



Correction to the *Report to the Governor in Council on English- and French-language broadcasting services in English and French linguistic minority communities in Canada* – July 2009

In the section “Access to new media”, the Commission replaces the units of measurement kilobytes per second and megabytes per second with the units of measurement kilobits per second and megabits per second respectively.

The following version of the *Report to the Governor in Council on English- and French-language broadcasting services in English and French linguistic minority communities in Canada* reflects the corrections mentioned above.

Report to the Governor in Council on English- and French-language broadcasting services in English and French linguistic minority communities in Canada

30 March 2009

In this document, the Commission sets out its final comments on its review of English- and French-language broadcasting services in English and French linguistic minority communities in Canada announced in Broadcasting Notice of Public Hearing 2008-12. Specifically, the Commission examines the television, radio and new media services available within the Canadian broadcasting system to:

- *determine whether official-language minority communities have access to an appropriate and equitable number of quality services,*
- *establish whether those communities are adequately represented in the programming of these services;*
- *identify deficiencies and challenges related to access to these services and the representation of the communities in their programming; and*
- *discuss proposed measures for addressing these deficiencies and meeting these challenges.*

The Commission concludes that official-language minority communities have appropriate access to television services. The Commission determines that the Canadian Broadcasting Corporation and community radio stations play a most important role in official-language minority communities. The Commission finds that community reflection in the programming of the services available in the Canadian broadcasting system can be improved.

In the medium and long term, the Commission considers that new media represent the best solution for ensuring access to a maximum number of services and for allowing a better reflection of official-language minority communities within the Canadian broadcasting system.

Introduction

In Broadcasting Notice of Public Hearing 2008-12, the Commission announced a public hearing to be held commencing on 13 January 2009 in the National Capital Region to examine the issues set out in that notice relating to the review of English- and French-language broadcasting services in Canada's official-language minority communities.

The Commission stated in that notice that it was holding the hearing in response to the Governor in Council's Order P.C. 2008-1293, which required that the Commission:

- a) examine the availability and quality of English- and French-language broadcasting services in English and French linguistic minority communities in Canada;
- b) identify any deficiencies and challenges in those communities regarding the provision of official-language broadcasting services and determine the availability of official-language services across all broadcasting platforms and distribution systems;
- c) propose measures to encourage and facilitate access to the widest range of official-language broadcasting services possible in English and French linguistic minority communities in Canada and to ensure that the diversity of these communities is reflected in the Canadian broadcasting system.

In light of this order, the Commission determines that its review of broadcasting services must focus on five issues, two related to the Canadian broadcasting system and three related to the communities.

The two issues relating to the broadcasting system involve determining the availability of English- and French-language broadcasting services across all broadcasting platforms and distribution systems, and ensuring that the diversity of these communities is reflected throughout the Canadian broadcasting system.

The three issues relating to the communities involve examining the availability and quality of English- and French-language broadcasting services in official-language minority communities; identifying any deficiencies and challenges in those communities regarding the provision of official-language broadcasting services; and proposing measures to encourage and facilitate access to the widest range of official-language broadcasting services possible.

In Broadcasting Notice of Public Hearing 2008-12, the Commission called for comments on the availability and quality of television, radio and new media services; access by official-language minority communities to these services; and the reflection of these communities in the programming. The Commission received and examined the written comments of a number of parties, including representatives from the communities, broadcasters and broadcasting distribution undertakings (BDUs), as well as members of government.

To assist the parties in preparing their comments, the Commission placed on the public file a study conducted by the Department of Canadian Heritage on the availability of services. Ekos Research Associates Inc. prepared a study entitled *Canada's Community and Campus Radio*

Broadcasting Sectors: An Analysis of the Sector's Roles and Impacts in the Context of Current Technological and Media Sector Changes.

The external consultants Brynaert et associ e.s (Brynaert) submitted to the Commission a study on the availability of radio, television, cable and high-speed Internet services in Canada's English and French linguistic minority communities. Their study, entitled *Sounds and Images*, included a quantitative analysis of the results by province and territory.

These studies made it possible to define the official-language minority communities. Based on 2006 Census data, the Brynaert study examined 343 francophone communities and 153 anglophone communities. The Commission notes that the 2006 Census shows that there were 939,995 Francophones living outside Quebec and 993,570 Anglophones living in Quebec, for an estimated total of 1,933,565 Canadians living in official-language minority communities.¹ Furthermore, over 50% of Francophones outside Quebec are in Ontario and approximately 25% are in New Brunswick, with the remainder spread across the other provinces and territories. Brynaert also concluded that the official-language minority communities are fairly equally divided among urban (52%) and rural (48%) regions. In British Columbia, Alberta, Manitoba and Quebec, the communities are more concentrated in urban areas, while in New Brunswick and Ontario, they are primarily located in rural areas, such as the Acadian Peninsula and northeast Ontario. Finally, the Commission notes that the vast majority (over 70%) of members of the anglophone minority communities are located in the Montr al Metropolitan Area, with the remainder located in small to large communities in Quebec.

Following the hearing held from 13 to 16 January 2009 in the National Capital Region, and following its examination of the written comments and oral interventions that comprise the record of this proceeding, the Commission has identified three major issues that are related to all the types of services examined: the availability of services, access to the services and the reflection of official-language minority communities in the programming of the services. These issues, which the Commission defines in greater detail below, directed the presentation of the Commission's final comments in the context of this review.

In evaluating the issue of availability of services within the Canadian broadcasting system, the Commission categorized all licensed television and radio services by type (commercial or community, mainstream or niche) and by means of transmission or distribution (over the air, by a BDU or by new media). Access to services includes the means by which the public can receive services, for example, analog or digital distribution, cable or satellite. Reflection of official-language minority communities relates to the representation of communities in the programming by licensed television and radio services, which can take the shape of local programming or the broadcast of programs that are produced by producers from the communities or that reflect the reality of those communities. In other words, reflection provides a way for communities to be seen or heard and to see or hear themselves on screen and on radio.

Because each broadcasting sector and each type of service is fundamentally different, in the two sections that follow, the Commission sets out its observations on television and on radio services separately. For each issue and each type of service, the Commission addresses the positions of

¹ Statistics Canada, 2006 Census (note: first official language spoken was the measurement used).

the parties to discuss measures proposed during the proceeding, and provides its final observations.

The Commission notes that the observations made in this report are addressed to the federal government as a whole and to all elements of the broadcasting system. Although the Commission has specific jurisdiction over the areas set out in the *Broadcasting Act*, it notes that the accessibility, diversity and viability of the Canadian broadcasting system depend on all its stakeholders. Accordingly, this report sets out observations that relate to all the stakeholders within the system.

In addition, following the Governor in Council's specific request that the Commission take into account technological advances in its report on broadcasting services for the official-language minority communities, the Commission is also addressing new media. Given the increasing importance of new media, the possibilities and future prospects they provide for Canadians, and their potential important contribution to enhancing access to and reflection of official-language minority communities within the broadcasting system, the Commission encourages those communities to adopt these new tools. This report explores how these technologies could enhance the access of those communities to broadcasting services in their language and how they could enable the broadcast of content that could enhance their reflection within the system.

Where appropriate, the Commission identifies certain issues it proposes to examine in subsequent proceedings.

Television services

Availability of television services in the Canadian broadcasting system

Television services authorized to broadcast in Canada consist of private and public conventional (over-the-air) television services, specialty services, pay television services, pay-per-view (PPV) services, video-on-demand (VOD) services and educational services, whether they be English-language, French-language or bilingual (i.e., operating in both official languages).

On 31 December 2008, there were 75 English-language and 20 French-language private commercial conventional television services authorized to broadcast in Canada. The English-language private conventional television market consists of major ownership groups such as CTVglobemedia Inc. (CTVgm), Canwest Media Inc. (Canwest), and Rogers Media Inc. (Rogers). The French-language market consists of major ownership groups such as Quebecor Media Inc. (Quebecor) and Remstar Diffusion inc.

The Canadian Broadcasting Corporation (CBC) is Canada's national public broadcaster. The CBC owns and operates 26 conventional television stations, of which 15 are English-language and 11 are French-language. The CBC also operates two national conventional television network services, one in the English language and the other in the French language.

There were 44 Canadian analog specialty services on 31 December 2008: 28 English-language, 14 French-language as well as two services operating in both official languages. There were also 18 Category 1 digital specialty services: 15 English-language and three French-language. There

were 166 approved Category 2 digital specialty services, including 141 English-language services, 19 French-language services, and six services operating in both official languages. As of 31 December 2007, 53 services were launched: 50 English-language, two French-language and one operating in both official languages.

As of 31 December 2008, the Commission had approved 19 English- and French-language pay services, of which 12 were Category 2 digital pay services. As of 31 December 2007, three Category 2 digital pay services had been launched: two English-language and one French-language.

As of 31 December 2008, there were seven terrestrial PPV services: five English-language, one French-language and one operating in both official languages. There were six direct-to-home (DTH) PPV services: four English-language, one French-language and one operating in both official languages. There were also 25 licensed VOD services: 12 English-language, two French-language, and 11 operating in both official languages. As of 31 December 2007, ten of these services had been launched: eight English-language and two French-language.

At the end of 2008, there were a total of seven educational services: four English-language and three French-language. Finally, there is a cable public affairs channel operating in each official language.

A more detailed breakdown of the number and type of television services authorized for broadcast in Canada is set out in Appendix 1.

Although there are more English-language than French-language television services because the English-language market is larger than the French-language market, the Commission considers the number of available French-language services to be equitable.

Access to television services in official-language minority communities

The Brynaert study concluded that official-language minority communities, particularly metropolitan communities, generally have access to a wide range of television services and to digital cable and satellite distribution services. All the communities involved in the study receive free television programming from the CBC, the public conventional broadcaster. These communities also have access to at least one cable BDU whose basic service includes local English- and French-language conventional Canadian television services. Only six of those communities involved in the study have access only to analog cable and not digital cable. Further, in all of these communities, residents can subscribe to DTH BDUs that distribute a range of Canadian services.

However, like the interveners, the Commission notes that French-language minority community access to television services is not optimal. English-language minority communities have access to a wide and diverse range of English-language services without having to subscribe to digital distribution services. The residents of French-language minority communities have to subscribe to digital cable or DTH BDUs to access a comparable range of services. The Commission would anticipate that, with time and as digital distribution replaces analog, this situation will be largely addressed.

The public process helped to identify some challenges and possible solutions. In the following paragraphs, the Commission examines the following issues:

- the distribution of the two French-language CBC stations in Ontario;
- the impact of the regulatory frameworks for BDUs and discretionary services on the number and variety of services available to official-language minority communities;
- the creation of a package of specialty French-language services;
- the mandatory distribution of certain specialty French-language services on the basic service of BDUs; and
- access to French-language coverage of the 2010 Olympic Games in Vancouver.

Distribution of the two French-language CBC stations in Ontario

Among the parties that submitted interventions, the Fédération culturelle canadienne-française (FCCF) and the Fédération des communautés francophones et acadienne du Canada (FCFA) emphasized the importance of the role of the CBC's regional stations in official-language minority communities. Because many of the communities rely on the CBC as their only source of regional news in the minority language, some parties stated that the rule set out in Broadcasting Public Notice 2008-100, which will require DTH BDUs to distribute at least one station from each major broadcasting group per province, will increase several communities' access to their regional CBC station. For example, when it comes into effect in 2011, the new rule will enable Fransaskois who subscribe to DTH BDUs to receive the regional French-language CBC Saskatchewan service.

However, the situation is different in Ontario, where the CBC operates two regional stations: one in Ottawa and one in Toronto. When required to provide at least one station per province, DTH BDUs may choose to offer only one of the two French-language CBC stations in Ontario, to the detriment of the francophone community members who are served by the other station. Given that the Toronto station is the only conventional French-language television station providing local programming to that region and that the Ottawa station provides local French-language programming to a large francophone population from the national capital, the CBC requested that DTH BDUs be required to distribute both stations as part of their basic service.

The Commission takes note of the view of these interveners with respect to the importance of the role that the CBC's regional stations play in providing regional programming within Franco-Ontarian communities. Programming from Ottawa, the federal capital, and from Toronto, the provincial capital and a major Canadian city, is of significant interest to the francophone population of Ontario. This population accounts, moreover, for over half of the francophone population living outside of Quebec.

The Commission also takes note of the concerns of the interveners with regard to access to the two regional CBC stations in the province, since, for example, that of the two Ontario stations,

Star Choice distributes only the Ottawa station and Bell TV provides only the local and regional programming of the Toronto station on a partial channel. The Commission also notes that some Franco-Ontarians may choose to subscribe to a terrestrial BDU that offers the local CBC signal but that may offer a lesser range of French-language specialty services, particularly in analog, or to a DTH BDU that offers a range of specialty services but not the local CBC station. Although all BDU subscribers must make similar choices, the Commission notes that the consequences of these choices are exacerbated for Franco-Ontarians.

Given the particular situation of subscribers to DTH BDUs in Ontario's francophone communities, the Commission considers that it would be preferable for those subscribers to have access to the programming of the two French-language CBC stations in their province. In the Commission's view, the distribution of both French-language CBC stations in Ontario would contribute to furthering the objectives of the *Broadcasting Act*. The Commission also notes that the regulatory framework set out in Broadcasting Public Notice 2008-100 does not prohibit BDUs from exceeding the minimum number of stations that they must distribute. The Commission therefore suggests that DTH BDUs and the CBC hold discussions to ensure that the local programming of the two French-language CBC stations in Ontario is offered to Franco-Ontarians and invites the government to encourage these discussions.

Impact of the regulatory frameworks for broadcasting distribution undertakings and discretionary services on the number and variety of services available to official-language minority communities

Several parties voiced their concerns regarding the implementation in 2011 of the distribution rules set out in Broadcasting Public Notice 2008-100. They expressed concern that the 1:10 rule, which will require BDUs to distribute one Canadian specialty service in the minority language for each ten services distributed in the majority language, will lead to fewer French-language services being offered to Francophones in minority situations.

In order to address these concerns, the Commission wishes to clarify this misunderstood rule. **The compilation of services in the majority language under the 1:10 rule takes into account not only Category 1 and Category 2 Canadian analog and digital services but also conventional television services and non-Canadian television services. The Commission therefore remains of the view that the implementation of the 1:10 rule will enable Canadians in all markets to receive an increasing number of services in their language and will be sufficient to ensure that communities have access to an equitable number of services in the minority language.**

Because several parties have expressed concern regarding the quality and variety of the discretionary French-language services offered to communities, the Commission reminds these parties that it authorizes analog and Category 1 services (which will be known as Category A services) in accordance with the one-service-per-genre rule. The Commission generally requires that pay and specialty services be complementary rather than competitive. **Although the Commission has opened up the genres of mainstream sports and national news to competition, its policy of genre exclusivity with respect to Canadian services continues to apply, and the Commission remains of the view that this policy will ensure that a variety of specialty services in both languages exists in the Canadian broadcasting system.**

Creation of a package of specialty French-language services

Community representatives noted that subscribers to terrestrial BDUs, in order to access the maximum number of French-language services offered by their distributor, must subscribe to several packages. They submitted that the French-language services offered by several distributors are part of theme packages that include both English- and French-language services. To receive all French-language services, subscribers must therefore subscribe to several theme packages, which can be very costly. As a result, several parties suggested that BDUs should be required to group all the French-language specialty services that they currently distribute into one package and to offer it to subscribers at a price slightly higher than the wholesale cost. In this respect, the Ontario French-Language Educational Communications Authority (TFO), with the support of several parties, suggested that a package including all the French-language analog and Category 1 specialty services (i.e., 19 services, excluding the Réseau de l'information [RDI], which is distributed as part of the digital basic service and subject to a mandatory distribution order) should be offered at a reasonable price. Some parties suggested \$5.00.

The Commission considers that, in a digital universe, creating a package of all the French-language services that a BDU must distribute would place only a minor additional burden on BDUs. In fact, some BDUs already offer such packages consisting of only French-language services. The Commission is also of the view that offering a package of French-language specialty services would make these services more easily accessible, which would have a positive effect on services received by official-language minority communities.

The Commission considers that communities should have the opportunity to subscribe to all the French-language services offered by a BDU as simply, efficiently and cost-effectively as possible and that BDUs should consider grouping all the French-language services in their digital offering into a single package as an attractive business opportunity.

With regard to determining the cost of a French-language specialty services package, the Commission notes that its current practice is to let market forces determine wholesale and retail prices and that it does not intend to change this approach.

The mandatory distribution of certain specialty French-language services

Several parties, including the FCCF, the FCFA, the Ministerial Conference on the Canadian Francophonie (MCCF) and the Commissioner of Official Languages, submitted that the television services available to French-language minority communities are lacking in variety. The interveners expressed the desire for access by these communities to services of particular importance to the preservation and development of the culture of these communities. According to these parties, the value of a service may stem from its nature (e.g. if it is dedicated to arts and culture), from its target audience (e.g. youth), or from its conditions of licence (e.g. if they require the licensee of the service to reflect the reality of the communities or to broadcast programs by independent producers from outside Quebec). The parties thus identified certain services as being of a particular quality and essential importance to the communities, specifically, TFO, Télé-Québec, RDI, Vrak TV, ARTV and TV5. Some interveners even

suggested that these services should have a mandatory distribution order under section 9(1)(h) of the *Broadcasting Act*.

The Commission recognizes that a certain number of French-language services broadcast programs by producers from official-language minority communities and reflect French-language minority communities in Ontario and elsewhere in Canada. Some are subject to conditions of licence for the broadcast of these programs. As such, these services make a major contribution to the Canadian broadcasting system.

To optimize communities' access to services that reflect their reality and to incite licensees to broadcast regionally relevant programs, the Commission encourages BDUs in French-language minority communities, when selecting the French-language services they intend to distribute, to prioritize the distribution of services whose programming reflects the reality of official-language minority communities (including Category 2 services, where applicable).

The Commission notes that it reserves the issuance of a mandatory distribution order, which it considers to be an exceptional measure and a privilege, for services that can prove that they make an outstanding contribution to the achievement of the objectives of Canadian broadcasting policy (i.e., services whose programming promotes Canadian expression, meets the general criteria of the basic service and corresponds to several objectives of the *Broadcasting Act*, which include linguistic duality). The Commission notes that it would only make a decision regarding the issuance of a mandatory distribution order following a public hearing relating to a request filed by an applicant to this effect.

Access to French-language Olympic Games coverage

In Canada, the rights to air the 2010 Olympic Games in Vancouver were granted by the International Olympic Committee (IOC) to the Bell Globemedia-Rogers Media consortium (now called CTVglobemedia-Rogers Media) (the consortium). The consortium plans to broadcast the 2010 Games in French on the conventional television network TQS and the specialty services Réseau des sports (RDS) and Réseau info sport (RIS). The Aboriginal Peoples Television Network (APTN) will also dedicate part of its French-language programming to the 2010 Games. In light of the parties' comments and discussions at the hearing, the Commission considers that 2010 Olympic Games coverage raises two issues, namely that of the difference between the number of hours of coverage in English and in French and that of access to French-language coverage.

With regard to the number of hours of 2010 Olympic Games programming, the consortium plans to provide Canadians with access to 1,100 hours of English-language coverage and 800 hours of French-language coverage. Groups representing francophone communities maintained that it is unacceptable that there be such a gap between English- and French-language coverage.

In its final comments, the consortium stated that the total duration of all the Olympic events during the 2010 Games will be 658 hours. By offering 800 hours of French-language programming and 1,100 hours of English-language programming, the consortium will ensure

that it broadcasts all the events in both official languages. The additional hours represent the broadcast and simultaneous rebroadcast of certain events by more than one service.

In response to a question from the Commission, the CBC indicated that during the 2006 Winter Olympic Games in Torino, the CBC and RDI broadcast a total of 292.75 hours of French-language programming and that the CBC, CBC Newsworld and bold (then Country Canada) broadcast a total of 486.5 hours of English-language programming. The consortium will therefore be providing 2.7 times the French-language coverage and 2.3 times the English-language coverage as the CBC provided in 2006. The Commission also notes that the CBC's coverage in 2006 was 66% more extensive in English than in French, compared to 38% for the consortium's proposal. The Commission therefore considers that the proportion of 2010 Games coverage in the two official languages is equitable.

The Commission notes that access to television coverage of the 2010 Olympic Games is a major issue for francophone communities outside of Quebec. In fact, the TQS network currently has only a single station outside of Quebec, CFTF-TV-1 Edmundston. Although TQS is distributed by several BDUs outside of Quebec, its distribution is not mandatory in any of those markets. In addition, RDS and RIS are also difficult to access via some terrestrial BDUs serving French linguistic minority communities.

To improve the distribution of these services, the consortium intends to make TQS, RDS and RIS available free of charge to all digital distributors serving English-language majority markets for the duration of the 2010 Games. In addition, the consortium indicated that it would broadcast all the events live on its Internet site, in addition to offering VOD content in both languages on the Internet. Finally, the consortium noted that BDUs could offer one of the signals in analog in lieu of the barker channel.

It is possible that some members of official-language minority communities subscribing to certain analog services, those not subscribing to any BDU, and those without broadband Internet access will not have access to the coverage of the 2010 Games in their language. Interventions from government officials, such as the Commissioner of Official Languages and the provincial ministers who participated in the MCCF, as well as groups representing French-language minority communities, stressed that it is important that all Canadians have access to equitable coverage of the 2010 Olympic Games in the language of their choice. Specifically, the Commission notes that interveners requested that the signals of TQS, RDS and RIS be made available for a period of several months prior to the beginning of the 2010 Games so that members of official-language minority communities may have access to programming focusing on the lead-up to the 2010 Games.

In response to questions by the Commission, the CBC submitted that it had attempted, albeit unsuccessfully, to negotiate with the consortium to reach an agreement that would have allowed it to broadcast events for the benefit of francophone communities outside Quebec whose members do not subscribe to a BDU. It argued that its mandate does not allow it to let the consortium use its stations, even in exchange for financial compensation. For this reason, the CBC sought to negotiate an agreement that would have allowed it to co-produce part of the French-language programming of the 2010 Games. These negotiations were ultimately

unsuccessful. After negotiations broke down with the consortium, the CBC implemented a strategy that would allow it to “[translation] have a strong presence” during the 2010 Games in Vancouver. It intends to broadcast a large number of feature news stories on cultural and political events surrounding the 2010 Games.

For its part, the consortium defended its plan, explaining that a large majority of Canada’s Francophones will have access to French-language broadcasts of the 2010 Games via their BDU, which should offer free of charge at least one of the services that will broadcast some of the coverage of the Games, and that all events will be available free of charge on the Internet. The consortium also submitted that the consortium negotiated in good faith with the CBC, but that it could not reach an agreement that satisfied both parties, which the CBC confirmed.

The Commission notes that the two official languages of Canada are also the two official languages of the Olympic Games. The Commission considers that coverage of Olympic Games held in Canada should be to the greatest extent possible available to all Canadians in both official languages.

The Commission recognizes the efforts made by the consortium to provide as much content as possible in both official languages on several platforms, as well as to provide many hours of coverage in both languages. The Commission considers reasonable the proposal by the consortium to unscramble the signals of TQS, RDS and RIS for a period of two weeks prior to the commencement of the 2010 Games, especially insofar as all broadcasters will have the opportunity to broadcast content on the Games during this period. The Commission notes that the CBC has specifically expressed its intentions to do so.

The Commission notes that in the letters of the President and CEO of the CBC addressed to the President and CEO of CTVgm and the Chairman of the Commission, which has been placed on the public record of this proceeding, the CBC stated that it was prepared to resume discussions with the consortium to address the Commission’s concerns.

The Commission encourages the consortium and the CBC to continue discussions as soon as possible, while reminding the CBC of its mandate as a national public broadcaster and reminding the consortium that the licences it holds allowing it to use the public airwaves are issued by the government. The Commission hopes that the new negotiations will allow both parties to find a practical basis of agreement so that the issue can be resolved once and for all and that the members of French linguistic minority communities that receive only French-language CBC television can have access to some of the Olympic events in their own language.

Reflection of official-language minority communities in television programming

All of the official-language minority community representatives who participated in the hearing – the Ad Hoc Quebec Production Committee, the Alliance des producteurs francophones du Canada (APFC), the English-Language Arts Network (ELAN), the FCFA, the FCCF, the Fédération des francophones de la Colombie-Britannique (FFCB), the Quebec Community Groups Network and the Voice of English-speaking Québec –, as well as TV5, TFO, the Commissioner of Official Languages and the delegated ministers from the MCCF, consider

regional reflection to be the barometer for the quality of minority television services available to minority communities. They demanded that measures be implemented to expand the representation of these communities within the Canadian broadcasting system, in news and in all other types of programming, and to better meet their needs in terms of local and regional programming.

Broadcast of regionally-produced programs and expenditures on the acquisition or production of such programs

According to the interveners, French-language independent productions from outside Quebec could play a more important role within the Canadian broadcasting system. Specifically, they should be more numerous and more visible during peak viewing hours. The APFC also submitted that the space allotted to regional French-language productions in the CBC schedule is limited: Belle-Baie being the only series to air during peak viewing hours. Thus, although the CBC French-language network and other broadcasters reserve part of their schedule for community reflection and call on producers from those communities, the fact remains that these productions are not among the most visible and that the equitable representation of communities within the system is still a problem.

As a possible solution, the APFC used the example of ARTV, on whom the Commission imposed, in Decision 2000-386, a condition of licence requiring the allocation of a percentage of its annual budget for original Canadian productions to programs produced outside Quebec. According to the APFC, this measure has a positive structuring effect and ensures regional reflection and a diverse Canadian content that projects the culture, artists and the reality of French-language minority communities. The APFC recommended that the Commission impose conditions of licence for conventional broadcasters that operate undertakings in the communities to increase the broadcast of regionally-produced programs. These conditions of licence would set broadcast quotas or expenditure requirements. For example, the FCCF and the APFC proposed that at least 15% of the budgets of French-language broadcasters be allocated to francophone producers from outside Quebec.

With regard to English-language minority communities, the Commissioner of Official Languages, in its report entitled *Shadows over the Canadian Television Landscape*, concluded that anglophone producers in Quebec face specific challenges: “fierce North American competition, lower international labour costs and the exodus of producers to other provinces that offer more attractive tax credits.” As a solution, the ELAN advocated that a minimum percentage of programming by English-language stations broadcasting in Quebec be produced by independent Quebec producers.

The Commission considers that the representation of communities on screen is essential to ensuring a suitable quality of service. The Commission intends to study this issue, among others, and where appropriate, in the context of licence renewals for Canadian English- and French-language services, and more particularly for the CBC and major Canadian broadcasting groups.

The definition of regionally-produced programs

Intervenors noted that the definitions of the term “regionally-produced program” used by the Commission and the Canadian Television Fund (CTF) are not the same. As set out by the Commission in Public Notice 1999-205, regionally-produced Canadian programs are both English-language programs in which the principal photography occurred in Canada at a distance of more than 150 kilometres from Montréal, Toronto or Vancouver and French-language programs in which the principal photography occurred in Canada at a distance of more than 150 kilometres from Montréal. However, the CTF defines regionally-produced programs as those produced in any part of Canada more than 150 kilometres by shortest reasonable route from Montréal or Toronto.

According to the Commission’s definition, French-language programs from Toronto or Vancouver are regional productions, whereas English-language programs from Montréal are not considered to be regional productions. The CTF considers neither French-language programs from Toronto nor English-language programs from Montréal to be regionally-produced programs.

On the one hand, anglophone groups in Quebec would like the same definition to apply to their linguistic minority community so that English-language programs produced in Montréal may be considered regional productions. In *Shadows over the Canadian Television Landscape*, the Commissioner of Official Languages stated that the clarification of the definition of regionally-produced programs “should make a clear distinction between producing regional programs in the majority official language and producing regional programs in the minority official language.” On the other hand, according to the intervenors, it is essential that changes to the Commission’s definition of regionally-produced programs be made and be accompanied by changes to the CTF’s definition so that regional producers can benefit fully from the fund, as the funding and broadcast of a program are closely linked.

At the hearing, the Commission asked the intervenors to propose a definition of regionally-produced programs. In their final interventions, the Commissioner of Official Languages, ELAN and the APFC jointly filed the following definition for adoption by the Commission and the CTF to account for productions in linguistic minority environments:

English-language programs at least 30 minutes long (less a reasonable amount of time for commercials, if any) a) which are produced by an independent producer whose head office is located in Quebec, or b) in which the principal photography occurred in Canada at a distance of more than 150 kilometres from Toronto or Vancouver. Programs in which the principal photography occurred on Vancouver Island will also be considered regionally-produced programs.

French-language programs at least 30 minutes long (less a reasonable amount of time for commercials, if any) a) in which the principal photography occurred in Canada at a distance of more than 150 kilometres from Montréal, or b) which are produced by an independent producer whose head office is located outside of Quebec and the majority of whose productions are in French, will be considered regionally-produced programs.

The Commission has taken note of the need to review its definition of English-language regional productions to distinguish between the production of regional programs in the majority official language and the production of regional programs in the minority official language. Given that the broadcast and funding of Canadian programs are closely linked, the Commission also recognizes the need to harmonize its definition of regionally-produced programs with that of the CTF.

Now that the government has made a decision on the governance of the CTF, the Commission intends to address with the Canada Media Fund at the appropriate time the possibility of establishing a common definition of regionally-produced programs. However, the Commission notes that all proposals to modify its definition of regionally-produced programs will be subject to a public process.

Creation of a French-language specialty service dedicated to French-language minority communities

In 2006, the APFC consulted with Canadian francophone organizations, broadcasters and public organizations to find a consensus solution to the problems and issues relating to the reflection of Canadian francophone and Acadian minorities on the small screen and their access to it. The solution consists of three options, presented in the APFC report *Bâtir l'avenir sur les acquis d'aujourd'hui*: (1) build on past achievements to improve the reflection of French-language minority communities and the contribution of francophone regional independent production in the programming of the current national broadcasters (CBC, TV5, TVA); (2) strengthen TFO's role and make it a national educational broadcaster; or (3) create a new inter-regional francophone service.

According to the report filed by the APFC, the partners consulted (members of the national joint committee) support the second option, that of making TFO the national educational broadcaster by granting it mandatory distribution on the basic service of BDUs, with a fee for carriage. In fact, as many interveners noted, TFO is one of the services that best reflects the various realities of French-language minority communities. TFO's nature of service is educational and cultural; its target audience, while composed mainly of young people, includes all Francophones outside of Quebec; and it broadcasts programs by independent producers from French-language minority communities.

In order for the Commission to determine whether it would be conceivable for TFO to obtain a mandatory distribution order, notably in light of the requirements set out earlier, the Commission would have to receive an application to that effect. That application would have to be examined as part of a public proceeding.

In regard to the creation of a new inter-regional francophone service, the APFC submitted in its report and at the hearing that this option is seen as utopian both for financial and management reasons, and because the national joint committee is concerned about the possible ghettoization effect of such a service. At the hearing, the APFC stated that francophone communities do not want to limit themselves to one network produced by Francophones for Francophones but would rather become stakeholders in Canadian society. Further, the APFC submitted that such an

option would be unrealistic due to the presence of several competitive French-language services that broadcast content produced outside Quebec.

Notwithstanding the conclusion reached by the national joint committee in the APFC report, the Commission considers that the option of establishing an inter-regional French-language service available not only to French-language minority communities but to all Francophones across Canada would enhance the reflection of Francophone communities and the visibility of minority French-language Canadian productions. This would further allow minority French-language Canadian producers to find their place in the broadcasting system and on screen, and would consequently contribute to the development of talent from the communities. The Commission therefore invites stakeholders from the official-language minority communities to re-examine this option by considering the impact that such a specialty service, created as a whole or in partnership with existing services, could have on the reflection of the communities and their productions within the broadcasting system.

The Commission would like to bring to the attention of interested parties the existence, within the broadcasting system, of a service that has a structuring effect on the communities that it represents. APTN acts as the voice of Aboriginal communities. As noted at the hearing, the winning conditions of this model are mandatory distribution under section 9(1)(h) of the *Broadcasting Act*, a structure that reflects all Aboriginal communities, a structure that is free of internal conflicts of interest, along with the necessary policy and resources to ensure that Aboriginal communities are well served.

Contribution of community television and video-on-demand services to the reflection of official-language minority communities

In addition to the measures discussed previously, the Commission would like to bring to the attention of interested parties the existence of other services that could make it possible for communities to ensure the projection of their image within the broadcasting system, namely, community television and VOD services.

In order to fully understand the role that community television services can or must play in official-language minority communities to reflect the realities, needs and concerns of those communities in programming provided by these television services and in the Canadian broadcasting system, the Commission will examine the issue as part of its community television policy review to begin in the fall of 2009.

In the regulatory framework for VOD services set out in Public Notice 2000-172, the Commission emphasized the importance of making programming available in both official languages, and stated that it expects VOD services, to the maximum extent possible, to propose such programming and to adhere to their commitments in this regard. In Broadcasting Public Notice 2008-101, the Commission called for comments on a number of issues, including the availability of programming in both official languages. Specifically, given that subscribers generally have access to only one VOD service, the Commission sought comments on whether its proposed regulatory framework for VOD services is appropriate for both linguistic markets and whether the mechanisms set out in Public Notice 2000-172 remain the best means to ensure

that minority language communities are served in both official languages. **The Commission will consider all comments submitted by the parties to this proceeding when making its decision on the regulatory framework for VOD services.**

Canadian Television Fund

While the MCCF recommended that a part of the money available in the funds overseen by the Commission be reserved for productions from official-language minority communities, the APFC made a series of more specific recommendations with regard to the CTF. Two of these relate to issues of governance. The APFC suggested that the CTF be designated as a public agency and be subject to Part VII of the *Official Languages Act* and that the Commission urge the Department of Canadian Heritage and the CTF to have the APFC represented on the CTF's Board of Directors.

Three other recommendations by the APFC concerned financing granted by the CTF. The APFC did not support the Commission's recommendations aimed at separating the CTF into two streams, i.e., private and public. However, the APFC recommended that the Commission ensure that the French-Language Production Outside Quebec (FLPOQ) program is maintained, that FLPOQ funding be increased each year to ensure production of content from official-language minority communities, and that producers of French-language content outside Quebec continue to have access to the private stream. The Commission notes that the government did not opt to separate the CTF into two streams when it announced the creation of the Canada Media Fund.

The Commission notes that the government recently announced its decision regarding the CTF and the creation of the new Canada Media Fund. The Commission anticipates that the issues raised previously are bound to resurface as the criteria of eligibility to the Canada Media Fund are elaborated, and that they should be given further consideration. The Commission also notes the intent of the government to continue to support French linguistic minority community productions.

Local Programming Improvement Fund

Several interested parties welcomed the creation of the Local Programming Improvement Fund (LPIF), which aims to improve the provision of news in medium and small markets. The MCCF recommended that a part of the money available in the funds overseen by the Commission, including the new LPIF, be reserved for productions from official-language minority communities. The Commissioner of Official Languages proposed that the criteria of the LPIF be expanded so that stations serving official-language minority communities in metropolitan markets can benefit from this fund to produce their programming. The FCFA suggested that stations eligible for the LPIF be subject to an accountability framework with regard to the uses to which they have put these funds to develop and broadcast content reflecting the realities of Francophones living in a minority community. TFO considered that producers of programs destined for provincial educational services should be allowed to access the LPIF. Further, the FFCB emphasized the importance of developing the capabilities of the CBC's French-language regional stations, which should benefit from the LPIF. The APFC would also like its productions to benefit from this fund to better offer communities content that is of interest to them. According to the APFC, because this fund is limited to non-metropolitan markets, Francophones

living in urban centres would require an exception to have access to local news in French. The CBC welcomed this initiative, which could support the production of content in French-language minority markets. The CBC regretted, however, that the anglophone minority market of the Montréal Metropolitan Area was excluded.

The Commission reiterates that the LPIF will be made available to stations operated in markets where the population with a knowledge of the official language of that station (English or French) is less than one million. This definition excludes, therefore, the urban markets of Vancouver, Calgary, Edmonton, Toronto and Montréal, as well as the anglophone market of Ottawa-Gatineau; consequently, the stations that serve those markets will not be eligible for LPIF funding. To qualify for LPIF funding, stations must be providing a local programming service that includes original local news.

Radio services

Availability of radio services in the Canadian broadcasting system

On 31 December 2008, there were 656 AM and FM radio stations licensed across Canada, of which 105 were French-language and 551 were English-language stations. There were 72 radio stations licensed to broadcast primarily religious music and/or spoken word programming: 27 French- and 45 English-language. There were 45 Type A, 57 Type B and six English-language developmental community stations. Of the Type A community stations, 34 were French-language, 10 were English-language, and one operated in both languages. Of the Type B community stations, 28 were French-language and 29 were English-language. As of the same date, the Commission had approved four specialty audio services in the English language. The Commission had also approved four pay audio services: two English-language and two operating in both official languages.

In 2008, there were 50 Type B Native radio stations and 3 Native network radio licences in Canada. There were 51 campus stations licensed across Canada: 41 were community-based stations (of which 34 were English-language stations, five were French-language stations, and two stations were operating in both languages) and ten were English-language instructional stations.

The CBC operates four national radio network services: Radio One and Radio Two in English and La Première Chaîne and Espace musique in French. The CBC radio services broadcast commercial-free and are funded by the federal government. The CBC also owns and operates the national pay audio service Galaxie.

A more detailed breakdown of the number and types of radio and audio services authorized to broadcast in Canada is set out in Appendix 2.

Access to radio services in the official-language minority communities

The Commission notes that the majority of the official-language minority communities have access to satellite and Internet radio services, as well as pay and specialty audio services.

However, according to the Brynaert study, francophone minority communities generally have limited access to conventional French-language radio services, an observation that was confirmed by various interested parties, including the CBC and the FCCF. In fact, with a few exceptions, the only conventional radio services that these communities receive are those of the CBC, as well as the 25 French-language community radio stations operated in minority communities.

In regard to conventional radio services, no representative from the anglophone minority communities raised concerns over access to English-language services, whether public or private, commercial, community or campus.

With respect to CBC services, the Commission notes that not all communities have access to the public broadcaster's cultural radio services, Espace musique and Radio Two. In fact, according to the CBC, 91% of Francophones in Canada and 77% of Anglophones in Quebec have access to Espace musique and to Radio Two respectively. The CBC confirmed that because it would be very expensive to extend its cultural networks to remote communities, it currently has no plans to expand them, although it is prepared to consider the possibility of adding a transmitter in a specific region if there is enough demand for one of its services.

For its part, the Commission is of the view that access to Espace musique and Radio Two, even though their programming is national, would help to improve the quality of the radio service offered to official-language minority communities. Consequently, the Commission intends to examine the issue of the presence of cultural services in those communities at the CBC's next licence renewal by considering the CBC's plans to expand its cultural services.

Interested parties submitted that, in the absence of more French-language radio services offering local programming, the CBC's services (particularly Première Chaîne) and community radio stations are even more important, and that it is essential to address the challenges facing them.

According to most of the parties, community radio provides the official-language minority communities with local programming that meets their needs and interests and that enhances their vitality. However, one of the biggest challenges facing community radio stations is the lack of funding to operate and support their services. On this issue, parties noted the value of the CBC's collaboration, which, while not without challenges, warrants consideration. Moreover, several parties expressed their perception of an imbalance of power when in a market with a saturated frequency spectrum, applications for licences to operate commercial and community radio programming undertakings are competitive.

As a way of overcoming the above-mentioned challenges, the parties proposed measures to provide more funding for community radio, make cooperation with the CBC systematic and ensure that linguistic duality is taken into account when radio applications are considered. The Commission agrees that the presence of these services to the official-language minority communities is important to ensure that they have access to local programming that meets their needs and interests and enhances their vitality and development, and, as such, it addresses the parties' proposals in the following paragraphs.

Funding for community radio services

Given that the lack of funding seems to be the main obstacle to the establishment of radio services devoted to the official-language minority communities, the Commission is of the view that it is reasonable and appropriate to ensure steady funding for community radio services.

The Commission notes that several offers of support are available to community radio programming undertakings. The Commission has identified several provincial assistance programs that fund the launch and operation of community radio services, in particular, the Quebec government's Programme d'aide au fonctionnement pour les médias communautaires and the New Brunswick government's Program on the Provision of Official-Language Services. Other organizations, such as Ontario's Trillium Foundation and the Enterprise Cape Breton Corporation, offer funding to community radio stations.

In addition, since 2003, the federal government has provided support for the implementation and management of community radio stations under the Department of Canadian Heritage's Development of Official Language Communities program. **The Commission is aware of the funding challenges facing community radio stations and their need for steady and reliable funding and therefore recommends that the Department of Canadian Heritage maintain and refine its community radio funding program.**

Government subsidies aside, the Alliance des radios communautaires du Canada (ARC du Canada) suggested another way to support community radio, namely changing the regime governing the annual financial contributions that commercial broadcasters must pay to support Canadian content development (CCD). ARC du Canada proposed that 5% of the annual CCD contributions would be allocated to the newly established Community Radio Fund of Canada (the Fund). This new requirement could apply to all commercial radio services in Canada, whatever their language of service.

In response to this suggestion, the National Campus and Community Radio Association (NCRA) noted that, to date, the Fund has been reserved for the production of programming aired by conventional radio services and that the funds derived from 5% of CCD contributions could be used for other purposes, such as to ensure a presence in new media, particularly the Internet. For its part, the CAB opposed this proposal, stating that the eligibility criteria for the Fund are aligned with the objectives of the Commission's policy on eligible CCD initiatives and that it would therefore be inappropriate to use the Fund to finance the development of new media programming.

The CAB and CTVgm were both of the view that it would be inappropriate to require a contribution to the Fund via regulation. According to the CAB, the Commission must not change the approach set out in Broadcasting Public Notice 2006-158, which considers the Fund as a third party eligible to receive CCD contributions. The CAB also noted the importance of ensuring that private radio stations in Canada, which reflect local realities, have a degree of flexibility that enables them to continue supporting local initiatives. Finally, the CAB stated that, while it clearly understands that several parties are attracted by this type of proposal, it would be premature to implement a regulatory mechanism to ensure contributions to the Fund.

The review of the Commission's community and campus radio policies scheduled for the fall of 2009 will provide the Commission with an opportunity to evaluate various scenarios and possible funding formulas, including ARC du Canada's proposal to require commercial broadcasters to make annual contributions to the Community Radio Fund of Canada. This proceeding will also allow the Commission to review the eligibility criteria for the fund and to determine if changes are required.

CBC's co-operation

In addition to funding, some community radio programming undertakings can benefit from the CBC's co-operation from a technical, training and programming perspective. Most of the parties noted that it is essential that this support continue, and some would like to see it expanded.

In its final comments, the CBC explained that wherever possible, it strives to support community radio in minority communities, depending on their needs, which vary from one undertaking to the next. From a technical perspective, the CBC shares its sites, towers and antennas, charging the lowest possible access rates based on each station's costs. In the area of training, the CBC occasionally provides workshops on hosting and interviewing techniques for community broadcasters. For programming purposes, for example, the CBC has developed a partnership with the Association franco-yukonnaise to create a weekly program entitled *Rencontres*, which is produced and hosted by volunteers and broadcast on the airwaves of the CBC in the Yukon.

The Commission considers that the CBC provides community radio stations in various regions of the country with support that is essential to their vitality and development. The role of the CBC with regard to its support for community radio will be discussed at the next licence renewal for the CBC's radio stations and the Commission's decision in this respect will take into account the resources that are at the CBC's disposal.

Discriminating in favour of community radio applications

Several parties expressed their perception of an imbalance in the consideration of radio applications when in a market with a saturated frequency spectrum, applications for licences to operate commercial and community radio programming undertakings are competitive. Several interveners representing the communities therefore proposed that the Commission reserve some frequencies for community radio services to ensure that there is support for the operation of local stations in certain communities. Specifically, the FFCB, the campus radio station CHUO-FM Ottawa, ARC du Canada and the NCRA suggested that the Commission reserve at least one non-commercial FM frequency for a community radio station in the minority francophone communities. The NCRA went so far as to propose that the Commission should set aside at least two frequencies, one for each official language. ARC du Canada stated that it has had discussions with the Department of Industry about setting aside a non-commercial frequency, without it necessarily being assigned to a community station, in markets where frequencies are still available. However, according to ARC du Canada, the only markets in which a scarcity of frequencies is causing a problem for community radio are Vancouver and Ottawa-Gatineau, both urban markets.

For its part, the CAB is of the view that it would not be in the public interest to set aside frequencies across Canada exclusively for community radio. According to the CAB, this could create a precedent that would trigger a wave of applications from numerous groups. The CAB argued that it would be inappropriate to manage the spectrum in this way given that it is a limited public asset and that the Commission's current licensing process is sufficient and has proven efficient. It also noted that the *Broadcasting Act* aims to protect the interests of all Canadians, including those living in linguistic majority communities and third-language minority communities. It would be a misinterpretation of the *Broadcasting Act* to suggest preferred treatment for official-language minority communities. Astral Media Inc. (Astral) essentially agreed with this position and encouraged the Commission to maintain its policy on the best possible use of the spectrum, whatever type of undertaking operated.

The Commission considers that in the short term two alternatives are available to the government to resolve current or future frequency shortages. The Department of Industry may wish to explore the possibility of optimizing spectrum by reassigning the television channels 5 and 6, which would free up frequencies to be used, for example, by community radio stations.

In the Commission's view, a detailed review of the allotment plan, conducted to identify and reassign some frequencies operated by licensees in highly congested zones, would clear new channels for licensing of new FM radio stations. The Commission considers that the Department of Industry could analyze the management of the spectrum in the Quebec-Windsor corridor and in Greater Vancouver.

As a second option, the federal government may wish to implement a standard for digital radio as soon as possible.

Aside from reserving frequencies, it was proposed that the Commission assess community radio applications using different criteria to ensure that the issue of access by official-language minority communities to radio services and access by these services to frequencies is given consideration. The new approach would be similar to a mechanism for discriminating in favour of applications by community radio stations whose audiences would be in a minority situation.

The Commission notes that it is subject to a number of statutes and regulations including the *Broadcasting Act*, which sets out clear and specific objectives for the regulation and supervision of the Canadian broadcasting system. The broadcasting system must notably reflect Canada's linguistic duality and cultural diversity and comprise public, private and community elements. In order to meet the objectives set out in the *Broadcasting Act*, the Commission has established policies relating to the operation of commercial and community radio stations, to the elaboration of the separate roles and mandates of these two types of services and to the Commission's programming expectations and requirements. Accordingly, applications for licences to operate commercial and community radio stations are examined in the light of distinct policies, namely the Commercial Radio Policy and the Community Radio Policy. Thus a simplified licensing approach is provided for in the case of developmental community stations. **The Commission's role is to strike a balance between the various objectives set out in the *Broadcasting Act*.**

The Commission’s regulatory framework does not enable it to give priority to factors related to official-language minority communities or to any other factor it must consider.

Moreover, several parties emphasized the need to apply the *Official Languages Act* when considering applications to operate radio stations. For example, the Commissioner of Official Languages recommended that the Commission assess the impact of its decisions on official-language minority communities prior to making a decision. In this respect, it is Commission practice to integrate the objectives of section 41 of the *Official Languages Act* in the carrying out of its activities. It takes into account its obligations under this section by ensuring that it considers the needs of official-language minority communities when holding hearings, developing policies and making decisions, as well as the other factors it must consider. **Nevertheless, the Commission agrees with the proposal by the Commissioner of Official Languages that it adopt an analysis of the impact of its decisions on these communities as part of its decision making process. The Commission intends to systematize its practice to demonstrate that it is fulfilling its obligations and that it has considered all factors in its decisions.**

Reflection of official-language minority communities in radio programming

As mentioned previously, official-language minority communities, particularly francophone communities, have access to a limited number of radio services. According to interested parties, with the exception of local CBC stations and community and campus radio stations, the programming of the radio services that the communities receive does not reflect the needs and realities of linguistic minorities.

Although the parties commended the CBC for its presence in the official-language minority communities, they noted that the programming of Espace musique, which is produced mainly in Montréal, provides very little reflection of the communities. The CBC confirmed that Première Chaîne and Radio One programming has a large regional component, while Espace musique and Radio Two programming is national. On this issue, the Alliance nationale de l’industrie musicale (ANIM) and the FCCF proposed that the Commission reiterate its expectations for the CBC, at the next licence renewal for its radio stations, to ensure that regional station and network programming provide a fair representation of the issues and concerns of communities across the country. Also, in its final comments, Torres Media Ottawa Inc. encouraged the federal government to increase its funding to the CBC so that the public broadcaster can provide the communities with more local and regional information.

For its part, Radio de la communauté francophone d’Ottawa (RCFO) submitted that only community radio stations can compensate for the lack of local content. In fact, several parties noted the contribution that community radio programming makes towards reflecting the official-language minority communities. For example, the MCCF compared the total audience share of francophone community radio stations and that of the CBC’s two stations in New Brunswick: 104,300 listeners tune into the eight French-language FM community stations in this province (CFAI-FM Edmundston, CFJU-FM Kedgwick/St-Quentin, CIMS-FM Balmoral, CKRO-FM Pokemouche, CJSE-FM Shediac, CKUM-FM Moncton, CJPN-FM Fredericton and CHQC-FM Saint-John), while only 26,400 listeners tune into the CBC stations CBAF-FM Moncton (Première Chaîne) and CBAL-FM Moncton (Espace musique). New Brunswick’s

French-language community radio stations thus have close to four times the audience share of both CBC stations combined.

The Commission is pleased with the success of community radio stations in official-language minority communities and encourages the stations to continue reflecting their respective communities in their programming. The Commission notes that it can nonetheless propose certain measures to encourage the reflection of these communities in the programming of the CBC's radio services. **Given the importance of the CBC's radio programming to the official-language minority communities and to the broadcasting system, the Commission intends to review the CBC's contributions to community reflection at the renewal of its licences.**

The ANIM for its part regretted the fact that French-language commercial radio airs so few musical selections by francophone artists from the communities, with the result that these artists and their communities are reflected very little within the Canadian broadcasting system. The ANIM submitted that these artists are suffering from a lack of funding and visibility and made two proposals to remedy the situation, namely:

- that the Commission require that a minimum of 15% of tangible benefits be earmarked for artists, undertakings and associations in Canada's francophone communities; and
- that the Commission require broadcasters to devote a minimum of 15% of French-language vocal music to French-language selections from minority francophone communities.

RCFO proposed that the Commission examine the possibility of implementing a quota system for the broadcast of "regional" music that would apply to both the CBC and private broadcasters.

The Commission notes that a number of artists from francophone communities have made a name for themselves in Canada's French-language music industry and that several of them have decided to pursue their careers in Montréal. After considering the proposals, the Commission is of the view that it would not be possible to impose requirements related to the broadcast of music selections by artists from these communities, given that it would be extremely complicated, if not impossible, to define what constitutes musical selections by artists from these communities.

The Commission notes, however, that community radio stations play an important role in broadcasting the work of artists from official-language minority communities. **The Commission recognizes that artists from official-language minority communities face particular challenges and invites representatives from the communities to present their proposals to meet these challenges by participating in the public proceedings relating to the review of the community radio policy. In this way, the Commission will be able to assess whether the implementation of measures is appropriate and feasible.**

New media services

Availability of broadcasting services via new media

Following an overview of broadcasters' websites, the Commission notes that there is a variety of content and that this content is provided in various formats (e.g. podcasts, VOD, streaming).

According to the majority of parties that appeared at the hearing, and in particular the CBC, TFO, CTVgm, Corus Entertainment Inc., Astral, Canwest and Quebecor, a substantial amount of content being broadcast is available via new media, either websites or mobile technologies operated in parallel with licensed broadcasting undertakings. The CBC, Canwest, TFO and TV5 confirmed that most of their television programming is currently available on several platforms. With respect to radio services, the CBC and Astral explained that most of the programming broadcast by their French-language stations is currently available on the Internet.

However, because new media broadcasting is subject to an exemption order, and because the Commission does not require licensees to report on the amount of content they offer to Canadians via new media, the Commission does not gather data for determining whether the content offered is sufficient.

Access to new media

Beginning at 128 kilobits per second, high-speed Internet may offer speeds sufficient to provide a radio service. However, providing a quality television service via the Internet may require speeds higher than those offered by broadband Internet starting at 1.5 megabits per second. In effect, broadband connections cannot always provide a television service of an acceptable quality, especially not in the case of a high definition broadcast. To do so requires higher speeds that can stream television services and high definition video. Quebecor, Evanov Communications Inc. (Evanov), ARC du Canada, the NCRA, the MCCF, the Assemblée de la Francophonie de l'Ontario (AFO) and the Mouvement des intervenant.e.s en communication radio de l'Ontario (MICRO) corroborated these statements.

The Brynaert study examined possible means for accessing broadband (i.e., digital subscriber line, cable or wireless) in official-language minority communities and concluded that several remote and rural communities do not yet have access to broadband Internet service.

After appearing at the hearing, ARC du Canada filed a document containing statistics on access to broadband Internet. The document reiterates the results of a 2007 Statistics Canada study cited in the 12 June 2008 issue of the newspaper *Le Quotidien*. According to the study, only 65% of residents of rural regions or small towns in Canada (as compared to 76% of urban residents) use the Internet, which is well below the national average. According to the same study, 88% of individuals with Internet access in their homes in 2007 had broadband access, as compared to 80% two years earlier. However, in rural regions, just over seven home users out of ten reported using broadband, whereas in urban regions that number increases to nine in ten users. The study added that over half of residents living in rural areas and small towns received slower service because broadband service via telephone or cable is not available in their region.

According to ARC du Canada, AFO and MICRO, some communities in eastern Ontario have access only to dial-up Internet service at a speed of 56 kilobits per second. As a result, access to broadcasting services via new media is limited by the impossibility of accessing broadband Internet. Consequently, access to broadband Internet is becoming essential.

Evanov alleged that, owing to limited broadband access in certain official-language minority communities, these communities are unable to receive a full range of broadcasting services via new media. Additionally, the CBC, Canwest, TFO and TV5 noted the importance of new platforms to connecting official-language minority communities, particularly young people. Astral therefore raised the need for investment in the new technology and new media sectors. TFO stressed the need to develop new strategies for using new media and mobile Internet devices to make French an essential part of daily life for young people.

In short, technical constraints present the greatest challenges to providing Internet access and broadcasting services via new media to rural and remote official-language minority communities. Not all remote communities have access to the technologies that allow broadband Internet access, and the technology best adapted to their needs has not yet been identified.

To overcome technical constraints, Astral recommended that the Commission propose that the government quickly bring about the deployment of wired and wireless broadband Internet in all Canadian communities – a national public policy objective – and adopt measures to facilitate subscription by members of official-language minority communities to broadband Internet services.

ARC du Canada noted that the vast majority of the minority language radio stations it represents are located in rural areas and small towns. It suggested that the government consider establishing a national Internet connection policy to ensure that all Canadians enjoy the same benefits no matter where they live in the country.

Noting that broadband Internet is becoming an increasingly useful tool for bringing together official-language minority communities outside conventional broadcast contours, the NCRA recommended that the Commission and the government support the development of universal and affordable broadband Internet access.

For its part, the Commission notes that several provincial governments, including those in New Brunswick and Quebec, have made efforts to provide broadband access across their entire province. Some countries, such as France, Great Britain and the United States, consider broadband Internet to be an essential service and have adopted policies to ensure that their entire population has access to it.

The Commission considers it urgent that all levels of government, following the example of the Department of Canadian Heritage and the Department of Industry, use various means (financial and otherwise) to encourage the adoption and implementation of cost-effective technologies in official-language minority communities in remote rural areas to ensure access to broadband Internet in the short term.

To achieve this objective, cost-effective and easy-to-implement technologies must be adopted, such as satellite or wireless (mobile or fixed) Internet. The selected technologies must also allow for judicious use of white space. The Commission notes that the last federal budget allocated \$225 million to the Department of Industry for the development of broadband Internet in remote communities. **The government may wish to ensure that remote official-language minority communities with a low population density also benefit from these investments.**

Reflection of official-language minority communities in new media

Although all parties agreed on the necessity of extending broadband Internet to all of Canada, several parties expressed doubt that adopting new media would alleviate the lack of community reflection in the Canadian broadcasting system. According to several parties representing official-language minority communities, the amount of new media community broadcasting content is limited. In general, broadcasting content on new media is based on content broadcast by traditional methods. As a result, if official-language minority communities are not represented equitably in the programming of traditional media, they will not be equitably represented in new media programming.

Evanov and RCFO specified that, due to the impossibility of accessing broadband Internet in certain communities, new media cannot deliver a complete service. They added that new media must be an integral part of the services available to minorities, but that community FM radio and television must also be part of daily life. In its intervention, ARC du Canada noted that in the current context of globalization, where broadcasting giants merge their activities to diversify their range of products and contend with the astonishing rise of new media, community broadcasters, particularly in official-language minority communities, struggle to stave off the fragmentation of their audiences and fight an uneven battle with the Internet, which has no boundaries or clear and specific rules. Some parties, including the FCFA, AFO and MICRO, believe that the Internet is not a solution to the difficulty of providing broadcasting services to communities because the medium is not regulated and providers are not required to include French-language content.

The Commission regrets that, although all parties are calling for broadband Internet access, community broadcasters are not more open to the broadcasting opportunities offered by new media. The Commission believes that to bring together all Canadians from their local communities, it is important that broadcasting content that represents them be available via new media. It is therefore essential that broadcasters, including community radio and television broadcasters, adopt new media technology to broadcast their content.

In this regard, the Commission notes that the CBC broadcasts a fair amount of programming via new media. As a public broadcaster, the CBC has a unique role in the new media broadcasting world. The CBC provides local reflection in several regions of the country and produces a significant amount of broadcasting content that can be rebroadcast on the Internet.

The Commission also notes the comments by parties such as ARC du Canada, according to which new media provide communities with an opportunity to ensure that they are reflected in the broadcasting system. The APFC explained that most of its producers can offer high definition content and that it will increasingly invest in the creation of web content. The APFC, Astral and

the MCCF also noted that many young Canadians actively use new media. The MCCF presented the results of a survey conducted by the Office of Francophone Affairs of Ontario, which show that young people use the Internet more than they watch television. Young people consume broadcasting content from traditional media via new media. Several parties therefore suggested that, in the new media broadcasting field, emphasis must be placed on youth programs that reflect the interests and realities of community youth. The Commissioner of Official Languages argued that the number of French-language programs for Francophones outside Quebec broadcast on new media must also be monitored, and suggested that the Commission propose additional financial support mechanisms for creators of web content for broadcast over the Internet.

In light of these comments, the Commission concludes that, once access to broadband Internet has been secured, communities will be able to themselves ensure that they are reflected in the programming broadcast on new media, provided that they meet the challenge of becoming familiar with the new technology and securing the financial means necessary for technical support and programming content development. To encourage the adoption of new technologies in official-language minority communities, the parties suggested the implementation of a national policy. The parties also discussed various funding strategies to promote the development of technical skills and content for new media. To reconcile traditional and new media, the parties asked that the Commission examine the issue of broadcasting rights. In the following paragraphs, the Commission discusses the solutions suggested by the parties.

Policy to help official-language minority community cultural industries adopt new media

Given the increasing importance of new media in broadcasting, particularly among young people, it is essential that official-language minority communities adopt this new technology and obtain the means and tools necessary to use it. To achieve these objectives, the FCCF recommended that a policy be implemented to help cultural industries in francophone communities outside Quebec adopt new technologies to broadcast their content via new media.

The Commission shares the FCCF's view on this subject. **The Commission considers it urgent that the federal government recognize that new media can play a major role in promoting the cultures of official-language minority communities and that the government incite these communities to adopt these new technologies as soon as possible. To this end, the federal government may wish to implement a policy to support the adoption of new technologies by official-language minority communities to ensure that the broadcasting content they produce is present in new media.**

Funding necessary for the development of skills and content for new media

Although APTN maintained that Internet broadcasting will be a more cost-effective means of providing broadcasting services to remote communities, the CAB, TFO, the NCRA and Evanov noted that, in official-language minority communities, a lack of financial resources restricts not only access to broadband – as subscription costs are generally high – but also the operation of new media broadcasting undertakings. The NCRA noted that many stations do not have the necessary resources to cover the costs related to developing, launching, maintaining and updating an Internet broadcast service. For example, because community broadcasters are not-for-profit

organizations that depend on volunteers, broadband subscription costs and the recruitment of volunteers with technical expertise are barriers preventing broadcasters from providing their content to communities via new media. In short, some parties, including ARC du Canada and the CAB, stated that Internet broadcasting, a new medium that is not subject to any regulation, requires more financial resources and a clear business model.

The Commission recognizes that website development requires expertise and programming knowledge and that developing, maintaining and updating a website entails costs that may equal the salary of a person with key skills. The Commission also notes that, to operate a website dedicated to a television or radio service, a broadcaster must ensure that it has sufficient bandwidth to serve several users simultaneously. To this end, they must pay to have their website hosted on a server and to have the necessary bandwidth to broadcast their radio or television programming. Bandwidth fees are directly proportional to the number of website users. Therefore, the greater the number of users, the larger the required bandwidth and the higher the bandwidth fees.

By comparison, the Commission notes that operating traditional media generates steady and predictable revenue. In addition, since this sector has been in operation for a long time, broadcasters have several proven business models to choose from. The Commission also agrees with the parties that the cost of developing and launching a website dedicated, for example, to a local community radio service varies greatly depending on fees for hosting, bandwidth consumption, maintenance and content production. It is thus extremely difficult to predict website traffic and consequently the revenue that a website could generate following its launch.

The Commission therefore agrees that the operation of a new media broadcasting service requires a clear business model. However, the Commission notes that broadcasters that wish to operate new media are responsible for developing their own business model. The Commission therefore encourages communities to use their business sense and seize all the opportunities provided by new media.

Moreover, producing content for new media often involves other types of expenses. Although the government has just announced the creation of the Canada Media Fund, which will allow the financing of new media productions, this funding applies only to audio-visual content and excludes community broadcasters, even though they are usually in the best position to ensure that communities are represented. The Commission considers that the broadcast via new media of archived or new broadcasting content that contributes to the reflection of official-language minority communities should also be eligible for funding.

The Commission considers that adopting new media to allow for innovation in broadcasting and enhanced local reflection within the Canadian broadcasting system would be beneficial to the official-language minority communities. The Commission considers that this strategy requires a two-step process.

First, the government may wish to ensure the development of key technical skills among official-language minority community broadcasters and their volunteers so that they can maintain and update their websites themselves. Second, the government may wish to

provide the necessary funding for producing both audio and audio-visual content and broadcasting it via new media.

For example, the government could implement a funding strategy to support the launch and operation of websites dedicated to broadcasting services for official-language minority communities while also supporting the necessary technical training to carry out such a project. Furthermore, a window or online portal could be developed and hosted on a highly visible website to promote the official-language minority community broadcasting services available on the Internet.

Negotiation of rights

At the hearing, some parties, including TFO, discussed the barriers to negotiating new media broadcast rights. The Commission notes that broadcasters and rightsholders (producers, writers and actors) do not always agree on the value of the rights to the programming broadcast on new media. This creates a barrier in terms of the availability of Canadian content on new broadcast platforms. To solve this problem, fair and equitable agreements must be negotiated between broadcasters and rightsholders.

The Commission notes that the review process currently in progress on Canadian broadcasting in new media has provided an opportunity to discuss such issues as the representation of linguistic duality in new media and the negotiation of broadcast rights, as well as funding for new media productions. The Commission will address these issues in its decision following that process.

Conclusion

As a result of this public process, the Commission has been able to determine that the number of English- and French-language television, radio and new media services available within the Canadian broadcasting system is equitable and of adequate quality.

The Commission also notes that access to these services presents technical and financial challenges for which solutions have been proposed in regard to distribution, policy and funding.

The Commission notes that this proceeding allowed it to ensure that the majority of Canadians will have access in their language to television coverage of the 2010 Games. The Commission is confident that the consortium and the CBC will re-enter into discussions that could allow them to ensure that all Canadians will have the opportunity to view at least a portion of the Olympic events.

Moreover, the challenges regarding equitable representation of these communities in the programming of services available within the broadcasting system are set out in this report, as are possible solutions, from which emerged the importance of supporting, acquiring and broadcasting regionally-produced programs.

This proceeding also established that new media present numerous opportunities for broadcasters. New media will enable official-language minority communities to themselves

ensure that they are reflected in programming available within the Canadian broadcasting system. However, before this happens, the issue of access to broadband must be resolved.

As the Commission committed to address certain issues at future public proceedings, it reminds interested parties of the importance of participating in the Commission's public proceedings so that it may take into account their views, situations and needs in making its decisions.

Finally, in view of the comments of the parties, the Commission notes the extent of the contribution made by the CBC's radio and television services towards ensuring the development of official-language minority communities. The CBC noted in its comments that it faced many challenges in regard to the conversion to digital of the transmitters of its stations in official-language minority communities, the production of regional content in high definition format by the regional stations, and the acquisition of the financial resources necessary for pursuing the extension of its radio services, in particular, that of Espace musique in minority communities.

The Commission considers it important that the CBC have the means to continue serving these communities. The government may wish to take note of the challenges that the CBC will have to contend with over the following years and encourages it to consider solutions that would enable it to provide the best possible service to official-language minority communities.

Secretary General

Related documents

- *Licence renewals for private conventional television stations – Additional documents placed on the record of the proceeding – Proposed allocation formula for the Local Programming Improvement Fund (LPIF)*, Broadcasting Notice of Consultation CRTC 2009-113-1, 17 March 2009
- *Call for comments on a proposed regulatory framework for video-on-demand undertakings* – Notice of consultation, Broadcasting Public Notice CRTC 2008-101, 30 October 2008
- *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services* – Regulatory policy, Broadcasting Public Notice CRTC 2008-100, 30 October 2008
- *Review of English- and French-language broadcasting services in English and French linguistic minority communities in Canada* – Notice of consultation and hearing, Broadcasting Notice of Public Hearing CRTC 2008-12, 16 October 2008
- *Canadian broadcasting in new media* – Notice of consultation and hearing, Broadcasting Notice of Public Hearing CRTC 2008-11, 15 October 2008

- *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006
- *Policy framework for community-based media*, Broadcasting Public Notice CRTC 2002-61, 10 October 2002
- *Proposed policy framework for community-based media*, Public Notice CRTC 2001-129, 21 December 2001
- *Introductory statement to Decisions CRTC 2000-733 to 2000-738 – Licensing of new video-on-demand and pay-per-view services*, Public Notice CRTC 2000-172, 14 December 2000
- Decision CRTC 2000-386, 14 September 2000
- *Community radio policy*, Public Notice CRTC 2000-13, 28 January 2000
- *Definitions for new types of priority programs; revisions to the definitions of television content categories; definitions of Canadian dramatic programs that will qualify for time credits towards priority programming requirements*, Public Notice CRTC 1999-205, 23 December 1999

Appendix I

Number and type of television services authorized to broadcast in Canada

	English-language		French-language		Both languages	
	2007	2008	2007	2008	2007	2008
Canadian conventional (over-the-air) (OTA)¹						
National public broadcaster (Canadian Broadcasting corporation)						
Owned and operated	15	15	8	11	23	26
Transitional digital ⁷	4	4	3	3	7	7
Private commercial ⁸	75	75	23	20	98	95
Religious ⁹	7	7	-	-	7	7
Educational	4	4	3	3	7	7
Aboriginal	7	5	-	-	7	5
Transitional digital ⁷	9	9	3	3	12	12
Canadian specialty, pay, pay-per-view (PPV) and video-on-demand (VOD)						
Analog specialty services	30	30	14	14	44	44
Digital category 1 specialty services	15	15	3	3	18	18
Digital category 2 specialty services ²	51	51	2	2	53	53
Pay television services ³	8	8	2	2	10	10
PPV services (direct-to-home and terrestrial)	11	11	2	2	13	13
VOD services ⁴	17	23	1	2	18	25
Other Canadian services						
Community channels ⁵	101	101	30	30	131	131
Community program services	11	11	1	1	12	12
House of Commons - Cable Public Affairs Channel (CPAC)	1	1	1	1	2	2
Non-Canadian services⁶						
Non-Canadian satellite services authorized for distribution in Canada	90	92	7	9	97	101
Total number of television services	456	462	103	106	559	568

Notes: Excludes radiocommunication distribution undertakings, rebroadcasters, exempt television services and those specialty services where the authority has expired. Also excludes some network licences. However, English-language includes bilingual (English and French) and native services.

1. Includes satellite to cable services.
2. Includes only digital category 2 specialty services launched as of 31 December 2007. As of 31 December 2008, the Commission had approved 166 digital category 2 specialty services.
3. Includes only pay services launched as of 31 December 2007. As of 31 December 2008, 19 pay services had been approved by the Commission.
4. Number of services approved as of 31 December 2008 but not necessarily in operation. 12 English-language, two French-language and 11 operating in both languages. It is estimated that, as of 31 December 2007, 10 had been launched.
5. Number of channels reported by broadcasting distribution undertaking (BDU) licensees as of 31 August 2007. Excludes class 2 and 3 BDUs.
6. Carriage of authorized services is at the discretion of the BDU. Refer to Appendix 2 of *Revised lists of eligible satellite services*, Broadcasting Regulatory Policy CRTC 2009-50, 4 February 2009 for a complete listing of eligible services approved as of 31 December 2008.
7. Number of OTA transitional digital television services approved, but not necessarily in operation.
8. Excludes private commercial religious stations.
9. Includes five private commercial OTA television stations.

Source: CRTC APP1205 report dated 31 December 2008, CRTC decisions and CRTC data collection

Appendix II

Number and type of radio and audio services authorized to broadcast in Canada

	English-language ²		French-language ³		Both languages	
	2007	2008	2007	2008	2007	2008
Over-the-air (OTA) radio services⁴						
National public broadcaster						
CBC Radio One / Première Chaîne	36	36	20	20	56	56
CBC Radio Two / Espace musique	14	14	12	12	26	26
CBC Radio network licences	2	2	2	2	4	4
CBC digital: Radio One / Première Chaîne	5	5	4	4	9	9
CBC digital: Radio Two / Espace musique	5	5	4	4	9	9
Private Commercial						
AM stations	152	135	15	10	167	145
FM stations ⁵	391	416	92	95	483	511
AM and FM network licenses ⁶	9	7	7	7	16	14
Digital radio (stand-alone and transitional)	32	32	4	4	36	36
Religious (music and spoken word)⁷	43	45	27	27	70	72
Community						
Type A stations ⁸	10	11	34	34	44	45
Type B stations	26	29	28	28	54	57
Developmental	10	6	-	-	10	6
Campus						
Community-based	36	36	5	5	41	41
Instructional	11	10	-	-	11	10
Developmental	1	0	-	-	1	0
Aboriginal - Type B stations⁸	39	39	11	11	50	50
Other (tourist/traffic; Environment Canada; special event, other network licences etc)⁹	81	59	9	7	90	66
Total number of OTA Canadian radio services	903	887	274	270	1177	1157
Multi-channel subscription radio services and audio services delivered by broadcasting distribution undertakings						
Satellite subscription radio service	2	2			2	2
Terrestrial subscription radio service	1	0			1	0
Specialty audio (commercial/not-for-profit, regional/national)	4	4			4	4
Pay audio (English and French national services) ¹⁰	3	4			3	4
Total number of Canadian radio and audio services	913	897	274	270	1187	1167

- Notes:
1. Number of services approved, but not necessarily broadcasting. Unless a request for an extension of time is approved by the Commission, most undertakings must be operational within 24 months of the decision date. The data is as of 31 December 2008.
 2. Includes bilingual (English and French) and English-language native services.
 3. Includes French-language native services.
 4. Excludes radiocommunication distribution undertakings, rebroadcasters and exempted radio services.
 5. Approval of a new FM radio station resulting from an AM to FM band conversion will result in station double counting until the AM licence is surrendered by the licensee - roughly three months after the AM and FM simulcast transition period.

6. Most of the commercial network licences noted here fall under *Exemption order respecting certain network operations*, Broadcasting Public Notice CRTC 2006-143, 10 November 2006 and will not need to be renewed after their current licence terms expire.
7. Includes commercial and not-for-profit religious radio stations.
8. Excludes network licences
9. The decline in these services was mostly due to expiration of licences as of 31 August 2008. A large part of these licences met the *Exemption orders respecting certain classes of low-power and very low-power programming undertakings*, Broadcasting Public Notice CRTC 2003-35, 10 July 2003, and *Revocation of licences*, Broadcasting Decision CRTC 2007-280, 7 August 2007
10. The numbers have been restated to reflect current results.

Source: CRTC APP1205 and APP1200 reports – run 2 January 2009