

THE BUSINESS OF CANADIAN OTA TELEVISION

2009

Prepared for:

The Canadian Radio-television and Telecommunications Commission
("CRTC")

Submitted by:

Peter H. Miller, P. Eng., LL.B.

August 31, 2009

Foreword

This report was commissioned by the Canadian Radio-television and Telecommunications Commission (“CRTC”) in July, 2009, to provide an overview of issues associated with the OTA Television Business in Canada, and in particular, to provide an independent assessment of the business model of conventional television, and its major challenges in terms of scaling costs (infrastructure, local programming, acquired programming) and regulatory obligations (local programming in particular) to current audience and revenue realities.

The purpose of the report is educational, rather than prescriptive. While the report does raise issues and options for consideration, the intent is not to offer firm or specific guidance on appropriate business or public policy response.

The following caveats should also be noted:

1. While the Author has made every reasonable effort to ensure information is current and accurate at the time of writing, significant changes may be occurring or have occurred in some areas by the time of reading.
2. This report addresses both the English-language and French-language markets in Canada, but not necessarily with equal import. While the basic concepts noted here are in large measure relevant and applicable to both markets, the impact and conclusions to be drawn may be significantly different. Where clear distinctions exist, they have been brought to the attention of the reader.
3. The report takes note of the Commission’s findings and conclusions (tentative or otherwise) in Broadcasting Regulatory Policy CRTC 2009-406 and Broadcasting Notice of Consultation CRTC 2009-411 (among other recent CRTC releases), but has not been bound by them.

Canada is blessed with a truly impressive broadcasting system and equally impressive people who make it function. In researching and writing this paper, I owe considerable thanks to more such people than I can mention (many of whom would likely prefer not to be mentioned in the first place). Suffice to say, you know who you are. The insights are yours; the mistakes are mine.

Table of Contents

TABLE OF CONTENTS	2
1. OTA TV BROADCASTING IS TWO BUSINESSES IN ONE	3
a. <u>Is the OTA TV Business Model “Broken”?</u>	5
2. THE INTEGRATION OF OTA TV WITH SPECIALTY TELEVISION AND OTHER BROADCAST PLATFORMS	6
a. <u>Corporate Accounting Methodologies and Allocations</u>	7
b. <u>OTA TV as a Part of a Corporate Multi-platform Whole</u>	8
3. CHALLENGES AND OPPORTUNITIES IN LOCAL OTA TV	9
a. <u>The Correlation between Hours of Local Programming and Local Staffing/Infrastructure</u>	9
b. <u>The “Craft” of Local TV</u>	10
c. <u>Identifying Costs and Revenues Attributable to a Local TV Station</u>	12
i. <u>Local OTA TV Costs</u>	12
ii. <u>Local OTA TV Revenues</u>	13
d. <u>Characterizing the Local OTA TV Business</u>	15
e. <u>Regulatory Implications and Potential Prescriptions</u>	16
4. CHALLENGES AND OPPORTUNITIES IN NATIONAL OTA TV	18
a. <u>Underneath the Business Model of National English-language OTA TV</u>	20
i. <u>U.S. Programming drives the business model</u>	20
ii. <u>Canadian programming fills holes in the schedule</u>	22
iii. <u>The National OTA TV Financial Model relative to Specialty</u>	23
b. <u>The Business Model of National French-language OTA TV</u>	24
c. <u>Regulatory Implications and Potential Prescriptions</u>	26
5. THE BUSINESS MODEL AND ROLE OF OTA TV MUST BE ALLOWED TO CONTINUE TO EVOLVE	27
APPENDIX A: ABOUT THE AUTHOR	32

1. OTA TV Broadcasting is Two Businesses in One

Over the Air Television (“OTA TV”, aka “Conventional Television”¹) is often referred to as the “foundation” or “cornerstone” of the Canadian Broadcasting system. This is said as more than just a historical fact², but an indication of OTA TV’s significance and “heft” in the Canadian TV business. OTA TV remains -- even today, and even under serious financial strain -- the “bullhorn”, the basis on which most major expensive Canadian TV production is built, and many broadcast empires have risen and fallen. It remains the best vehicle for aggregating and monetizing audiences for mass programming, for “delivering eyeballs to advertisers”, and launching, promoting and leading viewers to other exhibition platforms³.

That OTA TV has evolved, undergone crisis and rejuvenation is hardly a surprise for a 60-year-old business. That it is still in business, and has undergone evolutionary rather than revolutionary change, perhaps, should be. For while the ownership and “organization” of OTA TV in Canada has undergone profound change in the last 6 decades, arguably the “craft” of local TV has not⁴.

OTA TV started as a series of largely disconnected unique local business with local programming, obligations infrastructure and revenues, and some “cooperative” sharing of a limited amount of non-local Canadian programming⁵. This model persisted for over 25 years and was only first challenged in English Canada⁶ with the emergence of Global TV in the latter half of the 70s -- suddenly one Toronto based station could reach all

¹ There appears to be no perfect terminology for over-the air or conventional television. The relevance of “over-the-air” transmission appears to diminish by the year; indeed the Commission is actively contemplating not requiring it in smaller markets after the DTV transition. On the other hand, “conventional” sounds traditional or “old –school”, and certainly not “specialized” or “niche” which an increasing number of OTA broadcasters are. Given these imperfect choices, I have adopt “OTA” ... it is shorter, derives from the term “over-the-air”, but can perhaps survive as an acronym even if it no longer matches its roots in all cases.

² Canadian owned and controlled OTA TV first launched in 1952 in Canada, with CBC stations in Montreal and Toronto. Private CBC affiliates began operating late in 1953 (the first in Sudbury), and private non-CBC affiliated TV with the launch of future CTV affiliate CFCN-TV Calgary in 1960. While BDUs have long since surpassed broadcasters in revenues, and arguably market power, it is noteworthy that, by contrast, these entities are not referred to as a “foundation” of the system. Fowler’s oft quote refrain that “*What matters is program content; all the rest is housekeeping.*” is, perhaps, one reason for this.

³ For example, in [Broadcasting Public Notice CRTC 2007-53, Determinations regarding certain aspects of the regulatory framework for over-the-air television, May 17, 2007](#), the Commission emphasized the key role that the OTA television sector continues to play in the Canadian broadcasting system and noted that “because of its continued ability to attract mass audiences, OTA television remains the dominant force in the provision and production of Canadian programming”. Moreover, in [Broadcasting Public Notice CRTC 2008-100, Regulatory Policy – Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services, October 30, 2008](#), the CRTC stated “Although their audience share may be declining and the advertising revenue of these undertakings, on average, has ceased to grow, OTA services continue to be the cornerstone of the Canadian broadcasting system”.

⁴ The latter is a thesis that is debatable and will be discussed further below. The former is a matter of public record.

⁵ For example, CBC and CTV network affiliates grew to receive approximately 80 hours a week of their schedule from the network; about half with network advertising sales, the balance local.

⁶ In Quebec, by 1986 Tele-Metropole had emerged as the majority owner of the TVA network; some TVA affiliates nevertheless remain independently owned to this day (by Radio-Nord and Télé Inter-Rives). TQS was launched as Quebec wide “network” based out of Montreal in 1986.

major markets in Ontario (i.e. the largest Canadian market)⁷. It only truly ended with the sale of CTV to one majority shareholder, Baton Broadcasting in 1997⁸.

Up until that time, regional private broadcasting groups had certainly emerged (WIC, Allarcom, Electrohome, Baton, CHUM, Maclean Hunter etc.); each finding ways to pool programming resources regionally, and share admin overhead etc. But until Global TV emerged as a Canadian powerhouse, and CHUM ultimately sold its Atlantic Canada CTV stations to Baton (allowing Baton and Electrohome to together take over CTV), OTA TV in Canada was not a truly national business.

By the late 1990s, however, the structure had caught up with the reality: the major players in private English-language OTA TV clearly ran OTA TV stations as national businesses with the emphasis on national programming⁹, infrastructure and revenues. VP/General Managers of local stations, once senior heads of their own local businesses were gradually relegated to a lower status of “branch plant operators”, taking most orders from head office and with little autonomy other than managing local retail sales and local news within clear budgets¹⁰. The CRTC aligned with this national/centralization trend with regulatory policies emphasizing national obligations, culminating in the large multi-station group definition and priority programming obligations of the 1999 TV policy¹¹.

The business and public policy focus on the “national” aspect of OTA TV continued unabatedly until very recently. WIC, CHUM Limited, and Craig Broadcasting all aggressively pursued national growth ambitions, with mixed success -- as ultimately these ambitions directly led to the demise of the latter, and at least indirectly, the former two.

The last couple of years have clearly witnessed a renewed interest in the “local” aspect of OTA TV -- certainly at the level of public debate and regulatory response. Following years of indifference,¹² “local TV” is suddenly being seen as worthy of attention. Be it the specter of local news cuts or entire local stations going dark, the significant capital costs for DTV conversion, or the renewed recognition of local presence as a competitive

⁷ Actually licensed as a Paris, Ontario, originating station with 5 re-transmitters across the province

⁸ Obviously, from its origins, CBC/Radio Canada combined the model of national ownership with locally run affiliates.

⁹ For convenience the term “national” is used here to include the Quebec and/or French-language market in Canada for the purposes of French-language OTA services

¹⁰ I make this statement not to disparage the many hardworking individuals who have or continue to act as station managers. They are adept multi-skilled managers. But as most of them would confirm, corporate consolidation and centralization practices have made the job far less than it once was.

¹¹ The CRTC supported consolidation through the 1990s in order to give OTA TV groups the critical mass so that they could invest in expensive, competitive, national entertainment programs - largely drama and largely produced by independent producers. While not necessarily intended, the operational consequence of this was a gradual reduction in emphasis on local production on the part of OTA TV owners, and indeed the shutting down of production in places such as CJOH, CFTO, CFCF and CHAN.

¹² From a regulatory perspective, this began in the early 1990s when the Commission no longer required quantitative promise of performance commitments for local programming other than news. It culminated in the [1999 TV Policy](#) in which the CRTC eliminated the requirement for quantitative commitments with respect to local news programs, on the basis that “in the new television environment, there are sufficient market incentives to ensure that audiences will continue to receive a variety of local news without regulatory requirements. News programming is a key element in establishing a station’s identity and loyalty with viewers and is generally profitable.” Para 47

business advantage, the pendulum appears to have swung away from purely national TV issues and concerns¹³ to local ones.

Regardless of concerns “du jour”, if OTA TV is to endure another 10 years, let alone another 60, considered public policy action must recognize and understand these two distinct aspects of OTA TV, the local and the national. It should also recognize that these two businesses, while intertwined and mutually re-enforcing, remain nevertheless separable on both functional and purposeful lines.

a. **Is the OTA TV Business Model “Broken”?**

Much of the debate about OTA TV over the last year or two has been about whether the business model of OTA Television is truly “broken”, or not.

Those who believe that it is, cite flat and now declining revenues, declining profits, declining audiences, unaffordable priority programming obligations, significant unavoidable and non-recoverable capital expenditures for DTV and, by contrast, the profitability and ongoing revenue growth of specialty television with its “dual streams” of advertising and subscription revenue. Those who argue that it is not, cite over-priced broadcast asset acquisitions, changing viewer habits and soaring U.S. programming costs over the last decade, combined with the current economic downturn as the principle reasons for OTA Television’s current “crisis”. They also suggest that, under the same corporate umbrella, OTA TV and Specialty Television can weather the current economic downturn and that OTA TV can do more to take advantage of its access to “dual streams” of local and national advertising.

Both sides are in most respects right about the symptoms and problems, but the aggregate data generally used to present one case or other provide an inadequate basis for determining whether the challenges are endemic, fatal or fixable. Fortunately, by disaggregating the roots of these challenges, and in particular, separating the business along local and national lines, certain answers can be found.

In disaggregating the OTA TV business between the “national” and the “local”, naturally, which revenue or cost lines should be attributed to which segment of the business is somewhat arbitrary. Nevertheless, examining OTA TV from the perspective of what can easily be run nationally (as in a specialty service¹⁴) versus what either requires or is at least best served by local infrastructure and presence would appear to allow for the greatest insight into both solutions for and (as necessary) alternatives to OTA TV.

Accordingly, the approach taken for the purposes of this paper is to draw the distinction between local and national as follows:

1. Local OTA TV Business: That which benefits from and/or relies on local infrastructure for delivery of service and or incremental revenue

¹³ Particularly, it would appear, priority programming such as drama

¹⁴ Parallels and contrasts with Specialty TV were a theme in the May 2009 OTA hearing, including, for example, in an exchange between the CRTC Chair and CTV CEO at [Transcript Vol. 1 27 April 2009](#), paras 188 – 211. [Broadcasting Notice of Consultation 2009-113](#).

2. National OTA TV Business¹⁵: That which can or is provided nationally, with identical programming to all and with no need for local infrastructure, and none of the revenue benefits that accrue from being able to deliver different feeds to different markets. I.e. that which can be replicated by a specialty service.

2. The Integration of OTA TV with Specialty Television and Other Broadcast Platforms

Commensurate with its transformation into nationally owned and operated businesses, OTA TV began to integrate with Specialty Television from that platform's origins in the early 1980s. CHUM Limited, the first OTA broadcaster to enter into Specialty Television, initially relied on Citytv as the "mother ship" that nested and spawned the company's fleet of specialty networks, from MuchMusic and Bravo! to the analog/digital "hybrids" (Space, MuchMoreMusic, CLT etc.) to the Diginets. In the latter years of CHUM's existence, however, it was the specialty services that kept the conventional fleet afloat¹⁶.

CTV and CanWest Global followed this strategy with a combination of acquisitions and successful licence applications: in particular the acquisitions of Netstar and CHUM by CTV and AAC by CanWest. These companies are now too in a position in which specialty now supports and cross subsidizes OTA TV¹⁷. In Quebec, while the Specialty Television sector remains dominated by Astral, TVA has successfully launched a handful of specialty services that complement and support the network, although apparently not to the point of cross-subsidy¹⁸.

It is noteworthy that this transformation of OTA TV in Canada is by no means identical to that which occurred in the U.S. U.S. networks continue to have vibrant independent affiliates, have launched specialty ("cable") networks (often through "retransmission consent"), and have evolved from principal licensees of content to owners of it¹⁹. Moreover the relative market power and degree of vertical integration of U.S. TV distributors is far less than that of Canadian equivalents²⁰.

¹⁵ Even this description is not without grey areas. Certain specialty services have "east" and "west" feeds, historically as a means of ensuring programs are delivered at more appropriate times (thereby increasing viewing and revenues) and increasingly as a way of time-shifting for viewers who receive both streams (again increasing viewing and revenues). The WeatherNetwork and Metromedia take this considerably further by delivering national services with local inserts of text/graphic weather information, and in Toronto, even separate local programming.

¹⁶ A theme canvassed in the testimony and submissions leading up to the CRTC's approval of acquisition of CHUM by CTV in [Broadcasting Decision CRTC 2007-165](#).

¹⁷ A matter of financial reality if not deliberate strategy, given that even major group OTA stations are losing money, while specialty services continue to do well.

¹⁸ TVA's successful multi-platform strategy is discussed below. As a relative share of corporate revenues and profits, however, TVA is not nearly as big in, or dependent on, specialty television as CTV or CanWest.

¹⁹ Chapters could be written on the differences between the OTA TV business in (English) Canada and the U.S. Most notable is the full program rights protection afforded U.S. OTA broadcasters (through blackout and network non-duplication rules) and the increasing ownership of content (through equity positions or vertical integration). Eg. NBC Universal.

²⁰ There is much evidence of and many reasons for this, including the fact that in Canada cable was for years the "chosen" vehicle of CRTC distribution policy and the fact that Competition Laws in Canada allow for far greater consolidation and "industry cooperation" than anti-trust laws in the U.S.

The ownership of both specialty and OTA Television under the same roof has allowed broadcast companies to maintain or amalgamate larger aggregate audiences, over a period where OTA Television has seen its audience fragment and decline. In addition to sharing corporate resources and overhead, synergistic specialty properties permit significant sharing of programming with conventional TV -- both high price event or obligatory programs and more mainstream fare²¹.

Today, "cross platform" or "multi-platform" strategies for program exhibition are common place, and can include online exhibition, VOD, mobile, specialty, pay and PPV exhibition, all depending on the type of content, its appeal, currency and cost. TVA has been by far the most successful Canadian broadcaster to employ such techniques to monetize expensive original content effectively, using "pre-release" PPV for major event programs, followed by broadcast on TVA, repeats and VOD/online exhibition.²²

a. Corporate Accounting Methodologies and Allocations

Current financial reporting of OTA TV to the CRTC (and to some extent regulation itself) is still largely based on the original individual station model. Among other consequences, this means:

1. National or regional program rights costs and infrastructure are usually "allocated" to local stations based on GAAP, but regardless of methodology, allowing for considerable discretion;
2. "National", certainly "network", advertising revenues are also allocated based on discretionary formula (usually reasonable, but also allowing for discretion);
3. Depending on the circumstance, corporate groups have "unintended" regulatory incentive to allocate revenues as between specialty and conventional; or as between markets, in particular ways²³;
4. There is some likelihood that in the largest corporate groups, allocations of "overhead" to OTA TV are excessive and reflect historic subsidy of conventional

²¹ By necessity, as a relatively regional operator of OTA TV, CHUM Limited used this strategy extensively; sharing major event programs (like the *MuchMusic Video Awards*) between Citytv and Much, sharing science fiction drama between Space and the NewNets/A-Channels, cost effectively buying movie packages that could air on OTA and specialty etc etc. All major broadcast groups with both conventional and specialty assets have done this to at least some extent (eg. *Corner Gas* on CTV and Comedy Network, documentaries on OMNI and The Biography Channel), but as specialty television evolves from a "repeat programming" model to an original programming model, the practice may decline over time, except for high price event or other programming that can benefit from a multi-platform strategy.

²² Canadian TVA produced shows like *Star Academie* and *Le Banquier* (TVA's version of "Deal or no Deal") have benefited enormously, and indeed would likely not be financed, without such aggressive multi-platform strategies.

²³ While the author is not aware of this being a widespread practice, such incentives over time have included:

- Making an OTA market subject to new entry look less profitable
- Ensuring conventional TV looks as unprofitable as possible in order to win regulatory gains in renewal
- Ensuring specialty services do not exhibit too much of an increase in profits prior to renewal and hence become subject to increased CPE obligations

to specialty, rather than current health and ability of specialty to now carry a greater portion of corporate overhead and infrastructure²⁴; and

5. There is also incentive for, and strong likelihood that in any enterprise that owns both specialty and conventional services (i.e. the vast majority of OTA TV station owners) specialty increasingly carries a disproportionate amount of national Canadian programming costs, given the current absence of Canadian Program Expenditure (“CPE”) requirements on conventional TV

Implementation of the CRTC’s proposed move to corporate or “group based” CPE obligations²⁵, and ensuring OTA and (at least) major specialty service license terms are aligned within major corporate groups would render much of this moot from “regulatory avoidance” perspective. In such a scenario, corporate groups would presumably have no incentive (intended or otherwise) to allocate costs or revenues in a manner that helps “to tell a story”.

b. OTA TV as a Part of a Corporate Multi-platform Whole

Over the last 30 years, OTA Television has morphed not only from being locally driven to nationally driven; but also from being nationally driven as an independent platform to being nationally driven with specialty platforms to, increasingly, nationally driven across multiple platforms.

As a result, today an individual local TV station is generally a relatively small part of a much larger geographically dispersed and multi platform corporate broadcast enterprise. The economics or business of a single OTA station thus becomes very hard to discern, as a significant proportion of the reported revenues and expenses of such an OTA Television Station licensee will be corporate “allocations”.

Regardless of the form of regulatory obligation, however, the Commission and all parties would presumably benefit from a greater understanding of what is actually happening to the business of OTA TV, to better understand what the problems are and what solutions might be appropriate ... hence this paper’s attempt at disaggregating the local and national aspects of the OTA TV business, and their respective revenue and expense elements.

²⁴ This is not to suggest “nefarious” conduct. Once allocation rules are established (as they would have been when specialty services launch) it takes a conscious decision to change them. The Commission’s 2004 introduction of a specific linkage between CPEs and profitability may well, however, have triggered such changes for successful specialty services. See [Broadcasting Public Notice CRTC 2004-2](#).

²⁵ [Broadcasting Notice of Consultation CRTC 2009-411](#). CPE obligations were first imposed as a condition of licence on OTA television broadcasters in 1986, and in 2000 removed pursuant to the 1999 TV policy. ([Decision CRTC 86-1086](#), November 14, 1986 and [Public Notice CRTC 1999-97](#)). The return of CPE obligations to conventional TV, be it through new group-based corporate CPEs or specific OTA TV CPEs would have a similar effect here.

3. Challenges and Opportunities in Local OTA TV

Examined as a separate business, the challenge facing local TV is deceptively easy to label: the costs of local obligations, programming and infrastructure are simply out of whack with local revenue potential or at least current local revenues²⁶.

Whatever the cause -- declining audiences to local programming and hence revenues, greater competition for local retail advertising, or local infrastructure costs that do not pay for themselves through incremental revenue -- the simplest answer would be to allow OTA TV broadcasters to scale local obligations to revenue. Whether that means one crew shift and reduced local programming, a bureau and repeater rather than a full up local station, or even no local station/presence at all, the issue would simply be a market decision based on whether a given local OTA TV station can make money or not.

Up until the release of Broadcasting Regulatory Policy CRTC 2009-406, many if not most, OTA TV local programming obligations were set 30+ years ago in a completely “pre-Internet” era²⁷ and in English Canada²⁸ often included requirements for 20-25 hours or more of local programming per week. That news and non-news programming is a “good thing” has rarely been questioned. How much of this “good thing” a community should have, and what it should be, has received surprisingly little scrutiny ... other than the general view that “more is better than less”, original is better than repeats and local news is best of all.

a. The Correlation between Hours of Local Programming and Local Staffing/Infrastructure

Broadcasting Regulatory Policy CRTC 2009-406 and its related specific license decisions essentially cut through the above morass by declaring, as an “interim” framework, new requirements for English Canada of 7 hours per week of local programming in small markets, and 14 hours a week in large metropolitan markets of greater than 1 million population.

The repercussions of this are not insignificant. To produce and program 20-25 hours or more of local television per week of any quality essentially requires two week-day crews plus additional weekend shifts or part-timers. Typical arrangements might include the following:

1st Weekday Shift:

- Breakfast show/local breakfast show inserts (5 x ½ hr – 3 hrs = 2.5 – 15 hrs)

²⁶ A number of broadcasters have commented on local programming now losing money. See, for example, para 2383, [Transcript Vol. 2 April 28 2009, Broadcasting Notice of Consultation 2009-113](#)

²⁷ While the 1999 TV policy resulted in a *de facto* flexible “standard” of approx 15 hours of local news/non-news programming, many stations had significantly higher obligations (some 30+ hours per week) -- the result of broadcaster commitments in new license applications and ownership transactions.

²⁸ French-language OTA stations, given the relatively smaller size of the French-language market in Canada, have generally never had such high levels of local programming. By contrast, however, “national” French-language programs have far more regional and local content than their English-language counterparts. Quebec produced French-language game shows, contests, talk shows etc engage the whole province, in part, by ensuring participation from all across it.

- Noon newscast (5 x 1/2 hr – 1 hr = 2.5 – 5 hrs)

2nd Weekday Shift plus weekends:

- Supper time newscast (5 or 7 x 1/2 hr – 1 hr = 2.5 – 7 hrs)
- Late night newscast (5 or 7 x 1/2 hr – 1 hr = 2.5 – 7 hrs)

Independently or other in-house produced:

- News flashes (throughout the day) (5 x 8-12 x 2 min max/hr = 1 - 2 ½ hrs)
- Other local programming (e.g. Saturday morning block) (0 – 5 hrs)

Thus an 8 hour morning crew shift can produce up to 15 hours a week of reasonable original local programming with some combination of a breakfast show, morning news flashes and perhaps a noon newscast and some other local non-news programming.

Similarly, a late afternoon/evening 8 hour shift plus perhaps weekend crews can produce a similar amount of local programming through a combination of supper time and late evening newscasts plus news flashes and possibly some other local non-news programming. A quality supertime newscast can even be repeated, or repackaged, for 6 am the following day to meet weekly CRTC requirements, and still garner some audience.

Cutting local programming costs is therefore a non-linear exercise.

When local programming commitments are 20-25 hours per week or more, the die is largely cast, and a station generally has to commit to a local news strategy with at least 2 crews. At 14 or 15 hours per week, a station can cut to one crew and make a decision as to whether they are in the news business or not, whether they want an in-house produced breakfast show or some kind of talk show, and whether they need weekend station produced programming or not. At 5-7 hours or less a week, a station can decide whether it wants any station produced programming at all -- independent producers, particularly using brokered time for ethnic or religious programming, or potentially other shows with a strong community of interest and niche advertisers²⁹, can fill regulatory obligations without any local infrastructure beyond a transmitter.³⁰

b. The “Craft” of Local TV

The craft of “local TV” has arguably changed very little in the last few decades, notwithstanding huge shifts in competitive environment, viewer habits and technology.

Indeed, OTA TV’s basic approach to local news gathering, production and certainly exhibition has in many respects not changed significantly since Citytv introduced “videographers” and its “anchor desk free”/open concept production style in the 70s. Local news still uses a (relatively) large number of people in the field & studio, typically

²⁹ For example, with advertising limits now essentially removed, in larger markets, sponsored local talk shows on personal finance or legal matters, or even outdoor activity shows, could potentially be made as brokered paid shows.

³⁰ This is not as unlikely as it sounds. CIIT Winnipeg has operated this way since its launch by Rogers following acquisition approval in [Broadcasting Decision CRTC 2005-207](#). Similarly, CHWI Windsor, while it has a local storefront bureau and station produced programming, has had all its local programming assembled and packaged by CFPL London for years.

to produce traditional “live” noon, supertime and/or late night newscasts³¹. Technology has made this approach vastly more efficient (3 key ways: multi-tasking: a videographer not only shoots his own story, but edits it and submits the finished segment; automation (in cameras, traffic/ad inserting and storage servers); and, the most trend, centralization of packaging/production)³². But technology has not really been used to change the model, only make it more efficient.

CP 24 has perhaps come closest to changing the Canadian TV news model (with its multiple text/graphic feeds and associated banner advertising and sponsorship vehicles, around a 1/3 of screen area video image) but many US TV stations and even some Canadian Cable stations (i.e. our former “community channels”) have arguably done a better job of creating cost-efficient info/news shows through, for example, server-based segment “wheel” approaches³³.

Viewing to 24 hour news channels; specialized weather networks and multiple on-line sources (including those of the broadcasters themselves) is increasingly replacing the viewing of scheduled OTA TV local newscasts (particularly noon and supertime), as younger Canadians refuse to adopt and mid-age Canadians abandon this traditional “appointment” approach. And yet given historically high local programming commitments, maintaining a centralized and national programming focus and apparently unsure of the right move, Canadian OTA TV broadcasters have done little to change their basic local programming approach³⁴.

Fortunately, with the regulatory flexibility now afforded to OTA TV on minimum hours of local programming, the opportunity to both cut costs and focus resources on the areas of greatest potential viewership and revenue now presents itself. Available options open to OTA TV stations are many, and precedents abound, particularly in the U.S.³⁵. These include:

- Becoming a key anytime anywhere local news destination by investing even more heavily in local news through 24 hour on line and or broadcast platforms, ownership of or partnership with local print operations, cable channels and/or

³¹ Consolidation and centralization has, however, allowed “national” reporters to replace local ones. Why have a local “entertainment reporter” when the movies reviewed are released nationally? What starts to get missed, of course, is coverage of purely local events.

³² CanWest has been the industry leader here, and has been the first to centralize (in 4 separate centres) the “packaging” of local programming. [See Transcript Vol. 4 30 April 2009](#), paras 4779 – 4804. [Broadcasting Notice of Consultation 2009-113](#).

³³ Most local news programming plays off a “control room”, which switches between a live “anchor”, other live in-studio reporters, live “field reports” and pre-recorded footage. While more often than not, most if not all outside studio footage is, in fact, pre-recorded, this approach gives, at least, the impression of “live, breaking news”. The disadvantage of this approach is that it is far more costly to produce, leading broadcasters who are satisfied with “near live” news and information broadcasting to start to use “server based” approaches, in which all programming is placed on a server and a limited number of stories are played out, on a “wheel”, getting repeated and refreshed with new segments. Shaw TV and The Weather Network are among the Canadian services that use this approach.

³⁴ It should be noted that some traditional “appointment” local supper time and late evening newscasts still garner reasonable audiences, but most have seen material declines in the last decade.

³⁵ See, for example, these comments on [major trends](#) and these [2005 Predictions](#). It should be noted that none of these are “magic bullets”; in particular on-line based models have yet to demonstrate business viability. “Experimentation”, trial and error, will be required to find the right approaches for a given market, and “one size does not fit all”.

popular local portals; intelligently combining scheduled news (say breakfast and late night) with news flashes throughout the day on main local OTA TV channel;

- Pooling local news gathering resources with competing local news providers and placing the competitive emphasis on distinct editorial, anchors and other personalities to appeal to target audiences; and
- Getting out of local news altogether, and emphasizing local lifestyle shows, breakfast shows or niche ethnic, religious and other local information programs.

Decisions can be made on a market-by-market basis based on realistic assessments of competitive standing and advantage, and audience and revenue opportunity, all geared to building a sustainable business in local programming.

c. Identifying Costs and Revenues Attributable to a Local TV Station

Assessing the real business opportunity associated with local programming and local infrastructure requires an examination of the cost and incremental revenue aspects of each.

i. Local OTA TV Costs

Local OTA TV cost elements are relatively easy to identify, but increasingly require some allocation of centralized costs to assess. Broadly speaking, they include the following:

- **Local programming costs**
Either amortized acquisition costs (in the case of independent production) or in-house production costs, including staff, equipment amortization, rent, heat, hydro, feeds, etc.
- **Promotion**
The direct and indirect costs of the station in promoting itself or its programming to the community.
- **OTA transmission costs**
Costs attributable to OTA TV transmission including power, maintenance, transmission links and delivery to the transmitter.
- **“Incremental” master control, traffic and program delivery/packaging costs³⁶.**

³⁶ Historically a local OTA TV would have been a self-contained operation with all the equipment necessary to assemble and broadcast programming. Non-local programs and advertisements would be delivered by tape, a detailed/timed set of scheduling instructions (including specific advertisement placement) developed (“traffic”) and then the tapes assembled and played out (“master control”) over the air. Initial moves to local automation and digitization in the 80s have in the last decade largely given way to centralized operations where programming and advertising automatically runs off servers and a single master control operator keeps watch over 5 – 8 stations; fibre feeds sending the signal to the local transmitter (local programming having been sent back to the central operation).

Either including costs for a local master control operation and program delivery or allocated costs from a centralized master control operation plus signal delivery.

- **Local retail and regional agency sales costs**
The station's sales costs, including sales staff, support and overhead for its advertising sales.
- **Other admin and general management**
A large local station needs a General Manager, support staff, accounting, receptionist. In a smaller station, the Sales Manager or GSM typically assumes the most senior general management responsibility, and other admin functions are centralized.

In even a large local station operation, a significant part, if not the majority, of costs reported to the CRTC will be allocated from "head office": the largest being national programming amortization costs³⁷; second usually being corporate/admin. These costs need to be "stripped out" to get a real understanding of the true local costs of a local OTA TV operation.

In a small local station operation (particularly one that is part of a big network) the only significant locally incurred costs will be that of a local sales team and local programming. Transmission costs, plus a reasonable allocation for incremental centralized master control, traffic and library, are practically all that need to be added to arrive at a reasonable understanding of the true incremental costs of such a small OTA TV outlet.

ii. Local OTA TV Revenues

The only revenues typically seen as attributable to a local station are local retail revenues. Such revenues can be significant, and are clearly a direct and necessary outcome of operating a local OTA TV station. As a matter of practicality, local retail advertising only makes financial sense when it is targeted exclusively or primarily to its local audience. Moreover, as a matter of policy, the CRTC has had a long-standing requirement that the privilege of accessing local retail revenue is granted only to those who offer local programming³⁸.

The definition of what constitutes "local retail" advertising and the boundary between that and "national spot" (i.e. that sold by a national agency and classified as a national sale) is not entirely precise. In the extremes, there is clarity: advertising from a local single retail outlet (a particular local car dealership; an independent local jeweler) is clearly local retail, while advertising of a national brand (a Toyota Prius; Kraft Dinner) is clearly national. The grey area is in advertising from the newly opened local Sobeys Superstore, or a coordinated regional sales effort of Vancouver GM Dealers. While such advertising may have the characteristics of local retail (in that it is clearly related to retail sales and targeted to a certain local region), it is likely to be sold by an agency, and

³⁷ The recently approved transfer application for CHCH Hamilton is illustrative. Under Canwest's ownership, in 2009, of the \$75 million in projected operating costs, over \$51 million were acquired programming allocations, and over \$5 million were central charges, such as IT support and "broadcast network" support. See Application Nos. 2009-1021-7 and 2009-1019-2 re [Broadcasting Notice of Consultation CRTC 2009-425](#)

³⁸ Reiterated, for example, in the 1999 TV Policy at para 47.

therefore usually categorized as national. However it is sometimes sold by the local station and classified as local sales³⁹.

The significance of this phenomenon is that it leads to the first area of potential “understatement” of local OTA TV revenues -- that is the incremental value of being able to sell national spot rather than just network advertising⁴⁰ -- which only occurs by virtue of having a national network or system of local OTA TV stations (rather than a “single feed” specialty service). By selling national spot (market by market) to different advertisers, OTA broadcasters receive significantly higher overall revenues, than if they merely sold one spot nationally⁴¹ (as is the case for specialty). This premium, while difficult to determine, is still material despite the effect of distant signals⁴², and likely amounts at least 15-20% on what would otherwise be a single national or “network” sale.

The second area of potential “understatement” of local OTA TV revenues is the “incremental” advertising revenue arising from increased audience and revenues given the presence of an OTA transmitter. Most broadcasters now view transmitters as an unfortunate regulatory obligation rather than an incremental revenue source⁴³. This was certainly not always the case, as a relatively small portion of off-air viewing (as low as 3-5%) can still translate into increased audience and revenues that pays for transmission infrastructure. While off-air TV viewers are likely not to be major TV viewers, their viewing universe is inherently limited to a few OTA channels, rather than the hundreds of channels most BDU subscribers receive. Moreover OTA transmission is the only way many DTH subscribers can receive local programming from their local broadcaster.

³⁹ While Toronto is the Canadian headquarters for advertising agencies, Montreal handles some Quebec English and virtually all French-language business while Vancouver handles some western Canada business. Small local “agencies” also exist smattered across the country handling some local/regional accounts.

⁴⁰ Clarity on terminology is important here. “Network” advertising is advertising for which one purchase is made for the entire national coverage area of the TV OTA “network” or system in question. In theory, only a national network (CBC, CTV, TVA) sells these spots; in practice, other national OTA players (such as Global TV) effectively do, but only when necessary (and likely comprising < 5% of revenues). “National spot” is national advertising bought on a market-by-market basis. Advertisers that want universal coverage and only one bill will gravitate to “network” buys. Advertisers that only want a limited number of, not all, major markets will gravitate to national spot.

⁴¹ One of the big challenges for OTA broadcasters today is that the list of “must buy” markets gets smaller and smaller -- for example, markets like Kitchener/London, Winnipeg, and St. John’s, once seen as standard “buys” for a national campaign, are often no longer on a buyer’s list; they know that “spill” from nearby or distant signal major markets (eg. Toronto) will get them there.

⁴² Were it otherwise, CanWest and CTV would presumably have abandoned the practice of selling national spot advertising, as national advertising gets “credit” for all markets; whereas national spot only gets counted when viewed in its intended market. No doubt, the 15-20% average “premium” of “national spot” over “network” has come down as a result of distant signals (and could have further pressure because of the current economy), but, generally speaking, the more flexibility and market focus one gives to advertisers the more they will pay; and the more OTA broadcasters are able to give advertisers access only to the markets they want, the more inventory they have available to sell to other advertisers. Obviously, on a market by market basis, the premium would be higher for a market like Saskatoon which would be on some, but not all national advertiser market lists, and lower for a markets like Windsor and Fredericton which would be on fewer still.

⁴³ For example, at the May, 2009 OTA public hearing, CTV stated “We cannot justify an investment of several hundred million dollars to reach [the over-the-air] 9 percent of the marketplace, particularly when this investment produces no additional revenue in a business that’s already teetering on the edge.” Transcript, Vol. 1, 27 April 2009, para 126. [Broadcasting Notice of Consultation 2009-113](#).

Thus a small percentage of off air viewing can actually represent an even greater percentage of a station's audience⁴⁴.

Moreover, the must carry status of OTA TV historically afforded by virtue of having a local transmitter clearly still represents a clear and material audience and revenue increment over discretionary "highest penetrated tier" carriage. Indeed, it is reasonable to assume that in most BDUs, the combination of "basic carriage" increased penetration and a smaller number of channels would result in another 15-30% advertising revenue premium.

d. **Characterizing the Local OTA TV Business**

In sum, looked at as a separate business unit, the local OTA TV business can typically be characterized as having significant fixed costs in terms of equipment, infrastructure and staff, some variable costs in terms of 3rd party commissions and acquired programming, and variable revenues from at least 3 potential sources:

- Local retail advertising revenue;
- Incremental national advertising revenue; and
- Incremental revenue from increased local reach and hence audience.

The local OTA TV business is, nevertheless, quite scalable over time. Fixed local costs can be materially reduced, for example, by centralizing certain operations and cutting local programming and/or relying on independent production⁴⁵.

In addition, assuming adequate local resources, retail revenues can be an important source of incremental revenue, particularly, as now, when the national business suffers. While the cost of sales for local retail is high relative to agency deals, empowered local sales forces can find significant incremental local revenues by being aggressive and imaginative in their sales packaging and pricing approaches. Although local retail advertising finds its most natural home in local programming, the CRTC's elimination of advertising limits and a soft national advertising market mean that inventory can today be available, and incremental revenue found, in even prime time shows⁴⁶.

⁴⁴ The real issue going forward is whether OTA DTV transmission is a merely cost centre or is a potential incremental revenue opportunity. In broad terms, if one accepts a capital upgrade cost for a DTV transmitter of \$250,000 to \$500,000, a reasonable estimate of associated annualized interest, depreciation and operating costs might be in the \$50,000 range. For a station earning \$10 million annually, this would represent as little as 0.5% of revenues -- not requiring a big increment in advertising sales to be justifiable. Given the quality, price (free), interest in and ease of OTA DTV reception it is not hard to imagine a slight resurgence in OTA reception. (See, for example <http://overtheair.saveandreply.com/>, <http://www.remotecentral.com/hdtv/index.html>) Thus in major and many medium sized markets, DTV transmitters could well at least pay for themselves over time.

⁴⁵ CanWest has been a Canadian leader in consolidating and centralizing local operational infrastructure. In addition to savings in capital upgrade costs and operations costs, such a strategy allows CanWest to be more nimble in changing the amount and type of local programming a local station provides. Other major broadcasters, including TVA and CTV can be expected to follow suit.

⁴⁶ Local retail is a material but not always appreciated revenue element of OTA TV. Until the recent economic downturn, it had been allowed to languish somewhat, particularly by the larger station groups, because of the relative ease with which they were able to maintain high price national advertisers, and the high cost of local sales (relative to agency deals). Many, if not most, OTA broadcasters have been able to

Thus, from a purely business perspective, a local OTA TV station in a reasonable sized market and assuming a sustainable national programming strategy should, over time, be scalable to match its revenue opportunities. There is no reason why a local TV station cannot receive a small but healthy slice of local retail revenues, through an intelligent local and national program strategy that finds a reasonable audience. With sufficient regulatory flexibility to provide as little or as much local programming as a market can sustain, and reasonable fixed costs covered by incremental revenue, a business can still be made of local OTA TV.

e. **Regulatory Implications and Potential Prescriptions**

Assuming the foregoing is correct -- that a business can still be made of local OTA TV given sufficient regulatory flexibility to scale local obligations to match local and incremental national revenue -- the simplest regulatory approach would be to have no requirements for local programming at all, other than the stipulation that to access local retail revenue one must offer local programming. Licences could be offered for local “repeaters” or local stations to any who request them, and the market alone would determine success or failure.

That market decision would effectively be two-fold:

- First, whether the “incremental” national revenue from a local transmitter and must carry status more than covers the associated costs of local technical infrastructure; and
- Second, whether retail and other advertising revenue more than covers the costs of local programming and a local sales team

The result would presumably be that local markets that could sustain local TV programming would receive at least some of it, and assuming the market were big enough, from multiple OTA TV stations; those that couldn't might have a repeater or two with national and potentially regional programming; others would have to receive non-local OTA TV broadcast signals via BDUs and/or OTA TV programming from online sources.

Naturally, such an approach would be a significant departure from historic regulatory practices (and hence likely be viewed as bad public policy), for at least two reasons:

- There would be no “market entry” test and hence no ability to limit a market to an apparent “sustainable” level of OTA TV stations or limit the potential impact of OTA TV on local radio revenues (which can be 85% retail driven); and

maintain or increase retail sales through the 08/09 broadcast year. Nevertheless, radio and print today dominate retail with “solutions” and “selling systems” geared to helping local retailers build their businesses.

- There would be no ability to mandate levels or types of local programming from specific broadcasters that would not otherwise be created by the market. (Incentives could presumably still be offered).

Nevertheless, this theoretical construct invites the question as to what is a necessary or appropriate rationale for intervention by the CRTC in the local OTA television market. The issue of market entry criteria aside, there would seem to be 3 possible reasons for such intervention:

- First, to ensure higher levels or quality of local programming than would otherwise be the case;
- Second, to ensure the very existence of local programming that would not otherwise be there; and
- Third to ensure a diversity of local programming sources.

While each reason is somewhat different, the solution is essentially the same. If public policy deems it necessary that there be more local programming than the market can bear, some form of subsidy is needed, either:

- internal (i.e. the price of a “national” network is subsidizing smaller markets)
- direct (e.g. the CRTC’s Local Programming Improvement Fund⁴⁷ (“LPIF”))
- indirect (e.g. fee for carriage (“FFC”); distant signals or some other form of additional compensation)

CRTC decisions on which approach is appropriate generally and for any given local market or any given broadcaster are central to the proceedings that the CRTC will hold in 2009 and 2010. While there is no “right answer”, there are a number of clear philosophical underpinnings to such decisions. These include:

1. Given that local broadcasting has historically been profitable⁴⁸, and is only becoming unprofitable by virtue of changing technologies and consumer habits, does public policy really want to mandate and subsidize a dying model or should it allow it to transform into something sustainable?
2. Does Government effectively want to get into the business of direct subsidy of local news? Decades of firm adherence to principles of journalistic independence merit some debate on this⁴⁹.

⁴⁷ Established in [Broadcasting Public Notice CRTC 2008-100](#)

⁴⁸ This, of course, while a general truism, does not mean that local programming has always been profitable in every market. Local news can cost almost as much to produce in a small market as a medium sized one, so a multi-station group may well have cross-subsidized local programming in its smaller markets for years.

⁴⁹ The question has been obviously proposed provocatively. Government has indirectly subsidized local news for decades -- both through direct subsidy to the CBC and structural measure that can be said to “subsidize” local broadcasting and hence private newscasts. The difference here is that funds like LPIF, while strictly speaking not government funds, are creatures of government policy and can be said to be directly subsidizing local news.

3. If FFC is to be implemented based on a market negotiation, and one of the best ways a local OTA TV station decides it can maintain and enhance its local business is a 24 hour local news channel, should negotiating carriage and subscription fees for such a second channel with BDUs be deemed appropriate compensation⁵⁰?
4. Should the CRTC care about the type, quality or volume of local programming from a local OTA TV broadcaster or emphasize only a diversity of choice through multiple sources⁵¹
5. If diversity of voices and local programming choices is the key objective, should the Commission extend its Diversity of Voices framework to provide a basis for determinations on which broadcasters should be required, or incentivized, to provide programming in which markets?⁵². Should a certain level of independent local production be required, or incentivized, if sufficient diversity of outlets is not forthcoming?

4. Challenges and Opportunities in National OTA TV

When viewed as a distinct and separate business from that of local OTA TV, national OTA TV has one key disadvantage but also a number of key advantages over specialty television.

⁵⁰ The launch of “cable channels” was a primary consequence of retransmission consent in the U.S. Twenty years later, with most specialty niches filled, the outcome in Canada can be expected to differ, as “consideration for market value” takes a form appropriate to today.

⁵¹ It is interesting to contrast the Commission’s Diversity of Voices policy, [Broadcasting Public Notice CRTC 2008-4](#) and [Broadcasting Regulatory Policy CRTC 2009-406](#) in this regard.

In the former the CRTC stressed the “plurality” of “editorial voices” and the “sources of news and information programming that are essential to a functioning democracy. The presence of many sources of information in the broadcasting system is taken to mean that a diversity of voices or viewpoints will be represented”.

In the latter, the CRTC emphasizes volume and offers a purposeful (and hence inherently subjective) definition of local programming as that which “reflects the particular needs and interests of the market’s resident” and cites (with apparent favour) three criteria for “local presence” provided by CTVgm:

- providing seven-day-a-week original local news coverage distinct to the market;
- employing full-time journalists on the ground in the market; and
- operating a news bureau or news gathering office in the market.

While the Broadcasting Act does not give guidance on whether diversity of sources or volume and “quality” of local programming is more important, there are solid arguments to suggest that diversity would ultimately serve Canadians better than subsidizing volume, especially based on criteria which might appear quite “old-school” to the average internet-savvy consumer.

⁵² As an input to its Diversity of voices policy, the Commission tracked [31 local Canadian markets](#), and concluded that “Canadians currently have access to a reasonable plurality of commercial editorial voices in most local markets”. An aligned local programming/diversity policy could work as follows: In markets where there are more than X, say 4, independent news outlets, no minimum local programming requirements would be imposed, and no access to LPIF granted. Under this number, access to LPIF would be granted, and as required, minimum local hour requirements imposed. For example, with CanWest current owning print and the powerhouse local TV station (BCTV) in Vancouver, VTV (CTV Vancouver) and Citytv might be required to provide local news, even if not profitable. In Ottawa, CTV might be required to have news and local programming on CJOH or CHRO but not both.

The key disadvantage is well known. As yet, OTA TV has no framework or ability to negotiate subscription fees, which for many specialty services represent upwards of 50% of their revenues⁵³.

The advantages, often cited by BDUs and broadcasting companies with predominantly Specialty and/or Pay TV interests, are also well known, but there is little agreement among parties as to their true value. These advantages include:

- Historic status and “incumbency”. Having established themselves as key brands and destination channels with “priority” positioning, OTA TV stations can’t be knocked down without a fight.
- Ubiquity. Only OTA TV is guaranteed universal distribution to virtually all Canadians, through must carry status and OTA transmission⁵⁴.
- A significant premium in advertising cost per point or cost per thousand over Specialty Services⁵⁵.
- General interest programming. OTA TV stations can carry any programming they want to, targeted to any demographic. They are not bound by either regulation⁵⁶ or consumer “expectations”, and can simply air the best, most profitable programming they can; and (for English-language OTA TV broadcasters)
- Simulcast. More than just the incremental revenue⁵⁷, simulcast combined with all of the above means only English-language OTA TV can routinely and consistently air the “top” broadest interest shows, whatever genre they may be in.

There is also no doubt that, the current economic downturn aside, the single largest reason for reduced profitability of the English-language national OTA TV business is significant increases in US programming costs. In the last five years alone, foreign, predominantly US, programming costs have grown significantly in excess of revenues, for private OTA broadcasters, to a high of \$775 million in 2008 or 36.25% of revenues, from \$570 million or 27.63% in 2004⁵⁸.

Keen observers and players in the industry know that this is entirely due to market dynamics and the seizing of opportunities to secure competitive advantage. What is less

⁵³ In 2008, specialty service advertising revenues represented 44% of total specialty revenues. [2009 Communications Monitoring Report](#)

⁵⁴ As broadcasters rightly point out, however, the lack of guaranteed local station OTA carriage on DTH is a significant impediment for the local aspect of the OTA TV business

⁵⁵ On a Cost per thousand (“CPM”) or equivalent basis average, OTA TV advertising is generally acknowledged as priced at double that of Specialty TV. Given its inclusion in the local OTA TV side of the business, the advantage over specialty television of being able to sell national spot, not just national advertising, would reduce this to approximately 80%.

⁵⁶ Other than issues of public decency and airing of adult content.

⁵⁷ This has historically been estimated at \$200 - \$300 million annually. The author is unaware of any more recent estimates than this. (Cited in [An Overview of the Canadian Program Rights Market 2007](#), by the Author)

⁵⁸ [2009 Communications Monitoring Report, Table 4.3.17](#). Disaggregating the numbers over 10 years for private English-language broadcasters suggests an even more compelling story: from approximately 24% of ad revenues in 1988 to 44% in 2008.

well understood by observers and other interested parties is the reason why such expenses would have been allowed to rise to the obvious detriment of the overall business.

This can only be appreciated by understanding the basic business model of Canadian (national) English-language private OTA TV. Simply put, in English Canada, it is a margin business in which one first buys the best available U.S. simulcast programming, second the best available non-simulcast U.S. programming, and third (beyond news and sports, and absent other considerations) the cheapest acceptable Canadian programming necessary to fulfill exhibition requirements. This is a business model that has made Private OTA TV profitable (and at times, extraordinarily so) for almost five decades, and requires only an opportunistic program acquisition and scheduling approach.

The French-language “national” OTA TV business, is by contrast a business built on Canadian programming, and the strategies needed to maximize its audiences with Canadians.

The two markets are so fundamentally different that they deserve separate treatment here.

a. **Underneath the Business Model of National English-language OTA TV**

There are three basic ingredients to running the national side of an English-language Private OTA TV station group business.

First, buy the best U.S. programming you can to fill out your maximum permitted regulatory quota⁵⁹, in the highest potential audience time slots, with all or as much of it “simulcastable” as possible.

Second, find the most complementary Canadian programming, which will fulfill your regulatory minima and lose as little money as possible.

Third, maximize revenues by, promoting, marketing and selling your top U.S. shows to maximize audiences and revenues and create as much lift as possible for your “run of schedule” Canadian fare.

i. U.S. Programming drives the business model

The dependency of the national business of OTA Private English-language broadcasting on U.S. programming is well known, but still startling in its degree and pervasiveness.

As Global TV learned in the late 70s and early 80s, capitalized on through to the late 90s and lost to CTV in the last decade, a string of top prime time US simulcasts guarantees

⁵⁹ This is currently 50% in prime time (6 pm to midnight); 40% overall; subject to scheduling 8 hours of Canadian priority programming per week from 7 to 11 pm

viewing and revenue supremacy, and is the surest way to profitability, as long as competition for that programming is not too stiff, and prices can be kept reasonable.

Until recently, gross margins of 300%⁶⁰ on U.S. hits were not uncommon. And while the buying of U.S. programming rights is wrapped in intrigue and apparent mystery, it is hardly rocket science. The U.S. “concept to script to pilot” system already guarantees basic quality, and if the show one buys does not perform, it will almost inevitably be cancelled, and a new one put in its place⁶¹. Bidding on one show may be hit and miss; bidding on a prime time schedule of up to 21 hours of U.S. programming from 4 major and one upstart U.S. network should not be⁶².

Nevertheless, the fundamental structural business problem of national English-language OTA Television today can be almost entirely traced to the determination of the major groups to have the top programs⁶³.

The reasons that everyone wants the top shows are clear enough. Owning the most top 10 or 20 programs is a guarantee of audience and advertising domination -- audience levels triple that of a “normal” show, but with even more than triple the advertising revenue, as advertisers pay a premium (per eyeball) to buy spots⁶⁴.

The trouble with everyone pursuing this approach should also be immediately evident. There are only ever 20 top 20 U.S. programs, and 50 top 50 programs. And when all the major players define their business as requiring those top shows, competition for those shows is bound to get fierce, if not irrational. Practices like buying shows to “sit on the shelf” or paying more for certain shows than one can reasonably make in revenue (perhaps to have a “loss leader” that lifts a schedule) may be intended only to “beat” competitors, but their ultimate impact is to hurt the entire sector.

It doesn't have to be this way. Given that the acquisition of U.S. programming is almost a pure margin business, profitability is not assured by having the highest rated or highest revenue generating show, but ensuring a healthy average return on investment. Achieving an average 100% margin on U.S. programming should be realistic and

⁶⁰ The term “margin” here refers to program revenue over program expense times 100. Some broadcasters use net revenue; others gross to track their internal margins (the difference being sales commissions of as high as 15%). Note that once other expenses are allocated, including this paper's proposed allocation of the “premium” of “national spot” over “network” advertising to local, this 300% national U.S. programming margin starts to diminish significantly

⁶¹ The U.S. hit making machine means that there will be hundreds if not thousands of concepts pitched for every show ultimately produced. This filtering down means that by the time a Canadian broadcaster is looking to pick up a show, the U.S. broadcaster and studio has some confidence that they have a reasonable shot at garnering decent audience. For the Canadian broadcaster that has picked up a new prime time U.S. show, there are three possible outcomes: a hit, a miss, or a “middling” performer. Major Canadian network executives usually prefer the 2nd to the third, as in the case of cancellation, the cycle starts again, and this time they may get a hit.

⁶² Any Canadian network that airs 7 or 8 of the top 10 U.S. shows in a given year is obviously beating the odds, and doing a better job at selecting winners than its competitors. The more basic point here is that if there are 100 top 100 shows in prime time, and only 2 or 3 Canadian national bidders with 4 to 5 national platforms, there should still be a lot of decent U.S. programming to go around.

⁶³ When, over the course of little more than a decade, foreign programming costs increase by an increment of approximately 20% of revenue and PBIT goes to \$0, it is hard to conclude otherwise.

⁶⁴ Not only is there a 30% plus premium on a CPP (cost per point) basis, but inventory is likely to be sold out more easily, and through “inventory management” advertisers can be “forced” to buy lower rated or run-of-schedule shows as condition of buying the top shows. Moreover a top show can be used to “lift” the audiences of adjacent programs; a fleet of them lifts the whole schedule.

achievable today and still leave enough on the table to pay for “break even” Canadian programming, overhead and corporate profits⁶⁵.

OTA TV broadcasters that stick to “margin strategies” rather than “hit” strategies for the national side of the business need never “overpay” for U.S. programming given its abundance -- programming on five U.S. networks plus recent syndicated fare should provide more than enough volume and competition to fill English-language OTA TV station foreign programming needs at reasonable cost.

ii. Canadian programming fills holes in the schedule

With a 60% overall Canadian programming exhibition requirement, an Private OTA TV broadcaster needs to find just under 76 hours per week of Canadian programming to fill out a schedule.

With U.S. program acquisitions generally being “opportunistic” and changing over time, some of this Canadian programming will follow suit, but a good portion of it will help define and anchor an OTA TV network brand.

Foremost in this is a national newscast. The ongoing audience, and for the most part, financial success⁶⁶, of news with Canadians is nothing to sneeze about. The fact that Canadian OTA TV broadcasters have been able to maintain and grow that success, in the face of competing global brands like the big four US networks, CNN and BBC, is testimony to the strength of the news teams and brands they have painstakingly built, and the fact that in news, given a choice most Canadians would prefer a Canadian source⁶⁷.

The airing of Canadian news and information programming at similar times to that in which U.S. broadcasters air their equivalents is a sensible and natural strategy for most Canadian OTA TV broadcasters⁶⁸. The benefits are two-fold, Canadians will watch and no popular U.S. simulcast shows would be available in any event.⁶⁹

Canadian news and information programming can thus consistently give OTA broadcasters as much as 2 hours of Canadian prime time programming per day, or typically 13 hours per week; i.e. the majority of their prime time Canadian programming quota. The only big decisions are the mix of “headline” news vs. news magazine/talk show formats, the mix of local vs. national, and the extent to which room is left for major sports.

⁶⁵ A 100% margin (less commissions) on the 40% of the schedule that is foreign, could, for example leave 25% for a reasonable allocation to local revenues; 25% to overhead; 25% to subsidize Canadian programming and 25% to profits.

⁶⁶ News has historically been profitable for OTA broadcasters, not wildly so, but consistently a source of both pride and moderate financial return. The economic downturn has no doubt soured this financial picture; particularly as brand and journalistic integrity precludes the airing of excessive advertising.

⁶⁷ This bias in favour of the “home team” only goes so far. Without equivalent “quality” Canadian news outlets cannot compete effectively with foreign ones. Canadian OTA incumbents quick launch of 24 hour national news channels, adoption of on-line outlets, and smart investment in talent and news gathering, has maintained that quality.

⁶⁸ This is not to say that it doesn’t also present opportunities for “counter programming” strategies for smaller or niche OTA broadcasters, such as OMNI.

⁶⁹ Note that simulcasts of U.S. news magazine such as 60 Minutes and 48 hours have been a staple of a series of Canadian OTA broadcasters, and are evidently profitable.

Sports is unequivocally the most successful and profitable Canadian programming category. The popularity of major sports with Canadians is unquestionable. The limited number of hugely popular prime time sports franchises, and their scheduling unpredictability, however make them an increasing challenge for OTA TV, with the risks of overbidding and audience aggravation high⁷⁰.

Eight hours of priority programming brings the rest of a broadcaster's prime time quota. The flexibility the CRTC has provided OTA TV broadcasters with in meeting this definition means that the strategies employed by broadcasters here can differ widely. Typically, however, a major OTA TV broadcaster will commission and produce as much drama programming as they can get public funding for, and then commission or produce the best possible entertainment magazines, documentaries, and non-news/sports regional programming⁷¹.

With prime time filled, an OTA TV broadcaster must turn its attention to the 55 hours of daytime Canadian programming that needs to be found⁷². Again, different strategies are used to fill this time; all oriented to ensuring reasonable quality at relatively low cost and, more importantly, minimal loss. Talk shows, repeats, children programming are the staples of Canadian daytime programming. A surefire profitable approach is often, however, to sell or broker airtime – for religious, ethnic or other programming⁷³.

Finally the 6 hours outside of the broadcast day are generally filled with whatever can make the most money⁷⁴. With no Canadian content requirements from midnight to 6 am, OTA TV broadcasters have free rein to air infomercials and early morning fitness shows. While those colour “sign off” bars were once commonplace, today there's usually something on.

iii. The National OTA TV Financial Model relative to Specialty

When compared to a national specialty service, the program flexibility of a national OTA TV service is enormous. Rightly so, as it is this programming flexibility, combined with the other advantages of OTA TV noted above, that have allowed the national OTA TV business to be viable without the added revenue stream of subscription fees, and with the added disadvantage of higher program licence fees⁷⁵.

⁷⁰ NHL Hockey is of course Canada's golden prime time sports franchise. Pre-emption of programming comes with the territory; pre-emption of news is always controversial.

⁷¹ Papers can and have been written about the challenges of Canadian drama and other “underrepresented” program categories. (see for example, [Dramatic Choices](#) a report on Canadian English-language drama, by Trina McQueen) That despite public subsidy such shows generally lose money for the broadcaster is a matter of public record. Some combination of incentivizing and requiring OTA broadcasters to commission and air such programming appears to be an ongoing necessity, if they are to remain a part of OTA broadcaster schedules.

⁷² In order to meet 60% Cancon overall, and having only aired 50% in prime time, 65.5% of the remaining 12 hours of the broadcast day must be Canadian

⁷³ Different broadcasters have different views of this. The major broadcasters tend to avoid to this approach given concerns over brand integrity. As OMNI and other smaller broadcasters have proven, however, viewers are generally prepared to accept that OTA TV stations may not have programming they want to watch at certain times.

⁷⁴ And on Thursday to Saturday nights, in particular, midnight to 1 or 2 pm can still garner a surprising audience for the right late night movie or repeat.

⁷⁵ For mostly historic reasons, an over-the-air run of U.S. programming generally costs more than a “cable” run, primarily because of the different residual royalty schemes for actors.

Nevertheless, while the businesses can differ significantly in program strategy and costs, reach and revenue sources, Specialty and OTA Television have one strong business element in common. They can have relatively low required operational costs and are, or certainly can be, run as margin businesses.

The ability to efficiently operate a highly cost effective national television service has been proven with the launch of numerous digital services, whose non-program operating costs can be as little as half a million dollars a year⁷⁶. While national OTA TV broadcasters may have historically been assumed to need to be businesses with tens or hundreds of millions of dollars in annual program acquisition budgets and hundreds of millions in annual revenues (the majority of which could be attributable to the national part of the business), there is no particular reason why a national OTA TV business can not be scaled down by an order of magnitude and still, as in smaller analog and digital specialty services, make money. Understandably, a weaker national OTA TV offering would have some negative revenue impact on the local side of the business, but any such major negative impacts could presumably be addressed through alternative local strategies.

Reasonable financial comparisons between the revenue and profit potential of the national OTA TV business and that of national specialty services would suggest that neither business has any great overall advantage over the other⁷⁷.

In particular, in respect of the biggest “disadvantage” of OTA TV, the lack of subscription revenues, it is worth noting that the advertising CPM premium of OTA over specialty TV, represents a similar quantum⁷⁸.

b. The Business Model of National French-language OTA TV

The distinguishing feature of French-language OTA TV is its reliance on domestically produced programming in the vast majority of its program schedule including the highest viewing time slots, for the vast majority of its program expenditures and the vast majority of its revenues, and profits.

Yes, foreign, including U.S. dubbed, programming has an important place in the mix, but clearly a secondary one. Moreover the most successful applications of foreign

⁷⁶ A number of Diginets make little more than \$1 million in total annual revenues (almost entirely subscription based) and therefore have no choice but to keep overhead and technical costs down, in order to leave room for some kind of a program budget and some profit. Rather than building their own ingest, traffic and master control infrastructure, stand-alone diginets can find it far more cost effective to simply purchase those services, typically for fees \$25,000 or less per month. This plus uplink costs comprises typical and necessary “non-programming” operations costs for a small operation. Inclusion of live programming, “just in time” satellite delivery, and higher advertising/traffic demands can however drive this \$500,000 annual figure up to \$1 million or more (recoverable in a \$10 million + revenue operation).

⁷⁷ It is also worth noting that, going forward, issues of carriage and continuing downward pressure on subscription fees may well make the specialty business far less lucrative in as little five years from now.

⁷⁸ F.N. 53 and 55, *supra*. Most analog specialty services now garner over 50% of their revenues from advertising, but suffer a discount on that revenue of roughly 50% relative to OTA. In other words the 50% these services get from subscription fees arguably puts them on an equal overall revenue footing to OTA.

programming are not the dubbed ones, but the exploitation of successful formats to produce more Canadian French-language fare⁷⁹.

The predominant reliance on Canadian programming is a necessary, but nonetheless remarkable, feature of the French-language OTA TV business. The necessary conditions for this success include:

- A limited number of OTA TV players. While in theory there are essentially two private and two public OTA TV broadcasters⁸⁰, the market is effectively dominated by only two, highly competitive, commercially oriented networks, TVA and Radio Canada;
- A strong Quebec star system and a passionate interest in and preference for local and regional vedettes, entertainment, news and information programming “chez nous”;
- Efficient cost-effective production. Average “high cost” drama costs are considerably lower in French than English Canada. Lower cost “tele-romans” (soap opera) sitcoms are also a staple;
- An emphasis on inclusive, reflective “regional” or “national” programming, rather than purely local. This ensures local markets are reflected in a more cost effective manner. I.e. Not just to themselves but to the region as a whole;
- The strategic scheduling of programming to build and maintain audiences, both through the evening and the season. With no simulcast imperatives, French-language OTA TV broadcasters are free to schedule all their programming to achieve maximum audiences; and
- The ability to maintain high margins on U.S. movies and series and use them in a more integrated, complementary fashion, in particular, more in off-seasons for TVA and as a niche for TQS.

Such success does not mean, however, that there are no challenges for French-language OTA TV. There are, and these include:

- Stable or declining OTA TV audiences and revenues;
- Programming costs increasing greater than revenues. Fierce competition between TVA and Radio Canada has led to increases for U.S. programming, while per episode Canadian programming costs continue to rise⁸¹. With such cost pressures, sustainable program budgets can only be maintained by reducing numbers of original episodes, airing more repeats and U.S. programs (particularly in shoulder seasons) etc;
- For TVA, increased local programming commitments; and
- For TQS, overall viability⁸²
- For Radio Canada and TeleQuebec, uncertain public funding

⁷⁹ This should not be a surprise. Even unilingual English-language audiences often prefer sub-titles to dubbing; more bilingual French-language audiences are bound to have limited tolerance for even the best dubbed U.S. programming.

⁸⁰ Private broadcasters TVA and TQS; public Radio Canada and TeleQuebec

⁸¹ For example, TVA reports increases of between 5 and 12% per year between 2003 to 2007

⁸² The [recently announced](#) rebranding and repositioning of TQS to “V” by its new owners Remstar will be watched with keen interest

As a more “market driven” model of OTA TV, without an ability to rely on profits from U.S. programming to cross-subsidize Canadian programming, the need for regulatory flexibility is arguably greater in the French-language market than in English Canada. Imposition of additional or new regulatory requirements, say to do more local programming without LPIF funding, could introduce new internal cross-subsidies that inadvertently affects a broadcaster’s capacity to do important national or regional programming.

c. Regulatory Implications and Potential Prescriptions

The notion that the national OTA TV business is analogous to specialty television and, at least in theory, separable from the local OTA TV business has evident ramifications.

First, it means that traditional national models of OTA TV broadcasting, and in particular, an almost complete reliance on prime time simulcast U.S. programming by English-private players, need not be adopted by all future national OTA TV broadcasters.

Second, it means that OTA TV broadcasters who want to increase their profitability should focus less on audience and revenues and more on margin potential of their programming⁸³, and where necessary, take advantage of the fact that the national part of the OTA TV business is like specialty in that it can be readily scalable year to year. This part of the OTA TV business can and should be run on a margin basis.

Third, it means that regulatory support and regulatory obligations for the national part of the OTA TV business should also be scalable, and in sync with the national revenue potential and benefits of a given station group. If greater support, be it via FFC or signal integrity measures, is provided, it would be important that in English Canada such incremental revenue not automatically fall to higher U.S. program acquisition budgets. To this end, the re-imposition of some form of CPE appears to be the simplest way of both introducing a cap on U.S. program expenditures and ensuring a significant commitment to funding Canadian programming.

Fourth, to the extent that competition between large multi-station groups remains clearly directed to increasing market share, rather than profitability, the Commission must question whether it needs to ensure that OTA TV on a stand alone basis is profitable. If rational corporate players choose to operate their businesses this way, it must be that there are benefits that go beyond the specific financial picture of OTA TV. As the “bullhorn” for other platforms, OTA TV provides a broadcasting group with huge advantages for self-promotion. For this reason alone, OTA TV must be also seen in the context of a corporate whole.

⁸³ In the English-language sector, this, almost exclusively, refers to foreign program acquisitions

5. The Business Model and Role of OTA TV Must be Allowed to Continue to Evolve

The question “Is the Business Model of OTA TV broken?” should perhaps be seen for what it is: a crucial rhetorical question designed to focus the mind, not to be answered by a “yes” or a “no”. If, for its own reasons, a party prefers to say “yes, but ...” or “no, but ...” the absolute should be seen with considerable circumspect. The real answers will be found in the qualifier.

The reality is that OTA TV is a 60 year old business in the midst of an important, and entirely necessary, transition. In some ways, the current transition is no more important than earlier ones, such as that from a more locally oriented business to a more nationally oriented one. But in other ways, it is a far more profound one. Because, unlike at any other time, the questions that really need to be asked today are questions like: Does OTA TV matter? Does it need to exist in its current form? Is it replaceable? Can the things that it does be done in other, better, more efficient or cost effective ways?

These are questions whose answers are far from simple. The historical social and community significance of local TV gives it enormous local standing, as well as political power which incumbents and vested interests are more than happy to deploy. Moreover, predicting the future is a mug’s game, and what seems a clear and evident trend today – for example, and most notably, Canadians willingness to pay for TV services and disinterest in free over-the-air reception -- may well change tomorrow.

What is the future of OTA TV? The likelihood is there are as many possible futures as there are different markets and ownership groups. This paper has noted at least four different models⁸⁴:

1. **The Generalist Locally-focused Multiplatform Portal.** For a top local news/information provider, combining a strong generalist OTA TV station with a 24 hour local specialty channel, other local radio or print outlets and local online portal(s) should be a viable long term strategy. The station and its associated other platforms would together comprise the #1 top of mind local destination for news and information about what’s happening and relevant to the community in question;
2. **The Generalist Local Bullhorn for a National or Regional Corporate Conglomerate.** For the largest, highest rated corporate groups and stations, this remains a viable strategy. Such a station does not have to be the #1 local news and information provider, or even necessarily provide local programming at all (although it would help), but must be generally seen in a community as a source high quality, top programming. Whether a station or stations is (are) independently profitable or a loss leader may be somewhat irrelevant, as long as they contribute significantly to the promotion, audience, revenues and profits of the group as a whole;

⁸⁴ Since this paper was commissioned, such changes have also started to occur in the marketplace. The strategies of Moviola in buying CHCH, TQS in rebranding TQS and [local Victoria residents in seeking to rescue CHEK-TV](#) are evidence of new models being attempted. Whether they all ultimately succeed or not, such experimentation is a healthy and appropriate response for an OTA TV sector in financial difficulty.

3. **The Niche/Opportunistic Local Provider.** Focusing on a target community of interest for the majority of programming (e.g. a given programming genre, or being religious, demographic or ethnic based) but opportunistically acquiring high margin "leftover" US simulcast (e.g. CW programming, popular un-scheduled sports), when possible. For marginal independent or otherwise non-viable "twin stick" affiliated stations, absent the ability to make a business out of purely local, programming, this may be the only available strategy. This doesn't mean it can't be profitable; it does mean that also owning synergistic national broadcast assets, such as specialty services, would be advisable, if not necessary; and
4. **The Predominantly Local Strategy.** Proposed by Torstar in 2001 in licence applications for OTA TV stations in Toronto, Kitchener and Hamilton, and dismissed by the Commission at the time as not being viable⁸⁵, this is an approach that has yet to be attempted in Canada. By focusing on retail revenues, an intelligent mix of original and repeat programming, and a cost effective, server based approach, such a service could nevertheless be viable in certain markets. An "always on tap" current and breaking news and information destination, it would combine "evergreen" local information programming with text/graphic surveillance info and a reasonable amount of current breaking local news. Using a companion on line presence and making liberal use of UCG would not only engage the audience, but turn the audience into news gatherers themselves. Dedicating 10-40% of the schedule to opportunistic simulcast/sports or other "event" or brokered programming would provide additional financial stability.

What are the alternatives to OTA TV? These are equally evident, even if not "politically correct".

Issues of ubiquity aside, the national part of the OTA TV business can clearly be replicated by a combination of Canadian specialty services and U.S. OTA TV stations. There is little doubt that new applicants would line up for the opportunity to provide a general interest national free to basic mandatory carriage specialty service or non-over-the-air conventional network with mandatory simulcast and reasonable obligations to drama and other "underrepresented" Canadian programming.

The local side of the OTA TV business, that is the provision of local programming to local markets across the country, is also achievable through other means. In addition to the purely local programming OTA TV strategy noted in 4. above, there are at least 3 other broadcast models⁸⁶:

1. **The 24 hr Local/regional News Specialty Service.** Many major markets or regions should be able to sustain an efficiently run 24 hour TV news service along the lines of CP 24. Ownership by a synergistic local or regional broadcaster (radio or TV) news outlet (print or radio) and/or online portal would significantly increase business viability and reduce the need for, or quantum of, subscription fees;

⁸⁵ [Broadcasting Decision CRTC 2002-81](#)

⁸⁶ This is not to mention the myriad of print, on line and mobile platforms and services that are potential direct substitutes to local TV programming.

2. **The Nationally Licenced Local/regional News Specialty Service.** A nationally licenced service, with a mandate to serve different markets or regions with different feeds, would be able to efficiently provide local, regional and national news programming as appropriate. National synergies could be enhanced, and costs reduced, if the operator owned other national or local broadcast, print or online services;
3. **A Redefined Cable Community Channel.** In an era of almost ubiquitous online access with countless online platforms for self expression and community exchange, the historic community access role provided by cable community channels is of less and less public interest value. Given the challenge to local OTA TV posed by those very same platforms, allowing the community channel to replace local OTA TV, where it is otherwise not viable, may only make sense. Despite regulatory prohibitions⁸⁷, many community channels have already effectively evolved into local TV stations with local news and information programming, personalities and (what appears from the viewer perspective to be) retail advertising. Perhaps, on a market by market basis, it might be time to assess whether this is in the public interest, and bless that transformation, perhaps also subject to conditions such as the requirement that they be carried by all BDUs and make their programming and infrastructure available to local OTA TV stations on a non-discriminatory basis.

(In addition, to the extent that insufficient or insufficiently diverse local programming is deemed to be available in given markets from private broadcasters, the CBC and Radio Canada could be urged to play a greater role⁸⁸.)

In fact, in a world where consumers increasingly seek specialized services and communities of interest, there is no particular inherent reason that OTA TV's historic "amalgamation" model, of generalized service with "everything under one roof", needs to continue.

These two findings -- that there are different successful models for OTA TV and, failing that, different ways of providing what OTA TV provides -- have consequences for operators, communities and the regulator alike.

For incumbent OTA TV operators, a recognition that they themselves are replaceable might encourage the proposing of, and experimentation with, a greater range of potential answers, rather than the apparent singular focus on sustaining traditionally viable business models through mandatory subscription fees of one kind or another.

On the other hand, there are clearly markets and models that would require some form of access to subscription fees, if the provision of local television programming is considered to be in the public interest. Critics of OTA TV broadcaster's positioning might

⁸⁷ The current policy framework for community-based media, soon to be reviewed, limits the advertising revenues of community channels to sponsorship and contra advertising and requires a minimum of 30% (50% if demand warrants) of the programming aired during each broadcast week to be access programming. [Broadcasting Public Notice CRTC 2002-61](#)

⁸⁸ Indeed, CBC has already stepped up to the plate announcing general plans to increased local news in O&O affiliate markets in 2007, and [specifics in Alberta](#) in 2008

also, therefore, be well served by considering what those circumstances might be, and what they could propose as answers. Incumbent specialty services obviously have no right to a monopoly on subscription fees, and BDU/ISPs who have historically pushed up basic service subscription fees well beyond inflation, strain credibility with their arguments that consumers are not, in appropriate circumstances, prepared to pay increased fees for OTA TV.

The reality is that all broadcast entities have a common interest in a future where each is able to tap into multiple potential revenue sources, both advertising and fee based. Broadcast entities must also grapple with a future in which consumers are prepared to pay for value if they see it, but have an increasing array of bypass options⁸⁹ if they don't. Rather than merely concentrating on "slicing up the pie", it is time for broadcast players to start placing more focus on their common interest in improving the "efficiency" of the Canadian broadcasting system, and its ability to deliver the best programming to Canadians, aggregate the largest audiences and advertising revenues, and keep subscription fees reasonable⁹⁰.

For public policy makers, it is important to identify the precise market failure intervention is designed to correct. The fact that the OTA TV business is challenged, or even "broken", is not in itself sufficient reason to intervene. Subsidizing or mandating a potentially dying model, when there are evident market alternatives, would not be appropriate or ultimately successful public policy.

"One size fits all" solutions are unlikely to be appropriate, and identifying the precise purpose, criteria and effect of new or contemplated public policy measures is crucial. In particular, the focus should be on the needs of the market and correcting market failures (or excess concentration) rather than the requirements of a given OTA station.

From this perspective, there would appear to be three reasonable areas of potential intervention each with different rationale.

1. Subsidy for local programming.

That OTA TV programming may need subsidy to make local programming viable in certain markets to is a given. That this requires the CRTC to always correct such market failure through direct subsidy should not be. Instead the Commission should consider:

- a. Allowing OTA TV broadcasters to propose, at licence renewal, specific minimum requirements for local programming (including none), on a market by market basis, with rationale (with and without LPIF);
- b. Employing its Diversity of Voices framework to assess, in a market of a given size, whether local news programming obligations need to be imposed on any or all OTA TV broadcasters;
- c. If so, depending on the size of the market and resources of the OTA TV broadcaster, determining whether access to LPIF is warranted, and under what conditions; and
- d. Encouraging and exploring other means of providing local programming, particularly in markets that do not have sufficient diversity, including

⁸⁹ Including broadband, mobile and even OTA DTV

⁹⁰ Concepts such as Rogers' Broadband Portal, FreeSat etc are these kind of potential "win win" ideas

morphed former community channels, 24 hr local specialty news services and innovative national/local hybrids.

2. Redirection or increasing of resources devoted to Canadian (underrepresented) programming.

In the pendulum swing to local, the Commission should not lose sight of national programming imperatives. The Commission should introduce CPEs in a manner that increases Canadian programming expenditure and introduces downward pressure on U.S. programming expenditures. Incentives or requirements for “underrepresented” programming, be they exhibition and/or expenditure based should be maintained or introduced. Consideration could be given to including local programming (generally or in needed markets) in underrepresented program incentives or requirements.

3. Adopting appropriate market based negotiations/compensation regimes.

Ultimately, merely subsidizing unprofitable programming is not a recipe for a vibrant successful Canadian broadcasting system. On the other hand, suddenly introducing a scheme like FFC merely as a matter of “fairness” ignores the history, benefits and balances in the OTA TV business. Provided incremental revenue to OTA TV broadcasters cannot merely go to foreign program spending, there are areas where an ability to negotiate consideration for value could be beneficial. In particular:

- Modest compensation or non-monetary consideration for distant signals would be recognized by consumers as payment for incremental value, and could encourage the implementation of greater rights protection measures (enhanced simulcast; NSS)⁹¹;
- A U.S. style retransmission consent regime could allow for consideration in the form of local/regional 24 hour news channels; and
- Introducing a reciprocal ability on the part of BDUs to negotiate with OTA broadcaster the right to access local avails generally or local retail advertising community channels.

One thing is clear. If, notwithstanding the above, the conclusion drawn is that OTA TV should still remain the “foundation” or “cornerstone” of the Canadian broadcasting system, then a greater “balance” -- in bargaining power, in business opportunity -- will need to be restored between OTA TV broadcasters and BDUs.

Today the power and the profits clearly lie with triple, quad and quint play BDUs and their ISP, telephone, broadcast and/or mobile interests. Yes, OTA TV broadcasters have made some bad (unlucky) decisions and BDUs have made some good (lucky) ones, but broadcasting in Canada is still a regulated business; and one that is regulated in the public interest. And that means that the stronger (lucky) players shouldn't automatically win.

⁹¹ Issues and questions associated with different rights protection approaches are explored in a paper by David Keeble, *Substitution and Signal Integrity*, August 31, 2009

Appendix A: About the Author

Peter Miller is a senior communications lawyer and consultant with clients in both the public and private sectors. He specializes in business and policy development, broadcast regulation and planning, particularly in regards to digital media.

Peter's professional background includes acting as Parliamentary Assistant to Members of Parliament, private practice in communications law, and senior broadcast executive positions.

From June 2008 to May 2009, Peter was Chief Operating Officer for S-VOX, the Vision TV group of companies. In this capacity he oversaw the organization's operations and broadcast infrastructure as well as negotiations leading up to an agreement to sell the group's broadcast assets to Zoomer Media. From 2002 to 2005, Peter held the position of Vice President, Planning and Regulatory Affairs for CHUM Limited, where he was the key strategic advisor on industry developments and growth opportunities for CHUM Limited, as well as being responsible for all facets of CRTC regulatory affairs and government relations. Prior to joining CHUM in 1998, Peter was Executive Vice-President and General Counsel to the Canadian Association of Broadcasters (CAB), responsible for all policy and legal issues for radio, specialty and television. He is also a professional engineer -- graduating from the University of Toronto with a Bachelor in Engineering Science in 1984, and starting his career in telephone network design with Bell Northern Research in Ottawa.

Peter is a frequent industry commentator who has been actively involved in numerous industry boards and committees. Peter is a past chair of the CAB Specialty & Pay Services Board, past treasurer of Canadian Digital Television and a current member of the Board of Volunteer Toronto.

For more information, please contact info@petermiller.ca