



Broadcasting Public Notice CRTC 2004-63

Ottawa, 16 August 2004

Licence renewal for various multipoint distribution system undertakings

This public notice and its accompanying decisions set out the Commission's determinations with respect to the renewal applications of three licensed operators of multipoint distribution system (MDS) undertakings serving numerous urban and rural communities in eastern and western Canada.

In this notice, the Commission examines the role that MDS undertakings play within the Canadian broadcasting system, the services they are permitted or required to distribute, and other matters affecting all three MDS licensees. Requirements for contributions to local expression, Canadian programming and community television, other conditions of licence, and other matters pertaining to the operations of specific licensees, are discussed in the decisions dealing with the individual renewal applications.

The role of multipoint distribution systems within the Canadian broadcasting system

1. In three decisions issued today, the Commission renews, to 31 August 2011, the broadcasting licences held by licensees operating multipoint distribution system (MDS) broadcasting distribution undertakings (BDUs) serving various urban and rural communities in eastern and western Canada.¹ One of the three MDS operators, Image Wireless Communications Inc. (Image), was a non-appearing applicant at the public hearing held in the National Capital Region beginning 20 October 2003. The other two operators, LOOK Communications Inc. (LOOK) and Craig Wireless International Inc. (Craig), appeared at that hearing. Image holds thirteen Class 3 BDU licences, one to serve Lloydminster, Alberta, and the remainder for separate MDS undertakings serving Regina, Saskatoon and ten other communities in Saskatchewan. LOOK holds two regional Class 1 BDU licences, one to provide MDS service to Toronto and to 26 other communities in southern Ontario, and the other to serve the communities of Montréal and Québec and surrounding areas, the Saguenay/Lac St-Jean region, and Eastern Ontario and Western Quebec (including the National Capital Region)². Craig holds a regional Class 1 BDU licence to provide MDS service to Winnipeg and eight other Manitoba communities.

¹ See *LOOK – MDS licence renewal*, Broadcasting Decision CRTC 2004-347; *Image – MDS licence renewal*, Broadcasting Decision CRTC 2004-348; and *Craig - MDS licence renewal*, Broadcasting Decision CRTC 2004-349, each dated 16 August 2004.

² As part of LOOK's renewal decision, and at the applicant's request, the Commission has issued a single licence for the combined Ontario and Quebec service areas.

2. MDS is a wireless distribution technology that employs frequencies in the 2.6 GHz range. In Canada, the technology was introduced in the early 1980s for use in the delivery of television signals to the home. MDS signals are receivable by a standard VHF/UHF television receiver, provided it is equipped with a special antenna and converter, and the antenna is within line of sight of the MDS transmitter. The spectrum assigned by the Department of Industry to each MDS transmitter is sufficient for the delivery in any given service area of 15 analog television signals or, depending on the data compression method employed, between 75 and 120 low definition digital television signals.
3. In *Regulatory policy for direct-to-home (DTH) satellite television systems, multipoint distribution systems (MDS) and subscription television systems (STV)*, Public Notice CRTC 1987-254, 26 November 1987, the Commission ascribed a role to MDS undertakings whereby they would operate as a complement to cable television. The Commission envisaged that MDS might be used by an existing cable operator to extend its service into less populated areas within its authorized service area, or by a third party to deliver services to unserved areas. Under the Commission's policy, an MDS undertaking was only to compete in an area served by cable in the distribution of discretionary services. Acknowledging that the technology and hardware had not then fully developed, the Commission indicated that its purpose was to implement a licensing policy that imposed no undue regulatory burden on MDS licensees. It added, however, that the policy might subsequently be revised, as required, to take into account the evolution of MDS technology or its use.
4. In *Regulatory policy for multipoint distribution systems (MDS)*, Public Notice CRTC 1993-76, 3 June 1993 (Public Notice 1993-76), the Commission indicated that it continued to view MDS as playing a complementary role by providing "a range of television services to households in areas not served by cable television undertakings". However, in its 19 May 1995 report to the government entitled *Competition and culture on Canada's information highway*, the Commission reassessed this position and determined that, "in light of the dominance of the cable industry relative to other potential entrants, there is no need to limit competition by other entrants in the broadcasting distribution market".
5. Shortly thereafter, in December 1995, the Commission announced that it would issue a licence to SkyCable Inc. (SkyCable) to provide MDS service to Winnipeg and several other Manitoba communities³. SkyCable was renamed Craig Wireless International Inc. (one of the three current applicants for licence renewal) in 2000. The other MDS systems operated by Image⁴ and LOOK⁵ were licensed in decisions issued between 1996 and 1998.

³ Decision CRTC 95-910, 20 December 1995

⁴ Decision CRTC 96-775, 4 December 1996

⁵ Decisions CRTC 97-370 and 98-55 dated 6 August 1997 and 20 February 1998, respectively.

6. There are now more than 20 licensed MDS undertakings operating in Canada, including the 16 undertakings whose licence renewal applications are the subject of today's notice and decisions. At its peak in 2001, the Canadian MDS industry served approximately 86,000 subscribers. According to the Commission's records, however, the number of MDS subscribers stood in the neighbourhood of 50,000 in 2002. The MDS industry has not achieved the success projected for it by its proponents. Rather, it experienced a rapid expansion of competition from the direct-to-home (DTH) industry, while its own growth was hampered by MDS technology's limited channel capacity and reliance on line-of-sight access between transmitter and receiving antenna. Although, as mentioned above, video compression technology now permits MDS BDUs to distribute, in some cases, as many as 120 low definition digital television signals, this number is far outstripped by the digital capacity of both cable and DTH technology.
7. It was against this background that the Commission considered the licence renewal applications by Craig, LOOK and Image and, in particular, the licensees' requests for flexibility on the part of the Commission in setting their distribution and other requirements for the upcoming licence term.

The distribution of broadcasting services by MDS

The distribution of conventional television services

8. Licensed BDUs are currently regulated under the *Broadcasting Distribution Regulations* (the Regulations), which came into force on 1 January 1998. Before that date, the television programming services that had to be distributed by BDUs as part of the basic service were prescribed in section 9 of the *Cable Television Regulations, 1986* (the 1986 regulations), which were repealed with the coming into force of the Regulations. Craig, Image, and LOOK in respect of its Ontario regional licence, were relieved of the requirements of section 9 of the 1996 regulations in their conditions of licence which also specified the conventional Canadian television services that they were required to carry. These services are largely the ones the licensees would be obliged to distribute under section 17 of the Regulations (which lists the carriage priorities that apply to Class 1 and Class 2 BDU licensees), as well as section 32 (which applies to Class 3 BDU licensees).
9. In Decision CRTC 98-55, 20 February 1998 (Decision 98-55), the Commission approved the application by LOOK for a single Class 1 licence in respect of its Quebec-based regional MDS undertaking. As in the previous cases, the conditions of licence identified the specific Canadian television signals and services that LOOK was required to distribute. The conditions relieved LOOK of the requirements of section 17 of the Regulations.
10. Current conditions of licence vary from one MDS undertaking to another in specifying the additional Canadian and non-Canadian services that a licensee may distribute. In most cases, the specific signals or services that the licensee may distribute are identified individually by name or call sign, and are generally the same as those that the licensee proposed to distribute in its original licence application. In the case of LOOK's Ontario-

based MDS undertaking, however, the conditions of licence also permit the licensee, subject to certain distribution and linkage requirements, to distribute any specialty or pay television service, “as well as any of the programming services contained in the list of Part II Eligible Satellite Services”.

11. Each MDS licensee has conditions of licence authorizing the distribution on the basic service of one set of U.S. 4+1 television network signals, subject to certain distribution and linkage requirements. Other non-Canadian services may only be distributed in discretionary packages with Canadian pay and specialty services in accordance with condition of licence requirements, most of which mirror rules that apply to other BDUs under section 20 of the Regulations. For example, the MDS licensees may link a Canadian pay television service in a discretionary package with no more than five non-Canadian satellite services, while a Canadian specialty service may be linked in a discretionary package with only one non-Canadian satellite service. In addition, no package may contain only non-Canadian services, and no non-Canadian service authorized for distribution may be linked with a Canadian specialty service distributed on the basic service.
12. The MDS licensees did not generally propose any modification to their existing conditions of licence identifying the Canadian conventional television services that they must distribute, or to their conditions specifying the distribution and linkage rules under which non-Canadian services are carried. Nor was any change to the existing conditions proposed in interventions. The licensees, however, did request the flexibility to distribute any of the conventional television services described in section 17 of the Regulations, as well as the signals of other, distant Canadian television stations. In addition, Craig and LOOK requested authority to distribute any of the non-Canadian services that cable and other BDUs are generally permitted to distribute.

The Commission's analysis and determination

13. The Commission considers that, given their channel capacity constraints, the MDS licensees should, by condition of licence, continue to be relieved of the requirements of section 17 of the Regulations in the case of Craig and LOOK, and section 32 in the case of Image, and should remain subject to their current conditions of licence that specify the signals of those conventional Canadian television stations they must distribute. These conditions of licence are set out in appendices to the three MDS licence renewal decisions issued today.
14. The Commission also finds reasonable the licensees' request that they be authorized to distribute, at their option, the signals of television stations that they would otherwise be required to distribute under section 17 of the Regulations. Accordingly, conditions of licence to this effect are set out in the renewal decisions.
15. The licensees also requested authority to distribute the signals of distant Canadian television stations, but did not specify which signals they intended to distribute. With respect to the LOOK and Craig applications, the Commission notes that the licensees of Class 1 and Class 2 BDUs are free to apply for authority to distribute the signals of

distant Canadian television stations. They must specify in their applications, however, the particular signals they wish to distribute. In addition, and consistent with the Commission's approach to the distribution of distant Canadian television signals by these BDUs, the Commission generally requires that such signals be distributed in accordance with the requirements set out in *Distant Canadian television signals*, Public Notice CRTC 1985-61, 22 March 1985. Among other provisions, these requirements specify that:

a) there should be no objection on the part of the originating station whose signal is being extended; and

b) the originating station whose signal enters a distant market should not accept local advertising from such a market.

16. The Commission notes that, in the interest of encouraging cable television subscribers to subscribe to digital service offerings, it has also approved applications by the licensees of a number of Class 1 and Class 2 cable BDUs to distribute any of the Canadian television signals set out in Appendix B - List of Part 3 Eligible Satellite Services⁶ (Appendix B). Such approvals have generally been granted so long as the licensees comply with the requirement that the signals be distributed on a discretionary basis on the digital service. Further, the licensees must adhere to the requirements regarding non-simultaneous program deletion set out in section 43 of the Regulations. The Commission may suspend the application of this provision in respect of a signal, upon its approval of an executed agreement between the licensee and affected broadcasters or their representatives. Such an agreement must deal with issues related to the protection of program rights arising in connection with the discretionary carriage of a second set of U.S. 4+1 signals and of Canadian distant television signals solely on the licensee's digital service, as approved in this decision.
17. The Commission notes that LOOK and Craig may apply for authority to distribute additional distant Canadian television signals, as described above, either through an application identifying the specific signals to be distributed or as an application to distribute any of the Canadian television services identified in Appendix B, subject to the requirements of section 43 of the Regulations or an alternative approved agreement.
18. With respect to Image, the Commission notes that, subject to such requirements as are specified in Appendix B, the licensees of Class 3 BDUs are already permitted to distribute, without the need for further application, the programming service of any licensed television programming undertaking received from a licensed satellite relay distribution undertaking (SRDU).
19. In general, it is the Commission's view that the MDS licensees should be free to choose from the Lists of Eligible Satellite Services and to distribute the same range of Canadian and non-Canadian services that cable and other BDUs are permitted to distribute, in

⁶ The most recent lists are those appended to *Revised lists of eligible satellite services*, Broadcasting Public Notice CRTC 2004-52, 15 July 2004

accordance with the class of licence held by each. This means that, as Class 1 licensees, Craig and LOOK would be permitted to distribute any of the services appearing in Appendix A – List of Part 2 Eligible Satellite Services, while as noted above, Image, as a Class 3 licensee, would be permitted to distribute any service appearing in Appendix B. The conditions of licence applicable to each of the licensees are included in the appendix to its licence renewal decision. These include conditions that reiterate the existing distribution and linkage requirements for each licensee, modified where necessary to reflect the changes described above regarding the carriage of additional discretionary Canadian and non-Canadian services.

The distribution of pay and specialty services

20. In *Introductory Statement – Licensing of new direct-to-home (DTH) satellite distribution undertakings and new DTH pay-per-view (PPV) television programming undertakings*, Public Notice CRTC 1995-217, 20 December 1995 (Public Notice 1995-217), the Commission set out its policy requirements regarding the provision of access by DTH BDUs to licensed Canadian pay and specialty television services. In its 1995 decision licensing SkyCable (now Craig), and in its 1996 decision licensing Image, the Commission stated that it considered the access policy to have general application to MDS undertakings as well.
21. The Commission therefore expected the new MDS licensees to distribute all licensed pay television and specialty programming services, subject to channel availability and to other considerations discussed in Public Notice 1995-217. Application of the access policy was formally extended to all BDUs in *Access rules for broadcasting distribution undertakings*, Public Notice CRTC 1996-60, 26 April 1996. Accordingly, in Decision CRTC 97-370, 6 August 1997 (Decision 97-370), which approved LOOK's licence application for its Ontario regional MDS undertaking, the Commission repeated the above expectation concerning the distribution of all Canadian pay and specialty services, "subject to the availability of MDS channel capacity and other considerations discussed in Public Notice CRTC 1996-60".
22. Subsequently, the access requirements were incorporated into section 18 of the Regulations. The requirements apply to Class 1 BDUs and, in part, to Class 2 BDUs. They do not apply to Class 3 BDUs. The pay and specialty services that a BDU licensee is required to distribute under section 18 depends upon a number of considerations, such as the official language of the market served, the nominal bandwidth capacity of the undertaking, and whether the licensee has deployed digital technology.
23. In Decision 98-55 approving LOOK's application for a single Class 1 licence in respect of its Quebec-based regional MDS undertaking, the Commission stated the same expectation that it expressed in Decision 97-370 regarding the distribution of pay television and specialty services by LOOK's Ontario-based regional MDS undertaking. The Commission, however, relieved the licensee, by condition of licence, of the requirements of section 18, except as they would apply to the services that LOOK was required to distribute.

The applicants' proposals

24. In their renewal applications, both Craig and LOOK argued that channel capacity limitations would make it impossible for them to distribute the full range of specialty, pay and other services that Class 1 BDUs are generally required to distribute under section 18 of the Regulations. Craig requested that it be relieved entirely of the requirements of section 18, as well as of any expectations concerning access. According to Craig, it should be a sufficient requirement that it adhere to the provisions of section 6 of the Regulations, which specify that a majority of a licensee's channels must be devoted to the distribution of Canadian programming services. LOOK also requested relief from section 18 requirements. Citing its limited channel capacity, LOOK proposed that the Commission reiterate the expectation it expressed regarding the distribution of pay and specialty services at the time it approved LOOK's Ontario- and Quebec-based regional MDS undertakings, but added that the Commission should also permit LOOK to reduce the number of pay and specialty television services it distributes so that it may make "reasonable use" of MDS spectrum for the delivery of Internet services to its customers.

Interventions

25. Although interveners expressed no direct opposition to the applicants' requests, the Canadian Cable Television Association (CCTA) did comment on LOOK's plans to reduce the number of pay and specialty services it distributes in order to expand its Internet service. According to the CCTA, LOOK already has relief from various requirements that apply to Class 1 cable BDUs, including certain of those that relate to distribution and linkage. The CCTA argued that, should LOOK's request be granted for relief from the requirements of section 18 of the Regulations, then similar relief should be granted to all BDUs. Other comments by the CCTA and by the Canadian Association of Broadcasters were more general in nature. Both submitted that requirements imposed on BDUs for the purpose of achieving cultural objectives should be applied equally to all BDUs in a given market.

The Commission's analysis and determination

26. The Commission notes that, were the provisions of section 18 of the Regulations to apply in their entirety to the MDS undertakings operated by LOOK and Craig, each would be called upon to distribute 51 English-language, and approximately 10 French-language, pay television and specialty services in Anglophone markets. The required number of such services, in either official language, would be considerably smaller in Francophone markets. Currently, in their respective Anglophone markets, LOOK distributes 34 such services, while Craig distributes only 30. Both licensees make use of the full 90 MHz of MDS spectrum that they have been assigned. In each case, however, approximately 6 MHz (sufficient capacity to deliver between 3 and 10 digital television signals) is now used for the delivery of Internet services to subscribers. Requiring these MDS licensees

to adhere strictly to the provisions of section 18 would leave both operators with little choice but to reassign a large amount of the capacity now dedicated to pay-per-view and/or non-Canadian services and to eliminate all or a portion of their Internet services. Even were they to do so, they would still only be able to offer subscribers a portion of the total number of services that DTH and most cable BDUs are able to provide.

27. As mentioned above, both Craig and LOOK make use of a certain amount of their spectrum assignments to offer Internet services, and these applicants have outlined their plans to increase the amount of spectrum devoted to this purpose. The Commission notes in this regard that BDU licensees are not prohibited from using distribution capacity to deliver Internet services to subscribers. However, section 3(1)(t)(i) of the *Broadcasting Act* (the Act) states, as part of the broadcasting policy for Canada, that BDUs “should give priority to the carriage of Canadian programming services”. The Commission’s power to implement that aspect of the broadcasting policy is contained in section 9(1)(g) of the Act which specifies that the Commission may “require any licensee who is authorized to carry on a distribution undertaking to give priority to the carriage of broadcasting”.
28. The Commission concludes that imposition of the section 18 requirements on LOOK and Craig would tax their distribution capacity and unduly increase the competitive disadvantage they face as a result of the limitations of MDS technology. The Commission is nevertheless concerned that the applicants’ proposed alternatives to the requirements of section 18 of the Regulations would create a situation where their distribution of programming services, particularly of Canadian programming services, is reduced, and the amount of MDS spectrum devoted to Internet services is increased to an extent that is contrary to the objectives of the Act cited above. In light of the important broadcasting policy objectives of the Act, including those served by the requirements of section 18 of the Regulations, the Commission is not prepared to grant these licensees full relief from those requirements without specifying alternative obligations for the distribution of pay and specialty services that are tailored to reflect their channel capacity relative to the capacity of other distributors, while ensuring that, to the extent possible, these objectives are met.
29. Accordingly, the Commission will relieve LOOK and Craig of the requirements of section 18 of the Regulations. Conditions of licence to this effect are set out in the appendices to their respective renewal decisions. In place of those requirements, the Commission has imposed the following conditions of licence establishing specific alternative obligations on both applicants:

The licensee shall devote at least 50% of its allotted frequency spectrum to the distribution of programming services, other than pay-per-view programming services.

The licensee shall distribute at least one licensed pay television service, specialty service or Category 1 service, as defined by the *Broadcasting Distribution Regulations*, for every two programming services of any other type that it may

distribute, including those of licensed television stations, Category 2 services, pay-per-view services, non-Canadian television stations, or Part 2 eligible satellite services, but excluding the services of radio stations and other audio programming services. For the purposes of this condition, each pay-per-view service shall be counted as one television programming service, regardless of the number of channels used to distribute that service.

30. The Commission is satisfied that the above conditions of licence will provide LOOK and Craig with sufficient flexibility to pursue their respective plans, while ensuring that they continue to offer their subscribers access to a number of varied and attractive pay and specialty services that is appropriate and in proportion to the licensees' distribution capacity relative to that of other types of BDUs.

Distribution of services in the official language of the minority

31. Under section 18(11.2) of the Regulations, Class 1 and Class 2 BDUs that make use of digital technology for the delivery of any service and have a nominal capacity of less than 750 MHz are generally required to distribute at least one French-language specialty service for every ten English-language programming services of any kind distributed in anglophone markets, and at least one English-language specialty service for every ten French-language programming services of any kind distributed in francophone markets. Similar requirements are set out at section 33.3(1) of the Regulations concerning Class 3 BDU licensees having a nominal capacity of at least 550 MHz.
32. Section 18(11.3) expressly states that the requirements of section 18(11.2) described above do not apply to MDS BDUs (e.g., to Craig or LOOK). The section 33.3(1) requirements do not apply to the Class 3 MDS BDUs operated by Image, since their nominal capacity is only 90 MHz. However, in *Achieving a better balance: Report on French-language broadcasting services in a minority environment*, Public Notice CRTC 2001-25, 12 February 2001, the Commission stated as follows:

The Commission remains of the view that the rather limited transmission capacity of multipoint distribution systems (MDS) continues to warrant special treatment. However, as the technology advances and their channel capacity increases, the Commission expects these systems to offer more French-language services. The Commission proposes to deal with issues relating to the number of specialty services distributed in the minority official language at the time of MDS licensing and licence renewal.

The applicants' proposals

33. LOOK's offering in southern Ontario includes more than 90 television services, most of which are English-language services. Its offering also includes several ethnic or third-language services, and four French-language services. The French-language services are those of the CBC and TVA television networks, the Ontario educational broadcasting authority's TFO, and the specialty service known as Le Réseau de l'information (RDI). The first three of these French-language services must be carried under LOOK's

conditions of licence, while the fourth (RDI) is one that LOOK is not specifically required to distribute. At the hearing, LOOK indicated that, while it appreciated the Commission's desire to increase the number of French-language broadcasting services that BDUs make available to francophones living in anglophone markets, MDS technology has not advanced in recent years and the hoped-for increases in channel capacity have not materialized. LOOK stated that, while it would not have the capacity to distribute one French-language specialty service for every ten English-language services, it would accept a condition of licence requiring that it distribute at least one French-language specialty service for every twenty English-language services it distributes.

34. Craig advanced a proposal at the hearing that differed from that of LOOK. Specifically, Craig stated that, for every ten English-language services it distributes, it would be prepared to distribute, by condition of licence, at least one French-language service, provided that conventional, as well as pay and specialty services, could be included in the count of French-language services. Craig currently distributes some 60 television programming services on its Manitoba MDS BDU, all or most of which are in English except for three French-language services, these being the network services of the CBC, TVA and TV5. The first two of these services must be distributed, while Craig's carriage of TV5 is not specifically required.

35. There were no comments or interventions that addressed this particular matter.

The Commission's analysis and determination

36. At the public hearing, LOOK indicated that it plans to reduce, to approximately 70, the total number of television services it would distribute in the new licence term. Craig indicated that, in the new licence term, it intends to reduce the number of television programming services it distributes to approximately 50. Even with these reductions, the implementation of either applicant's proposal would result in an increase, both in the ratio of French- to English-language services and in the absolute number of French-language services, that each distributes. Although Craig's proposal focuses on French-language services in general, as opposed to just French-language specialty services, the larger ratio proposed by Craig (1:10 as compared to LOOK's 1:20) offers the potential of making more French-language services available to francophones in anglophone markets should the overall number of television services that the licensees distribute expand in the future.

37. Given the similarity of the challenges facing the two licensees, the Commission considers that Craig and LOOK should be subject to the same requirements for the distribution of French-language services in anglophone markets. The Commission also considers that the 1:10 ratio proposed by Craig offers the advantage of increasing the number of French-language services that are available to francophone subscribers resident in anglophone markets without unduly affecting the conventional service offerings of the two licensees. Further, the approach proposed by Craig would take into account the channel capacity constraints that both licensees face, while making provision

for a further expansion in the number of French-language specialty services available to subscribers with any increase in the overall number of television services distributed. Accordingly, in the case of each of Craig and LOOK, the following condition of licence is included in the appendix of its licence renewal decision:

In anglophone markets, the licensee shall distribute at least one licensed French-language programming service, whether that of a licensed television station, a specialty service, Category 1 or Category 2 service, or pay television service, as defined in the *Broadcasting Distribution Regulations*, for every ten English-language programming services it distributes, including those of licensed television stations, specialty services, Category 1 or Category 2 services, pay television services, pay-per-view services and non-Canadian-originated programming services, or any combination thereof, but excluding the services of radio stations and other audio programming services. For the purposes of this condition, each pay-per-view service shall be counted as one television programming service, regardless of the number of channels used to distribute that service.

38. In the case of the Class 3 MDS BDUs operated by Image, the Commission expects the licensee, as its channel capacity increases, to increase the number of French-language specialty services it distributes.

The distribution of ethnic programming services

39. In its intervention to the MDS renewal applications, the Canadian Diversity Network (CDN) recommended that the MDS licensees be required to distribute increasing numbers of ethnic services over the course of the upcoming licence term. Specifically, the CDN proposed that the MDS licensees each be required to distribute at least 10 ethnic services by the end of 2004, 20 such services by the end of 2006 and 30 ethnic services by the end of 2008. CDN further recommended that each licensee distribute two television services per ethno-cultural group or language, giving priority to Canadian services, and that these licensees work towards meeting similar targets for the distribution of audio services. The MDS licensees did not respond directly to CDN's proposal.
40. The Commission notes that the distribution of ethnic programming services serves to fulfil the objective set out in section 3(1)(d)(iii) of the Act, which provides, in part, that the Canadian broadcasting system should reflect the linguistic duality and multicultural and multiracial nature of Canadian society. To date, the Commission has licensed five conventional ethnic television stations, and five analog ethnic specialty services. It has approved applications for approximately 60 Category 2 ethnic specialty services, eleven of which have launched. In addition, it has placed 19 non-Canadian third-language services on the Revised lists of eligible satellite services.

41. The Commission finds that the targets proposed by the CDN for the MDS licensees overestimate the number of ethnic services currently available, and do not realistically take into account the capacity issues facing these licensees. Moreover, to impose a new requirement on the MDS licensees for the distribution of ethnic services, particularly of Category 2 services, would run contrary to the Commission's position, originally set out in *Licensing framework policy for new digital pay and specialty services*, Public Notice CRTC 2000-6, 13 January 2000, that distribution of Category 2 services by BDUs would not be guaranteed. Nevertheless, the Commission encourages the MDS licensees to add ethnic services to their service offerings in the new licence term, especially should their technical capacity to do so increase.

Other matters

The use of alternative distribution technologies

42. At the hearing, the Commission discussed with both Craig and LOOK their respective plans during the new licence term, including the possible use of technologies other than MDS technology to distribute broadcasting services. LOOK expressly requested the Commission's approval to make use of other technologies for this purpose. It acknowledged that constructing its own alternative network would not be practical, and speculated that it might wish to lease satellite or digital subscriber line capacity from common carriers. However, it was unable to set out a clear plan for the Commission specifying what technology it would use. For its part, Craig described projects it was pursuing, whereby broadcasting services would be delivered over its existing spectrum to a subscriber's home computer. According to Craig, the computer could be connected to a television should a subscriber wish to view programming on the latter.
43. The Commission is not prepared to consider a request such as that put forward by LOOK without first having a far clearer understanding of the applicant's intentions. The Commission considers that, should LOOK wish to make use of a technology or technologies other than MDS for the distribution of broadcasting services, it should return to the Commission with specific plans, in the context of a complete application requesting authority to proceed with their implementation, either under its current or a new licence.
44. With regard to Craig's use of MDS technology for the delivery of programming services to home computers, the Commission notes the determination that it reached in *New Media*, Broadcasting Public Notice CRTC 1999-84/Telecom Public Notice CRTC 99-14, 17 May 1999, that "devices such as personal computers...fall within the definition of 'broadcasting receiving apparatus' to the extent that they are or are capable of being used to receive broadcasting." Further in the Commission's view, such use would be consistent with the policy objective set out in section 3(1)(t)(ii) of the Act that distribution undertakings "should provide efficient delivery of programming services at affordable rates, using the most effective technologies available at reasonable cost".

The accessibility of programming services

45. In their applications and at the hearing, the MDS licensees emphasized the technical and financial difficulties they face, and their consequent inability to offer described video programming to their subscribers. The Commission acknowledges the obstacles, but encourages the licensees to continue to improve the accessibility of their services.

Secretary General

This document is to be attached to each licence. It is available in alternative format upon request and may also be examined at the following Internet site: <http://www.crtc.gc.ca>