commitments to contribute to a system that more accurately reflects the presence of cultural and racial minorities and Aboriginal peoples in the communities they serve.

Introduction

- 3. In the 1999 Policy, the Commission identified some of the changes that it expected to occur in the television broadcasting environment during the next decade. These changes included an increase in viewing choices, largely through additional Canadian and foreign discretionary services; greater opportunities for the export of Canadian programs and the international marketing of Canadian television services; and the continued consolidation of broadcasting, production and communications companies.
- 4. In the seven years since the issuance of the 1999 Policy, the pace of change in the television broadcasting environment has increased. However, in a number of cases the 1999 Policy did not fully anticipate the nature of the changes that would occur.
- 5. With respect to increased viewing choices, since 1999 the Commission has licensed over 100 new Canadian digital specialty services, 21 of which are Category 1 and the remainder of which are Category 2 services. In addition, 17 new applications for pay, pay-per-view and video-on-demand services have been approved. Canadian viewers have also benefited from a wide variety of foreign television services. In addition to the major U.S. networks, Canadian distributors have over 100 foreign satellite services that they may carry, 59 of which have been authorized since 1999.
- 6. Canadian English- and French-language pay and specialty services have increased their share of viewing at a growing rate. According to Nielsen Metered Data, these services captured 23% of all viewing in 1998/99. In 2004/05 this figure had risen to 35.8%. During the same period, the viewing share for English- and French-language OTA television services decreased from 47.2% in 1998/99 to 41.4% in 2004/05. The figures, when broken out by viewing in Quebec and all regions excluding Quebec, are as follows:

	1998/99	2004/05
All Regions Excluding Quebec		
Pay & Specialty	23.6%	36.2%
OTA	42.6%	36.6%
Quebec only		
Pay & Specialty	21.6%	33.9%
OTA	61.7%	56.5%

7. With respect to the export market for Canadian programs, the optimism expressed in the 1999 Policy failed to materialize. On the contrary, as a result, among other things, of increased demand for domestic programming in the European Union, previously strong export markets weakened significantly. According to data published by the Canadian Film and Television Production Association, the export value of Canadian television production was \$611 million in 1999/2000. This figure dropped to \$270 million in 2004/05.
8. Following the 1999 Policy, the Canadian television industry, as anticipated, experienced considerable ownership consolidation. In 2000, the Commission approved the acquisition of WIC Western International Communications Inc. by CanWest Global Communications Corp. (CanWest Global) as well as the acquisition of CTV Inc. by BCE Inc. (BCE) and, in 2001, the acquisition of TVA by Quebecor Media Inc. (QMI). CHUM Limited (CHUM) purchased the Vancouver station CKVU-TV from CanWest Global in 2001, and in 2004, the Commission approved CHUM's acquisition of the Craig Media television stations in Alberta and Manitoba and the QMI purchase of the Toronto station formerly owned by Craig Media. In the case of CanWest Global, BCE and QMI, these transactions also involved cross-ownership with newspaper properties.
9. As a result of this ownership consolidation and the Commission's benefits policy, a considerable amount of money has flowed into the broadcasting system in the form of public benefits since 1999. Transfers of ownership relating to English-language services have produced benefits totalling \$482 million since June 1999 while, for French-language services, the total is \$63 million.
10. The vertical integration of broadcasting with program production has not proved to be as significant a business strategy as expected. In addition, the market collapse of the high-tech sector in 2001 may also have resulted in a more cautious attitude towards integration on the part of most Canadian media companies.
11. With respect to the transition to digital television, the 1999 Policy recognized the eventual replacement of analog with digital technology and noted that stations in the U.S. were beginning this transition. The Commission also recognized that the costs of transition would be significant, and that the regulatory framework should permit the industry to react quickly and appropriately to the pressures it would face. However, the 1999 Policy did not anticipate the rapid consumer acceptance of high-definition (HD) television

receivers or the slow pace of transition to digital on the part of Canadian OTA television. It is now estimated by Canadian Digital Television, an industry organization that provides information on the implementation of HD television in Canada, that the Canadian transition to digital is lagging behind the U.S. by at least four years.

12. The 1999 Policy noted the important role of mainstream broadcasters in reflecting Canada's cultural diversity and supported an industry-led initiative to sponsor research, identify "best practices" and present practical solutions for the industry. This resulted in the CAB Task Force – Reflecting Canadians: Best practices for Cultural Diversity on Private Television which presented its findings in 2002. Close to 20% of Canada's population lists a language other than English or French as their mother tongue. Broadcasters must continue to adapt quickly in order that they accurately reflect the lives led by Canadians in all regions of the country.
13. The 1999 Policy made significant changes to the ways in which OTA television licensees contribute to the production and exhibition of Canadian programs – in particular, priority programs broadcast during peak viewing hours. The Commission took the view that, in an increasingly competitive environment, licensees require high quality programming to win audience loyalty and would, therefore, make the necessary expenditures to acquire such programming. In addition, the Commission noted that the previous expenditure requirements had become complex, and that concerns over their equitable application had begun to outweigh their benefits. Accordingly, the Commission eliminated expenditure requirements that had been in place for most OTA television licensees since 1989.
14. The Commission instead required most OTA television licensees to broadcast a minimum of eight hours per week of priority programs. These programs include Canadian drama, music/variety and documentary programs broadcast during the peak viewing hours of 7 p.m. to 11 p.m. Drama programs, while not required to be broadcast, were provided with time credit incentives. Since 1999, concerns have been expressed that the changes made in the 1999 Policy have been at least partially responsible for a decline in the production of distinctively Canadian drama series. The Commission notes that any decline in the production of Canadian drama following the 1999 Policy also coincided with collapse of the export markets and the rise in popularity of reality programming. Nevertheless, in 2004 the Commission introduced a new incentive mechanism to encourage English-language licensees to increase the hours of original drama broadcast, the expenditures on drama programming and the viewing to such programming. Incentives for French-language licensees were introduced in 2005 and were designed to maintain the existing levels of Canadian drama. Licensees are currently in the second full year of this incentive program.¹

¹ See *Incentives for English-language Canadian television drama*, Broadcasting Public Notice CRTC 2004-93, 29 November 2004, and *Incentives for original French-language Canadian television drama*, Broadcasting Public Notice CRTC 2005-8, 27 January 2005.

15. In summary, the past seven years have seen many changes – some anticipated, others not. In general, the Canadian OTA television industry is healthy, although profits are concentrated in the major urban markets. In 2005, private television stations in large English-language markets had a profit before interest and tax (PBIT) margin of 14%, while private television stations in small English-language markets reported a PBIT margin of 2%. The impact of direct-to-home (DTH) satellite, competition from other programming services and declining local advertising revenues are making it increasingly difficult for both English and French-language small market stations to serve their audiences and invest in the transition to digital.
16. In the large markets, OTA television stations face a declining audience share and major changes in the form and delivery of advertising in addition to the costs related to the digital transition.
17. The changes in the broadcasting environment that have been observed over the past seven years are one thing, but the changes that are likely to take place over the next several years are quite another. In recent months we have seen the emergence of a variety of new platforms for television that may have a significant impact on viewer behaviour. These include such hand held devices as the video iPod and sophisticated cell phone receivers, as well as the SlingBox, which allows access to local television programming from anywhere in the world. It is these prospective changes – in technology and in viewer demands and behaviours – that may impact conventional television the most. What will be the impact of new distribution platforms? How will broadcasters react to evolving consumer requirements for programming services that deliver content anytime, anywhere and on multiple platforms?
18. In order for OTA television licensees to prepare for the upcoming renewals of their licences, it is appropriate for the Commission to seek public comment, on an industry-wide basis, on how Canadian OTA television should respond to the pressures for change. The regulatory framework for television is based on a balance between ensuring appropriate contributions to the social and cultural objectives of the Act while creating conditions for a healthy private sector. Ensuring that this balance is appropriately calibrated given the existing and expected structure of the industry will be the underlying goal of this proceeding.
19. The Commission notes that, while certain aspects of the 1999 Policy will be considered during this proceeding, it does not plan to review that policy in its entirety. The Commission considers that those aspects of the 1999 Policy not identified for review in this notice remain appropriate.

Objectives of this review

20. As noted above, the Commission is aware that the environment for television licensees, in particular OTA licensees, is undergoing significant change. The Commission considers that regulatory clarity on the issues set out in this notice is necessary in order that licensees can prepare renewal applications proposing the maximum realistic contributions for the coming licence terms.
21. The Commission notes that changes are taking place in three major areas:
 - the overall economic models for OTA television undertakings and the production of programs;
 - the technologies for the distribution of television signals and programs; and
 - the expectations of citizens and television consumers with respect to the television broadcasting system.
22. In this proceeding, the Commission's key considerations are to ensure that its regulatory framework for Canadian OTA television:
 - provides an environment in which licensees can make the maximum contribution to Canadian programs in order to fulfil the objectives of the Act;
 - encourages a sustainable business model for television;
 - is responsive to the evolving expectations, tastes and demographics of Canadian viewers;
 - provides licensees with reasonable regulatory certainty, simplicity and coherence;
 - requires regulation only where the goals of the Act cannot be met by other means; and
 - supports, consistent with the Commission's mandate, the maximum amount of consumer choice.
23. The objectives of this proceeding are:
 - A. To ensure that OTA television licensees contribute, in the most effective manner possible, to the production, acquisition and broadcast of high quality Canadian programming that attracts increasing numbers of viewers.
 - B. To provide Canadian OTA television licensees with greater clarity regarding regulations that affect certain costs and revenues so that they are in a position to propose maximum contributions to the production, acquisition and broadcast of high quality Canadian programming.

C. To examine options for the most effective means of delivering Canadian digital/HD television to Canadians.

D. To examine the current and future economic status of small market television stations.

24. The Commission also considers that it is appropriate to review its overall approach to closed captioning.

Specific issues for consideration

25. To provide a context for discussion and to assist interveners in providing focus to their comments, the following sections of this notice highlight issues and concerns and pose specific questions for interested parties in the public process. The questions raised do not indicate any Commission predisposition for any particular approach, nor are they meant to preclude discussion of other relevant issues that interested parties may wish to address.

Objective A: To ensure that OTA television licensees contribute, in the most effective manner possible, to the production, acquisition and broadcast of high quality Canadian programming that attracts increasing numbers of viewers.

26. OTA television licensees contribute to Canadian programming in two essential ways. First, they present such programming to audiences at appropriate times in their schedules. In this regard, OTA television licensees are subject to the minimum regulatory requirements for Canadian content (60% during the broadcast year; 50% during the evening broadcast hours) as well as conditions of licence for priority programming during peak viewing periods.

27. Licensees also contribute through expenditures on the production and acquisition of Canadian programs. In the case of OTA television licensees, there is currently no regulatory requirement to spend a minimum amount on Canadian programs. In a highly competitive market, licensees are expected to spend whatever is necessary in order to acquire programming that will attract a maximum number of viewers while adhering to their exhibition requirements. According to Commission records, in 2005 English and French-language private OTA television licensees together spent 27% of their revenues on Canadian programming. French-language OTA television licensees spent 37% of their revenues, while English-language licensees spent 24% of their revenues, on Canadian programming.

28. For Canadian pay and specialty services, however, there are requirements for both exhibition and expenditures. Expenditure levels are set on a case-by-case basis but, on average, Canadian specialty services spend approximately 37% of their revenues on Canadian programs.

29. With respect to the acquisition of programs from Canadian independent producers, the Commission, in its latest licence renewal decisions, has expected the major OTA television licensees to ensure that an average of 75% of all priority programs is produced by independent production companies. Licensees also file annual reports outlining all their activities with respect to the licensing of independent productions. These reports are made public on the Commission's web site.
30. As noted earlier, benefits related to transfers of ownership have injected over half a billion dollars into the system since 1999. Much of this has been directed to the production of Canadian programs. Nevertheless, the Commission has some concern about an increased dependence on money from benefits for the production of Canadian programs, since the amounts are uncertain and unpredictable.
31. The Commission considers it of primary importance that OTA television licensees be in a position to make the maximum effective contribution to Canadian programs throughout the upcoming licence terms. Accordingly, the Commission seeks comment on the following specific questions:

Questions

- a) *What are the most effective regulatory mechanisms to ensure an appropriate contribution to the production, acquisition and broadcast of Canadian programs?*
- b) *Is the Commission's current approach to independent production appropriate to ensure that the broadcasting system includes "a significant contribution from the Canadian independent production sector," as required by the Act?*
- c) *Should OTA licensees be subject to an expenditure requirement?*
- d) *Should any spending requirement be based on a percentage of revenues, of total program spending, or some other measure? How might any spending requirement account for year-to-year variations in revenues or program spending? Please be as specific as possible in describing any proposed expenditure formula.*
- e) *What changes, if any, should be made to the Commission's benefits policy?*
- f) *In considering the questions set out above, please identify any particular issues or considerations facing French-language OTA broadcasters that may require a different regulatory approach than that adopted for English-language broadcasters.*

Objective B: To provide Canadian OTA television licensees with greater clarity regarding regulations that affect certain costs and revenues so that they are in a position to propose maximum contributions to the production, acquisition and broadcast of high quality Canadian programming.

32. Currently, OTA television licensees have access to only one source of revenue – advertising. This is in contrast to specialty services, which receive advertising revenues in addition to a subscriber fee.
33. In recent years, both advertisers and broadcasters have raised concerns about the continuing effectiveness of traditional advertising messages that are inserted in breaks in the program schedule. Viewers equipped with personal video recorders (PVRs) can avoid such messages. As a consequence, advertisers and television programmers have been developing other means to reach audiences. These non-traditional forms of advertising include the greater use of sponsorship, product placement and digital alterations of images.
34. The Commission's *Television Regulations, 1987* (the Regulations) require that a licensee not broadcast more than 12 minutes of advertising material in any clock hour. In most cases, non-traditional advertising should be counted within the 12-minute limitation even though the form and length of the messages may make them difficult to identify and count.
35. Subscriber fees have been a major source of revenue for specialty services since they were first licensed in 1984. Originally, these services were permitted only limited access to advertising – usually 6 minutes per hour. Since 1996, English and French-language specialty services have generally been permitted to broadcast a maximum of 12 minutes of advertising per hour. In 2005, advertising revenue represented 45% of the total revenue for analog specialty services as a group and subscription revenue accounted for 54%. This compared to 34% for advertising and 63% for subscription revenues in 1998.
36. The Commission notes that overall, English-language pay and specialty services now attract a share of total viewing that is approximately equal to that of English-language OTA television services. French-language OTA services continue to attract significantly higher viewership than French-language pay and specialty services. This has led certain OTA television licensees to propose that OTA broadcasters should also have access to subscriber fees. In this context, the Commission notes that, in its *Digital Migration Framework*, Broadcasting Public Notice CRTC 2006-23, 27 February 2006, the Commission stated that it would no longer regulate wholesale rates for specialty services where they are carried on a digital basis.
37. The Commission recognizes that the transition from analog to digital/HD will involve significant costs. These costs include the conversion of over-the-air transmitters, the acquisition of new production equipment and increased costs associated with the production and acquisition of HD programming. Broadcasters have indicated that these additional costs will not be recovered either through higher rates paid by advertisers nor through increased audiences to HD programming.

38. The Commission understands that many OTA licensees consider that out-of-market tuning is having a detrimental effect on viewing and advertising revenues for local stations. OTA licensees maintain that this is the case even when the tuning is to out-of-market stations that are part of the same ownership group. They submit that it has not been possible to convince advertisers to compensate broadcasters for this out-of-market tuning.
39. The Commission is concerned that the higher costs associated with the conversion to digital/HD, combined with a possible reduction in advertising revenues, could result in the inability of licensees to increase contributions at a time when it is important that the maximum investment possible be made in the production of high-quality HD Canadian programming.

Questions

- a) *In light of changes to the form and delivery of advertising messages on television, should the Commission consider amendments to the Regulations respecting advertising? For instance, should the Commission consider restricting its limitation of 12 advertising minutes per hour to traditional commercial messages inserted as breaks in the program schedule (15, 30, 60 seconds etc.)?*
- b) *What other amendments to the Regulations respecting advertising would be an appropriate response to current and anticipated changes in the way advertising messages are transmitted to television audiences?*
- c) *Should the Commission consider permitting a subscriber fee for the carriage of certain OTA television signals by broadcasting distribution undertakings (BDUs)? If so, what stations and under what circumstances?*
- d) *If such a fee were to be considered, should it be restricted to services that offer new or significantly improved services to subscribers – for instance, services that provide a program schedule that is predominantly in HD?*
- e) *Are there other criteria that the Commission should use in determining whether a subscription fee for OTA television services is warranted?*
- f) *If such a fee were to be considered, on what basis should it be calculated?*
- g) *If a subscription fee were introduced, what changes to the Broadcasting Distribution Regulations (the Distribution Regulations) would be necessary or appropriate?*
- h) *Is the apparent failure to monetize out-of-market tuning a serious problem? If so, what regulatory measures could be introduced to address the problem?*

- i) *In considering the questions set out above, please identify any particular issues or considerations facing French-language OTA broadcasters that may require a different regulatory approach than that adopted for English-language broadcasters.*

Objective C: To examine options for the most effective means of delivering Canadian digital/HD television to Canadians.

40. OTA television stations, by definition, operate transmitters that allow viewers to receive their signal over the air without charge. Current statistics show that slightly over 80% of Canadian households now subscribe to a cable, satellite, digital subscriber line (DSL) or other form of BDU. Of those that do not, some would rely on OTA reception primarily for affordability reasons; some may simply be satisfied with OTA signals only, while others may have little or no interest in television service. It is also noted that many households continue to employ OTA reception for second and third sets, as well as for portable sets.
41. The Commission set out its policy to oversee the transition of OTA television from analog to digital in *A licensing policy to oversee the transition from analog to digital, over-the-air television broadcasting*, Broadcasting Public Notice CRTC 2002-31, 12 June 2002. This policy framework established the principle that digital technology would be a replacement for analog and set out the terms under which new digital OTA services would be licensed. It also stated that a market-driven model with no mandated transition deadline would be appropriate.
42. This approach is in contrast to the U.S., which has established a specific date by which analog transmission will cease, and all OTA television signals must be transmitted digitally. Currently, the deadline for the conversion to digital in the U.S. is 17 February 2009.
43. In *The regulatory framework for the distribution of digital television signals*, Broadcasting Public Notice CRTC 2003-61, 11 November 2003, the Commission set out its policy framework for the distribution of OTA digital television signals by BDUs. In this framework, the Commission established the principle that BDUs, except under very limited circumstances, must carry the primary signal of Canadian OTA digital television stations identified in sections 17, 32 and 37 of the Distribution Regulations. BDUs may apply to drop the analog version of these services once 85% of the BDU's subscribers have the ability to receive digital services. A primary digital service that is carried on a priority basis will enjoy the same substitution rights as an analog service with the same priority status as long as the quality of the signal is the same or higher than the quality of the signal to be replaced.

44. Since 2002, 26 OTA digital television services have been licensed for the cities of Toronto, Montréal and Vancouver. Clearly, the pace of transition in Canada has been slow, particularly in comparison with the U.S. The Commission is concerned that viewers investing in HD receivers and subscribing to the HD services offered by Canadian BDUs are finding little Canadian programming offered in HD. As a result, these viewers may turn to foreign services and it may be difficult to repatriate them, even when Canadian programming is available in HD.
45. Licensees have indicated that one of the barriers to a more rapid transition to digital/HD may be the cost of modifying or replacing the existing analog transmission networks. In this proceeding, the Commission expects that parties will place on the record accurate information with respect to the costs that will have to be incurred, over and above the normal depreciation and equipment replacement cycle.
46. Given the high rate of BDU penetration and the relatively small proportion of households reliant on OTA reception, some would argue that OTA television stations should not incur the expense of replicating their existing analog transmission networks in digital as this may not be the best use of their resources, and hence not in the public interest. While BDUs, as noted above, must incur the expense of building their capacity in order to distribute digital services, OTA television stations might arguably better devote the monies otherwise required for digital transmission to producing more and better Canadian digital programming for distribution by Canadian BDUs.
47. The Commission notes that there are a number of fundamental provisions set out in the Distribution Regulations that are inherently linked to the existence of OTA television stations. These include provisions related to priority carriage and simultaneous substitution, which, in addition to these rights being defined in terms of the service contours of OTA stations, are major components of BDUs' contributions to the regulatory bargain that permits distribution of Canadian OTA services without payment to the local OTA television licensee. This regulatory structure helps ensure the provision of local and regional programming to Canadians.
48. In light of the regulatory policies set out in the Act, the Commission seeks comment on the most appropriate and effective means of delivering Canadian digital/HD signals to Canadians. Specifically, comment is sought, with respect to the future of OTA television, whether there are circumstances under which it *may* be in the public interest *not* to require OTA television undertakings to replicate existing analog over-the-air transmitters with digital transmission facilities, and if there are, what those circumstances would be.

Information requested from OTA licensees

- a) *With respect to your OTA television stations, provide current data regarding the number of Canadian households dependent on OTA transmitters as their primary source of these signals.*
- b) *Where possible, break down the above data according to market size (i.e. small, medium and large markets). Please provide your definition of market size.*

- c) *Provide specific information with respect to the cost of upgrading existing analog transmission facilities with digital transmission facilities.*
- d) *Provide cost comparisons between operating a digital transmitter network and providing a digital signal by direct feed to the head ends of all BDUs obliged to carry the signal.*

Questions

- a) *Describe the public policy implications of a decision not to require OTA transmission of digital/HD signals, including the implications for the Canadian Broadcasting Corporation/Société Radio-Canada, educational and OTA community television services.*
- b) *For those Canadians who continue to rely on OTA transmission, what reasonable and cost-effective alternatives could be proposed?*
- c) *How would licensees make local and regional programming available to the appropriate communities if there were no OTA digital transmission?*
- d) *What changes to CRTC regulations and/or policies would be required to accommodate a change resulting in no OTA digital transmission?*
- e) *If such an approach were taken, at what point should analog over-the-air services be shut down, or should the Commission specify such a point?*
- f) *In considering the questions set out above, please identify any particular issues or considerations facing French-language OTA broadcasters that may require a different regulatory approach than that adopted for English-language broadcasters.*

Objective D: To examine the current and future economic status of small market television stations.

49. In *Direct-to-home (DTH) broadcasting distribution undertakings – simultaneous and non-simultaneous program deletion and the carriage of local television signals in smaller markets*, Broadcasting Public Notice CRTC 2003-37, 16 July 2003 (Public Notice 2003-37), the Commission, following an extensive public process, found that it would be appropriate to relieve DTH BDUs of their obligations to perform simultaneous and non-simultaneous program deletion, so long as they fulfilled certain alternative measures. In that proceeding, the Commission determined, among other things, that audiences and revenues of stations serving markets with populations of fewer than 300,000 people (small market stations) have been particularly affected by the migration from over-the-air to DTH viewing. Key features of the alternative measures adopted by the Commission in Public Notice 2003-37 included the following:

- Approval of the carriage arrangements for independently owned small market stations proposed by the DTH licensees.
- Approval of the equitable distribution of stations belonging to larger broadcast ownership groups proposed by the DTH licensees.
- Approval of the distribution of no more than two sets of U.S. commercial network services and the compensation arrangements, as proposed by the DTH licensees.
- Approval of ExpressVu's proposal to partially black out or delete same time zone/same network Canadian television signals in certain small markets.
- Approval of Star Choice's proposal to substitute the programming of a small market independent broadcaster, within that small market, over comparable and simultaneously broadcast programming originating from the same network and within the same time zone.
- No limitation, in select small markets, of the distribution of Canadian television signals from earlier time zones.
- Approval of a fund intended to permit DTH licensees to assist small market independently owned television licensees in contributing to Canadian programming and, in particular, to meeting their commitments to local programming.

50. The Commission considers that the carriage provisions and the programming fund approved in Public Notice 2003-37 have improved the financial situation for most small market independently owned television licensees. The 17 stations benefiting from this fund in 2005 and 2004 reported combined PBIT margins of 15.67% and 16.39% respectively. This compared to a PBIT margin of 10.59% in 2003.
51. The Commission notes that small market television stations can provide an important source of local news and other programming to their communities. However, the quantity provided by licensees varies widely. All CTV stations provide a minimum of 15 hours of local programming per week. CanWest Global stations vary between 9.25 and 42.5 hours per week, and CHUM stations average 20 hours per week. Independently owned stations in small markets vary from 0.5 to 13 hours per week.
52. French-language OTA television stations also vary with respect to their local programming commitments. Small broadcasters provide between 1.5 hours per week and 5.0 hours per week whereas, outside Montréal, TVA and TQS provide 7.5 and 9.5 hours per week respectively.

Questions

- a) *What has been the impact of out-of-market tuning on stations in small markets?*
- b) *Are the measures set out in Public Notice 2003-37 to assist **independently owned** small market broadcasters in maintaining and improving local programming having their desired effect? Should they be continued or altered? If the latter, how?*
- c) *Should independently owned small market broadcasters be obliged to broadcast a minimum amount of local programming? If so, what amount should that be?*
- d) *What measures may be appropriate to ensure that small market stations **controlled by larger broadcast ownership groups** continue to fulfil their local programming obligations?*
- e) *Should the Commission expect broadcast ownership groups with profitable stations in the largest Canadian markets to subsidize their stations in small markets?*
- f) *In considering the questions set out above, please identify any particular issues or considerations facing French-language OTA broadcasters that may require a different regulatory approach than that adopted for English-language broadcasters.*

Closed captioning policy

53. The Commission set out its approach to closed captioning in *Introduction to decisions renewing the licences of privately-owned English-language television stations*, Public Notice CRTC 1995-48, 24 March 1995. Since that time, the Commission has generally required English-language broadcasters to caption 90% of all programming and 100% of news, with exceptions granted on the basis of the size (revenues), status (i.e. new entrant or not) and nature or language of the service in question.
54. In the 1999 Policy, the Commission stated that it considers that French-language broadcasters should have requirements for closed captioning of programming similar to those applicable to English-language broadcasters. Since then, it has explored the implementation of such requirements as part of its consideration of applications for new licences for French-language television stations, or for the renewal of such licences.
55. For third-language services, recognizing that captioning technologies do not permit the captioning of all languages, the Commission has generally required the captioning of English- and/or French-language programming and encouraged the captioning of programming in other languages.
56. Since that time, the industry has rapidly moved towards the 1995 objective of 90% closed captioning. Notwithstanding this important achievement, however, a number of concerns have been raised about the quality, accuracy and reliability of the captioning that is being provided within the Canadian broadcasting system. For example, and particularly with respect to live programming, captioning consumers have raised concerns about the lack of

captions, technical failures of captioning, and inaccuracy in captioning such as garbled captions, misspelled words and other errors. Although the industry has developed closed captioning standards in consultation with representatives of the deaf and hard of hearing community, none of these standards specifically address these types of concerns.

57. The Commission wishes to explore ways to improve the accessibility of television programming for persons who are deaf or hard of hearing.

Questions

- a) *Please comment on the appropriateness of the Commission adopting a requirement for the captioning of 100% of all television programming by all OTA television broadcasters, including whether exceptions should be granted and on what basis.*
- b) *Please comment on the feasibility of captioning in languages other than English or French and the obligations that should be applied to services that broadcast in third languages.*
- c) *The Commission is also seeking concrete and specific proposals to address the ongoing concerns about captioning quality, including the appropriateness of an industry standard “error rate” and the possibility of adopting a self-regulatory approach with a third-party body like the Canadian Broadcast Standards Council to adjudicate complaints about captioning and captioning quality.*

Public proceeding

58. The Commission will hold a public hearing commencing on Monday **27 November 2006** at 9:00 a.m. at the Conference Centre, Phase IV, 140 Promenade du Portage, Gatineau, Quebec, to consider the matters addressed in this notice.
59. The Commission invites written comments that address the issues and questions set out above. The deadline for filing written comments is Wednesday **27 September 2006**.
60. Following the oral public hearing, interested parties may have an opportunity to file brief final written comments.
61. The Commission will only accept submissions that it receives on or before the prescribed date noted above.
62. Parties wishing to appear at the public hearing must state their request on the first page of their written submissions. Parties requesting appearance must provide clear reasons, on the first page of their submissions, as to why the written submission is not sufficient and why an appearance is necessary. The Commission will subsequently inform parties whether their request to appear has been granted. While submissions will not otherwise be acknowledged, they will be considered by the Commission and will form part of the public record of the proceeding, provided the procedures set out herein have been followed.

Procedures for filing comments

63. Interested parties can file their comments to the Secretary General of the Commission:

- **by using the**
[Broadcasting Intervention/Comments Form](#)

OR

- **by mail to**
CRTC, Ottawa, Ontario K1A 0N2

OR

- **by fax at**
(819) 994-0218

64. Submissions longer than five pages should include a summary.

65. Please number each paragraph of your submission. In addition, please enter the line ***End of document*** following the last paragraph. This will help the Commission verify that the document has not been damaged during transmission.

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66. Note that all information that you provide as part of this public process, except information granted confidentiality, whether sent by postal mail, facsimile, e-mail or through the Commission's web site at www.crtc.gc.ca, becomes part of a publicly accessible file and will be posted on the Commission's web site. This information includes your personal information, such as your full name, e-mail address, postal/street address, telephone and facsimile number(s), and any other personal information you provide.

67. Documents received electronically or otherwise will be put on the Commission's web site in their entirety exactly as you send them, including any personal information contained therein, in the official language and format in which they are received. Documents not received electronically will be available in PDF format.

68. The personal information you provide will be used and may be disclosed for the purpose for which the information was obtained or compiled by the Commission, or for a use consistent with that purpose.

69. The Commission encourages interested parties to monitor the public examination file and the Commission's web site for additional information that they may find useful when preparing their comments.

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Secretary General

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