



The implications and advisability of implementing a compensation regime for the value of local television signals

A report prepared pursuant to section 15 of the *Broadcasting Act*

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1.0 Introduction

This report is the Commission's response to the Governor in Council's Order in Council P.C. 2009-1569 (the OIC), issued 16 September 2009, which requested that the Commission:

hold hearings on the implications and the advisability of implementing a compensation for the value of local television signal regime and to issue to the Government, as soon as practicable, a report providing recommendations taking into account:

- (a) the comments of the general public on the impact of such a measure on consumers, and in particular, the impact on affordable access to a variety of local and regional news, information and public affairs programming; and
- (b) how the application of such a regime would impact the various components of the communications industry as it adapts to the new digital communications environment, and in particular, the implications on current and emerging business models.

In the report, the Commission first sets out the context by providing background information on the role of local television and on the broader trends occurring in the Canadian television industry at this pivotal time. The report then describes the process that the Commission followed to respond to the OIC. The following key issues are then addressed:

- Section 2.0 describes the comments and provides the Commission's observations on the impact of a compensation regime for value for signal (VFS) regime on consumers and other issues related to the affordability of television services.
- Section 3.0 describes the comments and provides the Commission's observations on the impact of a VFS regime on the communications industry, and in particular, the implications for current and emerging business models.
- Section 4.0 describes the comments and provides the Commission's observations on other measures related to the affordability of broadcasting services.
- Section 5.0 describes the comments and provides the Commission's observations on the impact on consumers of the transition of local television stations to digital broadcasting.
- Section 6.0 sets out the Commission's specific recommendations to the Government.

Commissioner Michel Morin dissents in part from the views expressed in this report and provides his own minority report, which is attached.

1.1 The context

Local television stations, often called conventional or over-the-air (OTA) television stations, are licensed to serve an area defined by the contours of their transmitter. At present, local television stations must operate an OTA transmitter and have obligations to provide a minimum amount of local programming.¹ Local television stations offer a variety of programming, 60% of which must be Canadian. That Canadian content must also include local programming, which the Commission has defined as programming produced by local stations with local personnel or programming produced by locally based independent producers that reflects the particular needs and interests of the market's residents. Local programming includes, among other things, news, information and public affairs programming. The Commission generally requires that English-language local stations operating in metropolitan markets broadcast a minimum of 14 hours per week of local programming, while local stations in non-metropolitan markets are generally required to broadcast a minimum of seven hours per week. Local programming requirements for French-language stations depend on the operator and its financial capacity. Through their creation and distribution of local programming, as well as other Canadian programs, local television stations are key contributors to the attainment of the objectives for the Canadian broadcasting system set out in the *Broadcasting Act* (the Act).

Local television stations are currently available free to viewers who receive television signals over-the-air using inside antennas commonly known as “rabbit ears” or outside antennas attached to buildings.

When broadcasting distribution undertakings (BDUs) first began to operate they only distributed the signals of local television stations. It wasn't until the mid 1970's that technology permitted the distribution of distant signals, including U.S. signals. BDUs began to distribute specialty services in the 1980s.

The Commission requires that BDUs include local television stations as part of their basic package of television services that must be provided to all customers. This ensures that these stations, and the Canadian programs that they offer, are available to as many viewers as possible.

Prior to 2001, the Commission regulated the cost of the basic package. Due to the growth of competition in the television distribution market, and since many consumers now have the choice of at least three service providers in their local market (usually one cable company and two satellite companies), the Commission considered that it was no longer necessary to regulate the price of the basic package.

BDUs are not required to pay a fee for the local television signals that they distribute. Therefore, rather than selling advertising and receiving payment from BDUs for the use of their signals, as is the case for pay and specialty services, local television stations rely solely on the sale of advertising to generate revenue. In recent years, this sector has faced a number of challenges. Audience fragmentation resulting from the distribution of an increasing

¹ Local programming requirements do not apply to transmitters that serve solely to rebroadcast the programming of originating stations.

number of Canadian pay and specialty services and non-Canadian services, as well as competition from other platforms, has caused a decline in audience share. This, together with the economic downturn, has led to an erosion of advertising revenues.

Some of the broader trends that have been taking place in the television broadcasting industry are summarized below.

First, the profitability of local television has experienced a steep decline in recent years as consumers and advertising dollars have moved increasingly to more specialized programming. In 2008, pay and specialty television services garnered 37.9% of the total tuning share in Canada (excluding the Quebec Francophone market), versus 29.3% for private English-language local commercial stations and the Canadian Broadcasting Corporation (CBC) combined.² Furthermore, the gap in tuning between pay and specialty services and local television services has widened since 2005, when the 35% tuning share of pay and specialty services was only slightly higher than the 33.2% share of local television services. In the Quebec francophone market, the situation is slightly different but the trends are similar. Even though local television has managed to record a tuning share of 49.4% relative to that of 40.9% for pay and specialty services in 2008, local television has nonetheless experienced a progressive decline in its share since 2005, when it garnered a 55.5% share of tuning compared to 32.7% for pay and specialty services. However, although pay and specialty services have progressively taken viewing away from local television in recent years, overall tuning to specialty services is spread across many more services.

The local television sector continues to attract large and broad audiences, while specialty services tend to reach niche audiences. The mass appeal of local television is evident when comparing tuning to the top-rated programs on both the local and specialty television platforms. With the exception of sports programming, local television services still deliver per-program viewing that far exceeds that of specialty services.

For example, in Canada's English-language market (all Canada minus Quebec francophones) during the period of 1 September 2008 to 31 August 2009, the highest rated non-sports program on local television attracted an average minute audience (AMA) of approximately 4.1 million viewers. By comparison, over the same period, the highest rated non-sports program on specialty services attracted an AMA of approximately 603,000 viewers.³

Similar results were seen in the French-language television market during the same period, where the highest rated non-sports program on local television attracted an AMA of approximately 3.1 million viewers. By comparison, over the same period, the highest rated non-sports program on specialty services attracted an AMA of approximately 330,000 viewers.⁴

Second, there is a considerable difference between the financial performance of French-language and English-language local television broadcasters. Audience loyalty and therefore

² CRTC, Communications Monitoring Report 2009

³ BBM Nielsen Media Research

⁴ BBM Nielsen Media Research

economic trends in the French-language sector have remained relatively stable compared to the English-language sector.

Between 2005 and 2009, total revenues for Canada's English-language private local television broadcasters decreased from approximately \$1.7 billion to \$1.5 billion, a compound annual decrease of 2.1%. However, over the same period, total expenses increased at a compound annual rate of 3.3%, from approximately \$1.4 billion to \$1.6 billion. This has resulted in a progressive profit before interest and tax (PBIT) decline for private stations from 11.7% in 2005 to -9.1% in 2009.⁵

By comparison, between 2005 and 2009, total French-language private local television sector revenues decreased from approximately \$383 million to \$350 million, a compound annual decrease of 2.2%, which is similar to that recorded by the English-language sector. However, French-language local television broadcasters were able to offset the decline in revenues by reducing expenses by 1.3%, or approximately \$16 million, thereby minimizing the impact of revenue loss on the sector's profitability. As a result, the PBIT for Canada's French-language local television broadcasters has remained much more stable than that of their English-language counterparts with a 2009 PBIT of 10.4%, compared to the 13% margin recorded in 2005.⁶

Third, while the introduction of direct-to-home (DTH) satellite distribution has increased competition in the BDU sector, some local television stations have been unable to secure carriage on DTH services, particularly stations in areas of the country where populations are smaller. According to the Canadian Association of Broadcasters, approximately one third of Canada's private local television stations are without DTH carriage. The industry has pointed to the ability of local television stations to access and build the audiences required to sell advertising effectively as a necessary factor for the long-term sustainability of these operations. In this regard, the Commission notes that, as announced in Broadcasting Regulatory Policy 2010-162, it intends to conduct a comprehensive review of its policies for all DTH services prior to the next licence renewal proceedings for such services.

Fourth, the recent economic downturn has had a severe impact on media due to negative trends in consumer consumption and advertising spending. Coming quickly on the heels of the shift in profitability levels from the local television sector to the specialty sector, the recession has exacerbated viability concerns within the local television sector. As well, additional costs related to the transition from analog to digital broadcasting have compounded the financial pressure on local television stations.

Fifth, there has been a trend in the past decade towards greater economic efficiency in the delivery of local news programming. This not only includes downsizing, centralization and streamlining of production centres; it is also evident in the creation of more regional news centres and programming, and fewer purely local news gathering and production centres.

In 2008, as a means to respond to the challenges facing local television stations, the Commission created the Local Programming Improvement Fund (LPIF) to provide more

⁵ CRTC financial database

⁶ CRTC financial database

support for local programming provided by local television stations outside of major markets.⁷ The Commission also undertook to study other possible ways to help ensure that local television stations, and the Canadian programming they carry, remain viable.

Further, in Broadcasting Public Notice 2008-100, the Commission established a policy with respect to Canadian distant signals that will generally require licensed BDUs to obtain the consent of OTA licensees prior to distributing their local stations in a distant market. The Commission noted that market-based negotiations will allow broadcasters to recover the “full value” of their signals and the programming rights they have acquired.

In Broadcasting Notice of Consultation 2009-411-3, the Commission sought comment on whether or not a negotiated solution for compensation for the fair value of local conventional television signals is appropriate. The Commission also asked for comment on what strategies and procedures would most likely contribute to and/or ensure a timely resolution of negotiations in the absence of a negotiated agreement.

BDUs have opposed any payment for local signals and have stated that they intend to pass along any new costs resulting from such negotiations to their subscribers. Since any fee charged would be the result of a negotiation, there is no way to accurately predict what the ultimate charges would be for consumers. Cost estimates set out in comments received during this proceeding ranged from as low as \$1 per subscriber per month⁸ to as high as \$10 per subscriber per month.⁹

1.2 The process

In Broadcasting Notice of Consultation 2009-614 (the Notice of Consultation), the Commission announced that it would hold a public hearing beginning on 7 December 2009 in the National Capital Region. The hearing would examine the issues set out in the Notice of Consultation relating to the implications and advisability of implementing a VFS regime.

The Commission sought public comment on the two themes of affordability and impact, which were the subject of the OIC. Further, in the Notice of Consultation, the Commission noted that, in addition to the concerns relating to affordability set out in the OIC, it had received comments from some members of the public in recent related proceedings expressing a desire for further choices in the programming service offerings available from BDUs and expressing concern over the potential loss of local television stations in their communities.

⁷ The Commission recognizes the regional nature of some stations operating in Canada. Accordingly, where a station has historically been and is currently permitted to count regional programming towards meeting its local programming commitments or obligations, the Commission considered that it should be allowed to continue to do so for purposes of meeting the requirements related to accessing the LPIF.

⁸ Based on 4 local stations each receiving \$0.25 per month

⁹ Based on 10 local stations each receiving up to \$1.00 per month

Given the scope of the hearing and the comments already received from the public in other processes, the Commission considered that other issues closely linked to affordability would be raised. These issues include consumer choice, the availability of a low-cost basic television service, smaller packages of pay and specialty services, the ability to select pay and specialty services on a stand-alone basis, and transparency in billing.

The Commission identified the digital transition as another key issue in the adaptation to the new digital communications environment. The Commission noted that, due to the cost of implementing OTA digital television transmitters, the current economic climate, and high BDU penetration in most markets, most broadcasters have indicated that they do not intend to convert all analog OTA transmitters to digital. As a result, the Commission stated that Canadians will likely face a hybrid solution, whereby larger markets will continue to receive digital OTA signals while smaller markets will have to receive local television stations via cable and satellite and other television service distributors.

Taking into account all of the above, in the Notice of Consultation, the Commission sought comment on the following topics:

- What would be the impact on consumers, in terms of affordability, should the Commission adopt a VFS regime?
- What would be the impact, if any, on the availability of local television services should the Commission adopt such a regime?
- Should other specific measures be implemented to address affordability and choice (i.e., a smaller basic service, smaller discretionary packages, pick-and-pay options, and transparency in billing)?
- What would be the impact on the various components of the communications industry should the Commission adopt any of the measures noted above?
- What support or incentives are required by industry to implement a hybrid model of OTA coverage, as described above, and what would be the impact of a hybrid model on consumers?

1.2.1 Public response to the Notice of Consultation

The Commission received close to 190,000 comments from the public in response to the Notice of Consultation. In addition to the comments submitted directly to the Commission, close to 164,600 comments were submitted through two public relations campaigns that were launched by BDUs and local television broadcasters to rally public support for their respective positions on this issue. These included:

- 114,890 comments submitted through the “Local TV Matters” campaign created by CTV, CBC, Global, /A\, CHEK News, V, and ntv;¹⁰ and
- 49,693 comments submitted by the “Stop the TV Tax” campaign created by Bell, Bell Aliant, Cogeco, Eastlink, Telus and Rogers.

1.2.2 Online consultation on television services

On 30 November 2009, the Commission established an online consultation on television services as part of the proceeding launched by the Notice of Consultation. This consultation ran until 21 December 2009 and provided another outlet for Canadians to inform the Commission of their views on such issues as affordability, choice and access to local programming in the digital environment.

The Commission received over 11,000 comments from the public as part of the online consultation. The [transcript](#) of this consultation was added to the public file and is available on the Commission’s website. A [snapshot of comments](#) received during the online consultation is also available on the Commission’s website.

The Commission has taken these comments into account in preparing this report.

1.2.3 The hearing

The hearing took place the week of 7 December 2009 in the National Capital Region before a panel that included all 13 CRTC Commissioners.

From the many individual Canadians who requested to appear, the Commission randomly selected a representative sample from across the country to share their views at the hearing. The “Local TV Matters” and “Stop the TV Tax” campaigns were also asked to each select six consumers from among those who filed comments in support of their campaigns to appear on panels. In addition to these individual consumers, the Commission heard from members of the broadcasting industry, cultural and community organizations, trade unions and a consumer’s association.

In a letter to the Minister of Canadian Heritage on 16 October 2009, several groups representing consumers expressed their concerns about the lack of funding for consumer participation in this proceeding stating that “... the government has initiated a process to consider consumer impact without providing the means for consumer representation about the appropriate regulatory treatment of the potential impact.”¹¹

¹⁰ The Commission notes that on 18 December 2009, after the record of the proceeding had closed, CTVglobemedia filed a letter with the Commission contending that over 135,000 individual comments were submitted in support of this campaign. The Commission has reviewed this letter but has chosen to rely on its internal figures. Some of the comments mentioned in this letter were already counted as individual comments and others could not be independently verified.

¹¹ The letter was signed by representatives of the Public Interest Advocacy Centre, Union des Consommateurs, Consumers Association of Canada, Consumers Council of Canada, Option Consommateurs, Canadian Internet Policy and Public Interest Clinic and Canada Without Poverty.

Affordability of television services for consumers was at the heart of this public hearing and the Commission finds it unfortunate that these groups were not able to fully represent their members at this hearing. The Commission strongly believes that the *Canadian Radio-television and Telecommunications Commission Act* should be amended to clarify that participants are entitled to costs when they participate in Commission public proceedings under the *Broadcasting Act*. The Commission makes a recommendation in this regard in Section 6.1 of this report.

2.0 Comments from the public on local television and a value for signal regime

The following summarizes consumers' viewpoints in response to a potential fee associated with a VFS regime that could be passed on to subscribers.

2.1 The industry campaigns

As noted in the introduction to this Report, two public relations campaigns were launched by BDUs and local television broadcasters to rally public support for their respective positions on the issue of a VFS regime.

Both campaigns were well-funded, making extensive use of multimedia platforms and public relations strategies. Both strongly encouraged Canadians to show their support in numerous ways, including through the submission of form letters in this proceeding.

These two campaigns were not launched simultaneously. The "Local TV Matters" campaign began in May 2009 as "Save Local TV" by CTV and Global, and then expanded on 14 September 2009 to "Local TV Matters," with the additional partners of the CBC and others listed in Section 1.2.1. It continued to run through November, for a total of five months. BDUs responded on 5 October 2009 with "Stop the TV Tax." Therefore, as BDUs noted at the hearing, while the "Local TV Matters" campaign garnered more letters than the "Stop the TV Tax" campaign, those letters were generated over a longer period of time.

The record of the Commission's proceeding indicates that these campaigns influenced how the issue of VFS was perceived by participants. This is evident in the themes woven throughout submissions from individuals, above and beyond the campaign-generated form letters.

There are two over-riding themes that emerged from the comments of consumers. First, many expressed concern about the future of local television. Second, consumers by and large stated that they do not want to pay more for the programming they currently receive. Some, such as those living on fixed incomes, indicated that they are not able to absorb additional increases to their cable bills at all.

The following summarizes consumers' viewpoints regarding affordability as expressed to the Commission in written submissions, presentations and discussions during the oral phase of the public hearing, as well as in the online consultation.

2.2. The value of local television

Those who participated in this proceeding appear to value local television.

Those that commented on the value of local television stated that they expect local programming to be of high quality (i.e., professional), to include truly local content, to consist of a reasonable number of hours of programming per week, and to be accessible. However, many commented that changes to local television have resulted in programming that does not meet their expectations. Examples cited include: cuts to local programming and local stations, local content evolving into regional content, homogeneity in types of programming offered, and, for English-language stations, program schedules dominated by U.S. programming.

Parties also commented on the valuable role played by local television in:

- providing reflection of their unique community in local and regional news, information and public affairs;
- being an active community presence, in the form of local television stations providing sponsorship and other support of charities, promotion of local arts and entertainment, and on-air personalities being active participants in community events; and
- playing a direct economic role in the community, both as an employer and as a medium for local businesses to reach their target markets.

Given that some broadcasters argued that television stations could go dark in the absence of a VFS regime, many participants in this proceeding commented on the cultural impact on the community when stations do close. They spoke of a loss of relevant, reliable high-quality programming, even in cases when the amount of local programming was low.

On the other hand, some consumers stated that the local television they experience is not in fact “local.” These parties often described their “local television” as regional television that is generated in larger markets and that is not reflective of their own communities. Thus, some consumers who had recently lost stations in their communities (Red Deer, Alberta, for example) felt that they had lost a station, but not local television. In their view, local television had been lost prior to the closure of the station through regionalization of the content over the years. Those that shared this view suggested that, since local stations were not really local, letting them fail would provide opportunities for other operators to try to bring local television back into areas where the local television market is truly viable. The recently reopened CHCH-TV in Hamilton, Ontario was cited by several consumers as an example of this possibility.

Eighteen written submissions from elected officials, including members of Parliament and provincial legislatures, as well as mayors, expressed clear support for the essential role that local television plays in the lives of individuals and local economies. The majority specifically identified the importance of allowing a VFS regime while, at the same time, ensuring that basic cable rates are regulated to protect consumers. However, one elected official expressed concern that broadcasters have not committed to invest revenues from a VFS regime in local programming, bring back cancelled newscasts or reverse decisions to close local stations.

2.3 Consumer reactions to a value for signal regime

Regardless of their stance with respect to the value of local television, Canadian consumers who voiced their views to the Commission throughout this process had strong reactions to the notion of a VFS regime as it relates to affordability. It bears noting, however, that there was no

commonly held view as to what constitutes affordable service. What was commonly expressed was that cable/satellite bills were too high. The range of subscription fees cited to support such arguments varied based on individuals' circumstances and subscription preferences, with prices quoted ranging from \$35 to \$200 per month.

Those who commented in this proceeding appeared to base their reactions to a fee on the understanding that such a fee would amount to \$10 per month as proposed in the "Stop the TV Tax" media campaign. The consumer reaction to such an increase can be characterized as one of outrage, particularly given the assumption that such an increase would only maintain the status quo and result in no improvements to existing services, much less new services. Many also questioned how long such an increase would be necessary to stabilize the industry, or whether the intention would be to permanently charge consumers for what many characterized as a tax or subsidy.

Many participants expressed scepticism about the need for such a fee. They pointed to the reality that it is not only the broadcasting industry that has been affected by the current state of the economy, but many other industries and many individual Canadians. These participants also questioned the viability of the traditional business model for local television. Consumers particularly objected to subsidization of what they saw as an "obsolescent industry" or "failed business models," especially with the advent of new technologies and providers. Many ascribed the failure of certain parts of the industry to mismanagement, noting that some television broadcasters also owned profitable pay and specialty services. Participants also questioned whether monies garnered from subscribers would be reinvested in the broadcasting system.

At the hearing, however, consumers were asked for their reaction to the impact on affordability should a potential fee resulting from a VFS regime be more modest than that suggested by the "Stop the TV Tax" campaign. It was theorized by the Commission panel during questioning of parties that a monthly fee lower than \$10 might be possible, and suggested for argument's sake that, in many markets, monthly increases could be as little as \$1 or \$2 per month, based on a theoretical cost of \$ 0.25 per signal.

In response to this line of questioning, most consumers at the hearing indicated that, even if the fee were to be lower, groups of Canadians with lower or fixed incomes would still be affected. They submitted that rules would be required to manage the impact to protect vulnerable groups, such as ceilings or limits on how much could be charged to consumers.

With respect to how consumers would react if a fee were passed on to them, regardless of the price point, the most common responses were that they would either switch to other sources of television programming, re-evaluate their choices of program packages to reduce their costs, or re-evaluate the role of television in their information and entertainment spending overall. For some, the idea of yet another increase to their bill would be seen as "the straw that broke the camel's back," regardless of the new fee's purpose.

Other participants said they had no choice but to accept a new fee. In their view, there is no real choice available to them because there is no viable alternative to the services that cable and satellite subscriptions provide, both in terms of access to local programming and to a variety of other content. They expressed frustration about their inability to exercise choice when paying for program packages, especially if asked to pay more for what they currently receive.

When it comes to alternatives to cable or satellite, many expressed the view that current alternatives are not really equivalent to what cable, satellite and local television provide. For example, community television was praised by some for the role it can play in a market but was acknowledged by others not to be equivalent to professional journalistic coverage of local matters, or in terms of the breadth of local and non-local content offered by local television stations.

The Internet, though considered a valuable service, was also not seen to be equivalent because local news video content that is online tends to be generated by the local television station, not to mention that the Internet is a different media platform with different approaches to delivering video content. Moreover, consumers cited barriers to switching to other technologies to serve their television programming needs. They noted that reliable access in the form of broadband is not universal, often costly hardware upgrades may be required for many to successfully view video on home computers, not all consumers are comfortable with computer technology, and many do not own or cannot use a computer.

The only specifically consumer-focused association to submit comments was Union des consommateurs. It emphasized that affordability is a specific objective for BDUs that is set out in section 3(1)(t)(ii) of the Act. The Union des consommateurs submitted that BDUs have concretely demonstrated via the LPIF that, in the absence of being expressly prohibited from doing so, they will pass on regulatory costs to subscribers. Therefore, it argued that the Commission must ensure that any VFS regime does not result in higher rates for basic service and that the Commission must therefore regulate those rates.

2.4 The Commission's observations on the affordability of a value for signal regime

It is clear from the record of this proceeding that most consumers are opposed to paying more for television services.

It is also clear from the comments of consumers that affordability is tied to value. The value of television programming is influenced by many factors such as the needs and interests of viewers, geography, language and culture, to name a few. An individual's financial circumstances are equally important as they govern how priorities are established in consumer purchasing decisions.

Attempting to identify the purchasing value that Canadians place on local television in particular is challenging. While many parties have clearly expressed that they value local television, the depth of that value is not easily quantifiable. Is it a necessity, tantamount to an essential service? Or is it in the order of a good that is optional, nice to have, or even a luxury?

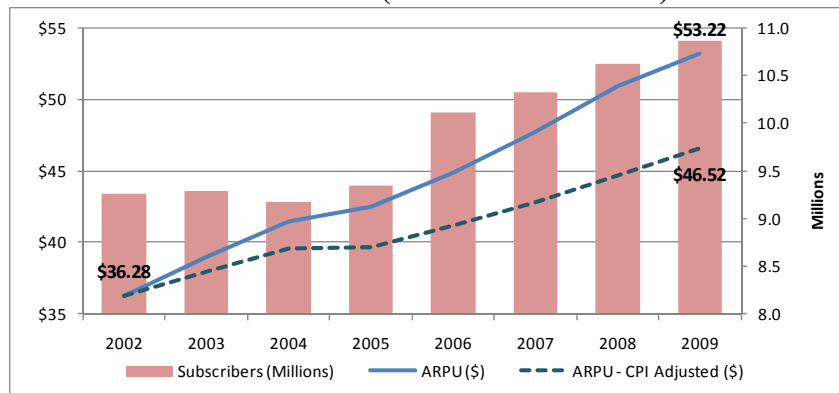
It does not appear, however, that significant affordability issues would be created by a VFS regime that resulted in modest price increases, as both subscriber levels and average per customer BDU subscription revenues have steadily increased since 2002. As set out below in Chart 1, in 2009, average per customer subscription revenues (basic and non-basic) reached \$53.22, an increase of 46.7% relative to the average of \$36.28 in 2002, representing a compound annual rate of growth of 5.6%. Over the same period, total subscribers to BDU television

services increased 17.2% from 9.3 million to 10.9 million, with increases each year except 2004.

Such results do not seem to suggest a significant withdrawal in demand for BDU television services when consumers are faced with rate increases, as BDUs have suggested in this proceeding. In fact, during the proceeding, BDUs also indicated that the vast majority of consumers subscribe to discretionary services beyond the basic package, meaning that they are spending at levels that exceed the lowest entry point for television services. If subscriber numbers had been in sharp decline versus increasing average expenditures, it could have been argued that such services had become cost-prohibitive for consumers. However, the data do not suggest that such a threshold has been reached.

Distributors have also suggested that they have succeeded in maintaining and increasing the value of BDU service for consumers by increasing the number of channels available, providing new services such as video-on-demand (VOD) and generally enhancing the viewing experience, in large part due to the transition to digital television.

Chart 1
Average subscription revenues per customer versus total subscribers (basic and non-basic)



Source: CRTC Financial Database

Disposable income is generally regarded as a determinant of how much households can spend on consumer goods and services.¹² The Commission notes that, between 2002 and 2009, the 3.7% compound annual growth rate (CAGR) in personal disposable income has been slightly lower than the average CAGR in average revenues per BDU subscriber of 5.6%.

However, as shown in Table 1, average expenditures on BDU television services account for a relatively small proportion (2.2% in 2009) of average personal disposable income.

¹² Personal disposable income is the amount of income that individual Canadians and unincorporated businesses have left over after they have paid their income taxes and social security contributions.

Table 1
Average subscription revenues per customer versus
monthly per capita disposable income

	2002	2003	2004	2005	2006	2007	2008	2009
Annual disposable income (per capita)	\$22,168	\$22,812	\$23,838	\$24,662	\$26,208	\$27,296	\$28,591	\$28,527
Monthly disposable income (per capita)	\$1,847	\$1,901	\$1,986	\$2,055	\$2,184	\$2,275	\$2,383	\$2,377
Growth in disposable income (per capita)	2.6%	2.9%	4.5%	3.5%	6.3%	4.2%	4.7%	-0.2%
Average revenue per subscriber	\$36.28	\$38.99	\$41.46	\$42.45	\$44.90	\$47.73	\$50.95	\$53.22
% of disposable income	1.96%	2.05%	2.09%	2.07%	2.06%	2.10%	2.14%	2.24%

Source: Disposable income: Conference Board of Canada; Average revenue per subscriber: CRTC Financial Database

It would therefore seem that a modest increase in the price of the basic cable or satellite service as a result of a VFS regime would do little to materially affect the percentage of disposable income that would have to be dedicated to basic television service. The caveat to this observation is that any increases to cable/satellite bills would have an impact on specific segments of the population, such as those with limited or fixed incomes or other disadvantages that impact their choices as consumers.

While the Commission recognizes that low income households would feel the impact of an increase in the price of basic television services to a greater extent, the reality is that, for most Canadians, the price of such services would still remain low relative to overall personal disposable income. This suggests that many Canadians may be opposed to an increase in the price of basic television services but are still able to afford it. For those consumers, the decision to retain such services is one based on a number of factors and not solely on affordability.

Of course, there are other factors to consider. It is difficult to anticipate the degree to which consumers have been sensitized to price increases as a result of the highly visible media campaigns by broadcasters and BDUs, and the degree to which they could react more intensely to a future price increase. Another is whether even a modest VFS fee passed on to the consumer, when added to annual cost-driven increases from BDUs and recent LPIF charges that have been passed on to consumers, may serve to tip the scale of affordability for some subscribers. A third is the increasingly easy access to attractive and lower cost television services available through alternate platforms such as the Internet.

A VFS regime, as proposed by broadcasters, may not increase consumer value in local programming because, as currently conceived, it does not guarantee incremental local programming or greater consumer choice. Nevertheless, the likelihood of mass migration at this time to other platforms in response to increased cable or satellite bills is low as these alternate platforms are not yet equivalent to television either with respect to the availability of programming or the quality of the viewing experience.

3.0 The impact of a value for signal regime on the communications industry

The Commission notes that, while the OIC asked it to report on the implications of a VFS regime for current and emerging business models, participants primarily restricted their comments to current business models. The exception was that some BDUs spoke in very general terms about the impact of a VFS regime on their ability to continue to upgrade their networks to permit digital distribution, carriage of high definition (HD) services, and VOD. Therefore, the Commission has no record to assess the impact of a VFS regime on emerging business models such as the Internet and VOD.

3.1 The impact of a value for signal regime on local television broadcasters

Local television broadcasters generally supported a VFS regime, considering that such a mechanism represents appropriate compensation for the distribution and re-sale of local television signals. Local broadcasters argued that consumers have ultimately been paying for the value of such services as part of their monthly service fees and that BDUs have been deriving significant financial gain from the distribution of local television stations within basic cable packages.

Local television broadcasters were also of the view that the majority of Canadians strongly support local television services and that a VFS regime would serve to reduce the likelihood that, in the face of considerable financial challenges, local television stations would either close or seek significantly reduced regulatory obligations related to Canadian and local programming.

Local television broadcasters also rejected the assertion that BDUs cannot afford the cost of a VFS regime. Thus, they opposed BDU service rate increases that may occur as a result of such compensation. Most local television broadcasters also advocated mechanisms aimed at addressing potential affordability concerns. Mechanisms cited included the re-imposition of rate regulation and mandating BDUs to offer a low-cost basic package comprising local television services, educational services and services designated as mandatory pursuant to section 9(1)(h) of the Act.

BDUs noted that, if English-language conventional television broadcasters do not reduce expenditures on foreign programming, an injection of revenues derived from a VFS regime could prove to be only a short term reprieve to their financial hardships.

3.2 The impact of a value for signal regime on broadcasting distribution undertakings

BDUs generally considered the profitability of their television distribution services to be insufficient to absorb the cost of a VFS regime while maintaining the quality of existing networks as well as responding to the demands of technological innovation. As such, they stated that a VFS regime would undermine the investments in network infrastructure that have brought about innovation, advanced services and increased competitive choice to Canadian consumers.

Small independent BDUs suggested that they are particularly exposed to the impact of a VFS regime given that many already struggle to keep pace with national competitors. They argued

that it would further hinder their ability to invest in plant upgrades and new services that are necessary to remain competitive.

The majority of BDUs stated that they would have no choice but to pass the cost on to customers. They submitted that this would provoke many subscribers to leave the regulated system or to reduce subscriptions to discretionary packages. According to BDUs, given the link between BDU revenues and their contributions to Canadian programming, the corresponding loss of revenue in the system would be detrimental to most industry stakeholders, including local television broadcasters.

Quebecor, however, noted that a VFS regime could ultimately be introduced in a way that would have little impact in terms of affordability on Canadian consumers. Quebecor's approach would be to reduce payments to specialty services in an amount that would offset the payments to local stations. According to Quebecor, such a proposal would eliminate the necessity for BDUs to transfer the financial burden of a VFS regime to subscribers.

Finally, BDUs argued that approval of a VFS regime could result in U.S. OTA television broadcasters demanding terms similar to those afforded to Canadian local television broadcasters.

3.3 The impact of a value for signals regime on specialty services

Specialty service licensees submitted that they were particularly vulnerable to the impact of a VFS regime.

First, specialty services considered that a VFS regime would alter consumer purchasing habits, leading to a loss of revenues resulting from service cancellation or reduced uptake of discretionary services in order to compensate for an increase in the price of basic cable.

Second, specialty services feared the potential loss of revenues that could result from a redistribution of affiliation payments as described by Quebecor.

Specialty services also expressed concern about a potential decline in revenues attributable to loss of carriage resulting from the introduction of a smaller basic package or greater reliance on a pick-and-pay model. The two models are discussed in the following sections of this report.

3.4 The Commission's observations on the impact of a value for signal regime on the communications industry

In a public process initiated by Broadcasting Notice of Consultation 2009-411, the Commission reviewed its regulatory framework for the large group-owned television licensees. As part of that proceeding, the Commission reviewed appropriate requirements for the exhibition of, and expenditures on, Canadian programs. It also reviewed various mechanisms for increasing revenues to this important sector. Possible mechanisms included a VFS regime and other means of protecting the rights that broadcasters have acquired in the programming that they distribute. In addition, the Commission reviewed broadcasters' plans to convert their transmitters from analog to digital in light of the deadlines and policies previously announced.

In Broadcasting Regulatory Policy 2010-167, the Commission has set out its determinations in these matters. The policy describes the views expressed by industry participants as part of that proceeding with regard to the impact of any VFS regime on the various sectors of the communications industry, which were generally consistent with those expressed during this hearing. The Commission's specific conclusions in this regard are equally true for the purposes of this report.

With respect to the issue of a VFS regime, the Commission has determined to seek clarification from the Federal Court of Appeal as to whether the Commission is empowered pursuant to its mandate under the Act to establish a regime to enable private local television stations to choose to negotiate with BDUs a fair value in exchange for the distribution of the programming services by those local television stations.

4.0 Other measures to improve the affordability of broadcasting services

In addition to the affordability of a VFS regime, the Commission requested comment concerning ways in which increasing or improving the range of programming service choices available to Canadian consumers may also improve the affordability of services, such as a low-cost or “skinny” basic service, or smaller packages of discretionary services.

All BDUs offer television programming services to their subscribers in packages for a particular price. Every BDU subscriber receives a “basic” package, which includes local and regional television stations and certain other Canadian services required by the Commission.¹³ BDUs most often include some specialty services and U.S. network television stations in their basic service.

In addition to the basic service, BDUs also offer other packages of services for a variety of prices. BDUs that offer digital services also offer some services on an individual or pick-and-pay basis.

As noted earlier, many consumers that participated in both the public hearing and the online consultation cited choice as central to the issue of affordability. Consumers are willing to pay for programming they want but not for programming they don't want. These consumers equated affordability with receiving value in the programming they receive for the price they pay.

In addition to the general comments above, consumers and broadcasters focussed on the ability to subscribe to a small, inexpensive basic service offering, and the ability to choose services on pick-and-pay basis.

4.1 Skinny basic

Certain broadcasters and individuals suggested that a “skinny basic” containing fewer services might provide a more affordable option for Canadians. Although a variety of proposals were

¹³ These are referred to as 9(1)(h) services, in reference to the section of the Act that the Commission relies on to require distributors to offer these services. The 9(1)(h) services currently include one affiliate of the TVA network (in anglophone markets), APTN, CPAC and VoicePrint, and, for digital basic only, CBC News Network (in francophone markets), RDI (in anglophone markets), The Accessibility Channel, Avis de Recherche (in Quebec) and Météomedia and The Weather Network.

made as to the programming services that should be part of this package, the only consensus reached was that a skinny basic service should include at least local television stations.

Although many consumers were concerned by on-going increases in the cost of distribution services, only a minority expressed some interest in the possibility of a skinny basic service option. These parties often commented that such a skinny basic service may improve the affordability of basic service for low-income Canadians. However, consumers expressed much more interest in being given the opportunity to select and pay for only certain programming services that are currently part of basic, along with other services outside the basic service.

Most local television broadcasters took the view that offering a smaller, lower-cost skinny basic service would provide customers, especially those with lower incomes, with a more affordable lower-priced option to maintain their BDU service. A number of these also indicated that the price charged for a skinny basic service should be regulated.

Some specialty programming services that are currently offered on basic by many BDUs took the view that a reduced basic service would be of little benefit to consumers since they would have to pay an additional fee, above the cost of a skinny basic, in order to obtain the specialty and other services they were used to receiving as part of basic service.

BDUs opposed a requirement to offer a skinny basic service. Some indicated that skinny basic services have been offered in the past but few subscribers were interested. Various BDUs also presented evidence that less than 10% of their subscribers currently take only the basic service, indicating that the majority of consumers are willing to pay more to receive other services of interest to them.

4.2 Pick-and-pay

Currently, BDUs offer most services as part of packages, and only some services are available individually, i.e., on a pick-and-pay basis.

The majority of consumers indicated that the current packages offered by BDUs often include a number of services that do not interest them. Since many services are only offered exclusively as part of packages, subscribers submitted that they are compelled to pay for services they do not want in order to receive the services they do. Consumers want to be able to select and pay for only those services they wish to receive.

Broadcasters that own local and regional television stations opposed any pick-and-pay option that would allow subscribers to opt out of receiving their stations. They considered that distribution of their stations was necessary in order to ensure that the Canadian broadcasting system meets the objectives set out in the Act.

Corus Entertainment Inc. submitted a study completed for the U.S. Federal Communications Commission describing the potential impact of an “à la carte” (pick-and-pay) system.¹⁴ In

¹⁴ U.S. Federal Communications Commission; Washington D.C. *Report on the Packaging and Sale of Video Programming Services to the Public* http://fjallfoss.fcc.gov/edocs_public/attachmatch/DOC-254432A1.pdf

essence, this study argues that the introduction of an à la carte system would reduce viewing to discretionary programming services, which would cause them to charge distributors higher rates for their services in order to recoup lost advertising revenue. The study concluded that combining these higher subscription rates with the increased costs that distributors would incur in advertising “à la carte” services to customers would result in greater costs to consumers.

Licenseses of speciality services generally indicated that, although consumers do not have complete choice, BDUs already offer considerable flexibility in their packaging options. They submitted that the diversity of Canadian specialty services available is in part a result of the way in which these services are packaged.

BDUs also argued that packaging is a benefit to subscribers and that pick-and-pay options are increasingly available to consumers who subscribe to digital services.

4.3 The Commission’s observations on other affordability measures

Consumers who participated in this proceeding overwhelmingly called for greater choice in the television services for which they are required to pay. They want to pay only for what they want or what they consume. There are those who say they are willing to pay more for exactly what they want, recognizing that there is additional value in choice.

4.3.1 Skinny basic

The Commission notes that, under the current regulatory framework, BDUs are free to offer their subscribers a relatively small basic service. The programming services that must be offered in a basic package are primarily local and regional television stations and those few Canadian services that the Commission considers to be central to the fulfillment of the objectives of the Act. The choice by BDUs to offer a much larger basic package, including foreign services, is presumably a response to a number of factors unrelated to regulatory requirements such as the demands of subscribers and the negotiation of terms for distribution with programming services.

Based on the evidence presented to the Commission, BDUs generally recover a significant portion of their capital costs, i.e., the costs of building and maintaining their networks, through the basic service fee. Increases in the price of basic service, therefore, are said to reflect, at least in part, increases in these capital costs.

The majority of programming services offered as part of the basic service, including local Canadian television stations and some U.S. stations, do not at present contribute in any material way to the cost of basic service. Although some other Canadian programming services are also commonly distributed on basic, fees paid by BDUs to these services do not represent a significant portion of the basic fee. For example, Rogers submitted evidence that removing those speciality services that it is not required to distribute as part of its basic service would reduce the cost by only 7%. Consequently, removing any of these services to create a skinny basic is unlikely to result in a substantially lower price.

The only way for the Commission to ensure that a skinny basic service would be offered at a price that is significantly lower than the current price of basic would be for the Commission to re-regulate the price of the basic service. To intervene in this manner, however, would be

contrary to the recent course of the Commission's overall broadcasting policies. While acknowledging that it is necessary, in certain instances, to regulate in pursuit of the objectives of the Act, the Commission considers that solutions based on market forces are preferable when they permit achievement of the Act's objectives.

In any case, offering a skinny basic service at a price substantially below the current price of basic – whether regulated or not – may involve a reduction in revenues that BDUs would likely seek to recover by increasing the price of other discretionary packages and programming services.

The Commission also heard evidence that few subscribers may be interested in a skinny basic service as the vast majority of consumers subscribe to optional or discretionary services in addition to the current basic services. As noted above, BDUs estimated that less than 10% of their subscribers choose to purchase only the basic service. These facts suggest that few subscribers would benefit from the introduction of a skinny basic service.

Finally, it is important to note that most cable distributors still offer a basic service that is distributed using older analog technologies and will likely continue to do so. A skinny basic service on analog would be prohibitively costly to offer since it would require the installation of new equipment (traps) at the home of each subscriber that chose to receive such a service. Cable BDUs would need to recover these costs through the pricing of other services and packages, which may, in turn, impact the affordability of these other services.

As more and more consumers choose to receive digital services from BDUs and as the number of Canadians that rely on analog services diminishes, the benefits and challenges associated with offering a skinny basic service may change.

4.3.2 Pick-and-pay

The Commission notes that, for technical reasons, it is not practical for BDUs using analog technology to distribute services on a pick-and-pay basis. Only services distributed on a digital basis can be offered individually to subscribers.

As well, there are currently some regulatory limitations on the way that programming services are packaged by BDUs that prevent them from offering certain services on a pick-and-pay basis, most notably non-Canadian services. The current distribution and linkage rules, which were originally adopted to support Canadian services, set out a range of packaging rules for various types of BDUs. Among other things, these rules specify that, for every non-Canadian specialty service offered in a package, there must be one Canadian specialty service (the 1:1 rule), and, for every five non-Canadian pay services offered in a package, there must be one Canadian pay service (the 5:1 rule).

However, the Commission announced in Broadcasting Public Notice 2008-100 that these packaging limitations will be largely eliminated as part of changes to its regulations that are scheduled to come into effect on 31 August 2011. These changes will enable BDUs to respond better to consumer demand for pick-and-pay and other packaging options.

Based on the evidence presented to the Commission, it would appear that consumers view the relationship between choice and affordability differently from the broadcasting industry, at least as it applies to packaging of programming services.

Both BDUs and programming services commonly stated that the price consumers pay for packages of discretionary services is usually considerably less than what BDUs charge for purchasing the services individually. On this basis, BDUs and programming services suggested that the packaging of services increases their overall affordability to consumers. In contrast, consumers consistently emphasized that the ideal solution would be for subscribers to choose the services that they are willing to pay for and can afford.

The Commission notes that the current methods of packaging programming services have provided significant benefits to both programming services and BDUs and have supported the production of diverse, high-quality Canadian programming.

From the perspective of Canadian programming services, packaging rules support services that might not be viable if they were only offered on a pick-and-pay basis. In this way, current packaging practices – most often involving grouping less profitable services with more profitable services (i.e., services with a greater audience) – have, in part, been responsible for the survival of less profitable services and maintaining the diversity of programming available to Canadians. Programming services are therefore concerned that full pick-and-pay could have a significant negative impact on services with a narrower appeal, especially those that are not part of large broadcast ownership groups.

Moving to a full pick-and-pay environment may also have an impact on revenues earned by BDUs if consumers reduce the number of services they receive overall. Moving to a pick-and-pay business model could also create considerable new costs related to changes in a BDU's infrastructure, customer service operations, and billing and back-office support.

Some BDUs have already begun to respond to consumer demand for more choice by offering their digital subscribers a greater range of packaging options, including some pick-and-pay. For instance, at the hearing Quebecor noted that, for the past eight years, it has allowed its digital subscribers to assemble their own packages of 15, 20 or 30 discretionary services. According to Quebecor, half of its customers now choose their services in this manner rather than in the thematic packages that Quebecor offers. However, consumer choice is also constrained through affiliation agreements negotiated between BDUs and programming services. In some cases, these agreements may specifically prohibit offering a service on a pick-and-pay basis, or otherwise constrain the packaging of services. The Commission does not generally become involved in such agreements unless it is called upon to resolve disputes between the parties.

It is clear that there is sizeable consumer demand for more choice in the manner in which programming services are distributed and the prices paid for these services, and, in particular, for further pick-and-pay options. To the extent that the Commission will be involved in shaping the packaging options available to consumers, it will continue to seek the best balance between consumer demand for choice, maintaining a strong and diverse broadcasting industry and achieving the objectives set out in the Act. However, the Commission anticipates that market forces will play a growing role in determining the manner in which programming services are

offered to consumers. In particular, as digital penetration increases, and as alternatives such as Internet and VOD develop, consumer demand will compel the broadcasting industry to offer Canadians more pick-and-pay and other packaging options.

That being said, the Commission notes that there has been no centralized self-regulatory body for BDUs since the Cable Television Standards Council (CTSC) ceased operations in April 2006. The Commission also notes that following the decision to alter the framework for forbearance of local telecommunications services, the Government called for the creation of an industry self-regulatory body to deal with consumer's telecommunications complaints, as referred to in Order in Council P.C. 2007-533. This resulted in the creation of the Commissioner for Complaints for Telecommunications Services (CCTS). The Commission considers that, in light of the consumer dissatisfaction expressed in this public proceeding, it would be appropriate to provide consumers with a similar avenue to raise issues and concerns related to broadcasting distribution services. The Commission sets out a recommendation in this regard in section 6.2 of this report.

5.0 Impact of the transition of local television stations to digital

5.1 Background

Currently, approximately 98% of the Canadian population has access to at least one over-the-air broadcasting station. The reception of this OTA signal is completely free except for the installation of a television set and an antenna.

Canadian television is in the process of converting its OTA transmitters from analog to digital. The transition to digital television (DTV) will provide significant benefits to Canadians. In addition to providing television viewers with better picture and sound, including HD programming, and allowing for more services through multiplexing,¹⁵ it will make spectrum available for public safety uses and greater wireless competition and innovation through the repurposing of channels 52 to 69.

In order to ensure that the transition to digital OTA transmission occurs in a timely manner, the Commission set a shut-down date of 31 August 2011 for analog television transmission.

The Commission is dealing with the digital transition as part of this report since it may impact Canadian viewers' ability to maintain access to free local television.

5.2 Comments on access to over-the-air television

Consumers told the Commission that Canadians require access to local television stations. This is a concern because both private and public broadcasters do not currently plan to provide digital OTA service across the country due to the costs associated with erecting digital transmitters to serve smaller markets.

Consumers stated that Canadians living in small markets should have access to television services that is similar to that of Canadians living in large markets. In this regard, consumers

¹⁵ Multiplexing is the use of one digital transmitter by one or more broadcasters to transmit several programs at the same time.

considered that multiplexing or the proposals of satellite distributors to provide a package of local signals, as discussed later, could ensure that Canadians living in smaller centres would maintain access to local television stations. In addition, the Fédération des communautés francophones et acadienne du Canada (FCFA) raised concerns that the CBC, the primary provider of francophone programming outside of Quebec, has plans to implement digital transmitters only for its originating stations, possibly causing viewers in non-francophone markets to lose access to CBC French-language OTA signals. Broadcasters stated that completing the transition to digital by 31 August 2011 is not feasible due to technical and logistical challenges. However, wireless carriers told the Commission that completing the transition to digital, as scheduled, is important as it will free up spectrum for wireless and public safety services.

Parties generally stated that proceeds of any future spectrum auction should be used to provide financial support to broadcasters to offset a portion of their digital transition costs.

Overall, parties recommended that the government fund a program for the purchase of digital receiving equipment by consumers in order to maintain access to local television stations for those currently relying on OTA signals. Parties suggested that such equipment could include OTA digital converter boxes for those consumers with analog television sets and satellite receiving equipment for those consumers who lose their options for receiving OTA television signals altogether. FreeHD Canada Inc. recommended that a program be established under which two \$75 coupons would be provided to each Canadian household for the purchase of digital receiving equipment.

A number of parties stated that the government should provide some form of financial support to broadcasters to assist in the digital transition. In particular, Corus Entertainment Inc. submitted that the government should allow for an accelerated capital cost allowance for digital broadcasting equipment. In addition, the Canadian Media Guild stated that government funds should be used to encourage multiplexing in smaller markets.

Consumers relying on OTA signals will need to take a number of steps to ensure they maintain access to local television stations after the transition. A number of parties therefore submitted that, as undertaken in other countries, a consumer education program spearheaded by the federal government and funded by spectrum auction proceeds should be implemented to inform Canadians about the transition and the necessary steps to maintain access to television services, and to provide any associated information.

5.3 Commission's observations on the digital transition

The Commission has recognized that the costs associated with digital transition may be too onerous for broadcasters to convert transmitters in smaller markets. Accordingly, in Broadcasting Regulatory Policy 2010-167 the Commission stated that it would:

- Continue to require broadcasters to convert all full-power analog transmitters to digital in provincial and territorial capitals and markets with two or more competing stations or with populations greater than 300,000. A list of mandatory markets falling within these criteria is set out in Appendix 1.

- Require broadcasters to cease operating full-power transmitters (both analog and digital) that are currently operating on channels 52-69.
- Allow all other analog transmitters to continue operating past 31 August 2011, provided they do not preclude another transmitter from converting to digital and they meet the technical requirements of the Department of Industry.

The Commission encourages broadcasters to convert all analog full-power transmitters across Canada. However, for Canadians that may lose access to local television services received over the air due to the transition, the Commission stated that smaller markets could be served by multiplexing and/or cable and satellite distributors. In Broadcasting Decision 2010-61, the Commission approved in part an application by FreeHD Canada Inc. FreeHD Canada Inc. has stated its willingness to provide a free local television package to Canadians. Bell Canada, Shaw Communications and MTS Allstream have put forward similar proposals.

The Commission wishes to ensure that Canadians who may lose access to OTA signals due to the digital transition maintain access to similar services. Accordingly, in Broadcasting Notice of Consultation 2010-169, the Commission called for comments on its preliminary view that it should authorize BDUs to provide a package of local and regional conventional television signals on the condition that the package is provided at no charge, no other paid television services are provided in conjunction with the local package, and access to the local package is not conditional on the purchase of any other services or fees.

As stated in Broadcasting Notice of Consultation 2010-169, the Commission estimates that, based on 2006 data, the approximately 900,000 Canadian households in mandatory markets that currently rely on OTA reception may require a digital converter box in order to maintain access to OTA services using older television sets. Such boxes currently retail, at major Canadian retailers, for approximately \$75. Accordingly, a consumer converter box subsidy program to cover the entire purchase of a digital converter box could cost approximately \$67.5 million, excluding program administration costs.

Additionally, the Commission estimates that approximately 44,000 Canadian households currently rely on full-power OTA television stations operating on channels 52-69 outside mandatory markets. These households may require alternative means, such as satellite distribution, to maintain access to the services they currently receive. In its response to a Commission letter dated 12 May 2009, Bell Canada stated that a satellite receiver and dish for a Freesat viewer would cost \$300, without installation. FreeHD Canada Inc. put forward comparable consumer equipment costs. As such, a consumer subsidy program to pay for satellite reception equipment could cost approximately \$13.2 million, excluding program administration costs.

The Commission is also of the view that a consumer education program is necessary to make Canadians aware of the implications of the digital conversion and what they have to do in order to maintain access to local television.

In Broadcasting Notice of Consultation 2010-169, the Commission called for comments on the following matters related to the digital transition:

- the number of Canadians that could potentially lose service as a result of the transition to OTA DTV;
- the size, type and manner of administering a subsidy program for OTA viewers, should such a program be authorized;
- provision of a free package consisting of all local and regional conventional television signals;
- possible regulatory measures to educate consumers regarding the DTV transition; and
- the implementation of one or more trial markets for DTV conversion.

6.0 Recommendations to the Government

In this report, the Commission has provided a summary of the information and comments it received as a result of the public proceeding requested by the Government. The Commission has also provided relevant data and observations to assist the Government to better understand the issues raised in the OIC.

The Commission has provided its recommended approach to address many of the issues identified in the OIC in the new policy framework for television set out in Broadcasting Regulatory Policy 2010-167, which has been released and is provided to the Government with this report. The overarching recommendation is that constant effort be made, in light of ever more rapid technological change, to ensure that the principles embodied in the Act are realized and that each element of the Canadian broadcasting system contributes appropriately to the attainment of that objective. On the basis of this proceeding, and as requested by the OIC, the Commission states the following specific recommendations.

6.1 Public interest participation

Broadcasting services play an important role in the lives of Canadians. The Commission considers it essential that groups representing the views of consumers are able to participate in the Commission's proceedings. Accordingly, the Commission recommends that the Government amend the *Canadian Radio-television and Telecommunications Commission Act* to clarify that the Commission has the power to award interim or final costs and incidentals to participants in broadcasting proceedings before it.

6.2 Establishment of a self-regulatory body for broadcasting distribution undertakings

As noted above, there has been no centralized self-regulatory body for BDUs since the CTSC ceased operations in April 2006. The Commission considers that, in light of the consumer dissatisfaction expressed in this public proceeding, it would be appropriate to provide consumers with a similar avenue to raise issues and concerns related to broadcasting distribution services.

The Commission notes that the majority of BDUs provide a suite of services that include both telecommunications and broadcasting services, and that the rates for these services are routinely bundled. In the Commission's view, consumers would benefit from a single point of contact for all telecommunications and broadcasting distribution concerns.

Accordingly, the Commission recommends that the Government issue an Order in Council enjoining the CRTC to seek establishment by BDUs of an independent self-regulatory body to address complaints regarding broadcasting distribution services, and that this self-regulatory body work with the CCTS to provide consumers with a single point of contact for consumer complaints.

6.3 Digital transition

The digital transition date of 31 August 2011 is fast approaching and the Government needs to take additional measures to ensure that Canadians maintain access to over-the-air television stations. Therefore, the Commission recommends that:

- The Government set out a clear policy and coordinate the implementation plan for Canada's digital transition, including support for the CBC's digital transition plans. In this regard, the Commission notes that the Government provided capital funding to increase coverage of the CBC's services beginning in the 1970's with its Accelerated Coverage Plan.¹⁶ The digital coordination process should include trilateral discussions with the Department of Industry, the Department of Canadian Heritage and the Commission, given the importance of the digital transition to the policy objectives of the three participants. The Government should position the digital transition as a key part of Canada's digital economy strategy set out in the Speech from the Throne on 3 March 2010, and the Federal Budget on 4 March 2010.
- The Government fund and lead a coordinated national consumer education and awareness program to ensure that Canadians are well-informed with regard to their access to local television services and any required consumer action. In this regard, the Commission is undertaking a process to determine what regulatory measures, if any, it should put in place to ensure consumers are adequately informed regarding the digital transition. For its part, the Government should establish a working group tasked with implementing a comprehensive, coordinated national DTV consumer education program with involvement from all stakeholders, particularly broadcasters, cable and satellite companies, and consumer groups, among others.
- The Government fund a consumer subsidy program for the purchase of digital receiving equipment (e.g., over-the-air digital converter boxes, satellite receiving equipment) that some Canadians will need in order to continue to view the OTA services they currently receive for free. To this end, the Commission intends to provide the Government with a revised estimate of the number of Canadians who could potentially lose service as a result of the digital transition.

¹⁶ The Accelerated Coverage Plan (ACP) was announced by the Secretary of State on 14 February 1974, following its approval by the Government. It was to be implemented over the next three years with a view to extending CBC services at double the normal rate to communities that were inadequately served. The Government provided \$50 million for this purpose.

7.0 Conclusion

The Commission wishes to thank all who contributed to this proceeding through written submissions, presentations at the public hearing and by taking part in the online consultation.

Related documents

- [*A group-based approach to the licensing of private television services*](#), Broadcasting Regulatory Policy CRTC 2010-167, 22 March 2010
- [*Call for comments on issues related to the digital television transition*](#), Broadcasting Notice of Consultation CRTC 2010-169, 22 March 2010
- [*Distribution by direct-to-home services of stations from the major ownership groups in the Atlantic provinces and independently owned stations across Canada*](#), Broadcasting Regulatory Policy CRTC 2010-162, 19 March 2010
- [*Call for comments following a request by the Governor in Council to prepare a report on the implications and advisability of implementing a compensation regime for the value of local television signals*](#), Broadcasting Notice of Consultation CRTC 2009-614, 2 October 2009
- [*Policy proceeding on a group-based approach to the licensing of television services and on certain issues related to conventional television, Clarification on the scope of the proceeding – negotiated fair value for local conventional television signals*](#), Broadcasting Notice of Consultation CRTC 2009-411-3, 11 August 2009
- [*Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services – Regulatory policy*](#), Broadcasting Public Notice CRTC 2008-100, 30 October 2008

Appendix 1

Markets where broadcasters must convert all full-power analog transmitters to digital

British Columbia: Vancouver, Victoria

Alberta: Calgary, Edmonton, Lethbridge, Lloydminster

Saskatchewan: Regina, Saskatoon

Manitoba: Winnipeg

Ontario: Toronto (Barrie and Hamilton since their stations compete in the Toronto market), London, Windsor, Kitchener, Thunder Bay

Quebec: Montréal, Québec, Trois-Rivières, Sherbrooke, Rivière-du-Loup, Saguenay, Rouyn-Noranda/Val d'Or

New Brunswick: Saint John, Moncton, Fredericton

Nova Scotia: Halifax

Prince Edward Island: Charlottetown

Newfoundland and Labrador: St. John's

Yukon: Whitehorse

Northwest Territories: Yellowknife

Nunavut: Iqaluit

National Capital Region (Ottawa-Gatineau)

Minority Report by Commissioner Michel Morin

I can only applaud the Commission's decision (the Decision), as set out in *The implications and advisability of implementing a compensation regime for the value of local television signals*, to finally recognize the right of private conventional broadcasters to negotiate the value of their signals. On the other hand, I can only deplore the Commission's lack of will to establish a skinny basic service – less expensive and competitive – that would have given consumers the choice whether or not to pay the new subscription rates that could result from the negotiations between local broadcasters and broadcasting distribution undertakings (BDUs). I say yes to the freedom of the undertakings to negotiate, but yes also to the freedom of consumers to choose when it comes to conventional services, the complimentary delivery of which is seriously threatened by the Commission's Decision.

Consumers: the forgotten ones

What was unthinkable and taboo just a few months ago has become reality. By its Decision, the Commission seeks to emulate the *Retransmission Consent Regime* of the U.S. system which has been operating efficiently for over 19 years: it seeks to give Canadian private conventional broadcasters (as it has always done for discretionary services) the possibility of receiving compensation for the value of their signals.

Rather than dictate the value of conventional signals, the Commission will allow market forces to set it.

Armed with the threat of blacking out their signals from the airwaves, the local private television stations would theoretically find themselves on equal terms with the BDUs. All that remains to be seen is whether this new economic model, this new advance in the Canadian system that is so earnestly desired by the conventional broadcasters (including CTV, the country's largest private broadcaster) will in fact translate into new subscription rates from the BDUs.

Should this solution be put forward, will each of the 11 million cable and satellite subscribers have to pay 25 cents, 50 cents or a dollar per month for each signal (CTV, Global, Citytv, TVA, V, etc.) that he or she receives? And in three years, after the new series of negotiations, will that rise to 75 cents, a dollar or a dollar fifty? Already, our neighbours to the south have begun negotiations based on a dollar per month per signal per subscriber. We saw it in December 2009 with News Corp. (Fox Broadcasting) and Time Warner Cable. We saw it in March 2010 with Walt Disney and Cablevision Systems. As the saying goes, the present is the best predictor of the future.

The negotiation framework arising from the Decision would give BDUs the choice to pass the bill on directly to subscribers to the basic service, which is the sole entry point into the distribution system. Today, tomorrow and the next day.

In my opinion the Commission has not acted as a prudent person in the circumstances. It has staked everything on the undertakings without considering the repercussions on the basic service of new subscription rates for the private sector.

When deregulation occurs (which I support wholeheartedly, by the way), the consumer must be kept foremost in mind. This principle is ingrained in Canada's *Broadcasting Act* (the Act), as was noted by the Union des Consommateurs at the hearings. Section 3(1)(t)(ii) of the Act stipulates that distribution undertakings "should provide efficient delivery of programming at affordable rates, using the most effective technologies available at reasonable cost." One could not be any clearer in a new digital environment that allows all permutations.

In 2006, when the government gave the Commission instructions on the implementation of Canada's telecommunications policy, consumers were not thrown to the lions. On the contrary, criteria were set out to ensure that there was competition in the newly deregulated market and the position of Complaints Commissioner was established to receive and deal with consumers' complaints, at the cost of the industry.

This time, we have nothing of the sort. The ramifications of the new basic service subscription rates will only be established through negotiations among the parties. The Commission defends the interests of the industry to the detriment of consumers who, for their part, remain powerless.

These consumers are the same 11 million Canadian subscribers who have been hit since September 2009 with the first bill for the \$100 million resulting from the establishment of the Local Programming Improvement Fund (LPIF) (1.5% of the BDU's bill to the subscriber) with no guarantee as to any increase in content. How much will the bill be this time? \$100 million? \$200 million? \$300 million? We will find that out at the end of the negotiations, and those negotiations could prove to be brutal (and be accompanied by the signal blackouts as has sometimes occurred in the United States) or friendly, such as those between Vidéotron and TVA (which are both part of the Quebecor Média family) or with Citytv (a part of the Rogers group) or with Canwest (which may soon be owned by Shaw Communications). One thing is for sure: it is the consumers who are getting hit again.

At any rate, there is a definite risk that the Canadian consumer will be faced with new additional subscription charges for private local services without any increase or improvement in programming, as was the case with the LPIF.

Though he is the first partner of the Canadian broadcasting system, the consumer is left out in the cold by this Decision.

A competitive, less expensive skinny basic service

In Order in Council P.C. 2009-1569, the Governor in Council asked the Commission among other things to assess "the advisability of implementing a compensation regime for the value of the local television signals." More specifically, the order raised two points: **affordable access** and **the impact of such a measure on the various components of the communications industry**. In my humble opinion, it would be extremely perilous to attempt to provide a definitive answer to the second question: anything and everything that could be said was said at last fall's hearings.

Big winners in the struggle to gain a larger share of the audience over the past 20 years, the discretionary services claimed that authorizing conventional broadcasters to receive compensation for the value of their signals would destabilize the specialty channel offering,

while many of these same specialty channels are posting earnings that are making our conventional Canadian broadcasters green with envy and while these same discretionary services (with the benevolent complicity of the Commission) have benefited from subscription revenues, followed by advertising revenues that had until then been reserved for the conventional broadcasters. Why should we now prevent conventional broadcasters from advancing their business models by allowing them to benefit in turn from subscription revenues? Would this not be a fair return of the pendulum? The Commission had the mandate to consider the question of **more affordable access** raised by the government, which it didn't do.

And yet, the solution was so simple: establishing a skinny basic service, as proposed several times in the past, notably by the CBC/SRC. This limited basic service would have been defined solely by its content rather than by a regulated price, as was the case prior to 2001. You will recall that in the wake of that deregulation which was the flavour of the day, the Commission gave the BDUs the right under Commission regulations to add as many discretionary services as they wanted to their basic service, without regard to the rates. As a result, deregulation led to the creation of hybrid basic services and numerous rate increases followed (5.6% per year from 2002 to 2009) without consumers even having the opportunity to opt out, that is having the option of not choosing those discretionary services that they did not want.

Currently, the basic services offered by Eastlink, Vidéotron, Cogeco, Rogers, MTS Allstream, Shaw, Bell TV, Star Choice and Telus are all different, both in terms of price and content. Depending on markets and supply, the offering in the country can differ by as much as 30%.

A skinny basic service – which would have included only the CBC/SRC, the educational channels, a few specialty services that must be distributed pursuant to section 9(1)(h) of the Act (such as the Weather Channel/MétéoMédia, CPAC, etc.) and, it goes without saying, the conventional broadcasters that do not have a negotiated value for their signals – would have been less costly for consumers. That is how the Commission, in the context of recognizing the value of signals, could have dealt with affordable access for consumers!

With an affordable service as proposed, the BDUs would not have been able, as is currently the case, to increase the offer of discretionary services on the basic service. Logically, the cost to the consumer would have been lower. By how much? Five, ten, fifteen or twenty per cent? It is difficult to say. On the one hand, the BDUs have not provided convincing numbers in this regard. Be that as it may, the Decision makes them the gatekeepers for entry into the system. On the other hand, a skinny basic service uniformly defined for the French- or for the English-language market would have stimulated competition among the BDUs as a result of the new transparency (as is the case, despite what people say, with regard to the price of gas—everybody knows the price because everyone can see it). No BDU would have been able to boast, as is now the case, of having a better line-up of services because, for the first time, the consumer would have been able to compare apples to apples or prices to prices. The content of the basic service would have been regulated by the Commission without the BDUs being able to add discretionary services or conventional networks. The consumer would have been able to judge on the basis of price because the content of the basic service would have been essentially limited to public or private services available at no charge and services that must be distributed pursuant to section 9(1)(h) of the Act.

During the five-day hearing held in December 2009, I asked five Ontario consumers who were carefully chosen what they thought of such a skinny basic service, which would logically be less expensive. Here is the full transcript of that exchange which took place on the final day of the hearing on December 11.

COMPLETE TRANSCRIPT OF THE DISCUSSION WITH Peter Lowry (Toronto), Doug Assis (London), Barb Johns (Oakville), Michael Peacocke (Ottawa), and Denis Watson (Ottawa).

6793 COMMISSIONER MORIN: Thanks, Mr. Chair.

6794 I have just one question and those who want to answer it, please do. It's a hypothesis.

6795 But if the Commission decides to put in place or to order the BDUs to have a skinny basic service -- I mean right now we have in every province a deluxe basic service. It has the name, but it's not basic because every BDU can add every channel on this basic and you pay for it.

6796 But if at the end of the hearing we will have a skinny basic service with, for example, TVO, Télé-Québec, the 9(1)(h) services -- the CBC, if the Commission doesn't recognize the value for its signal because it is financed by the taxpayer -- and those OTA broadcasters who can get value for the signal won't be in the skinny basic service, so the consumers won't have to pay for the deluxe basic service we have right now, because on this deluxe basic service CTV, Canwest and the other OTA broadcasters would end up with a value for the signal, so the skinny basic service will be, of course, cheaper than the one we know now.

6797 So what do you think about this skinny basic service which has been proposed by many intervenors here?

6798 MR. LOWRY: Thank you for the question, Mr. Morin.

6799 I would agree with you absolutely.

6800 The way you described it -- I don't believe it will happen, but the way you described it sounded very good.

6801 MR. ASSIS: I agree. I agree with you.

6802 MS JOHNS: I agree as well. I think a skinny basic service is going to allow disabled Canadians to more affordably at least watch some television and at that point they can make consumer decisions as to what networks or what programs in particular they could add to their skinny basic service. But I think that would help alleviate some of the affordability issues that I'm concerned with.

6803 MR. PEACOCKE: I would say a few things.

6804 On a pragmatic level I think it would require the Commission and the distributors to spend a lot of time sorting out what goes into that in each market --

6805 UNIDENTIFIED SPEAKER: It sure would.

6806 MR. PEACOCKE: -- working on the costs, because if these value for signal charges go into place, then those costs presumably have to be built into the skinny basic, then you have to figure out well, presumably the rest of the basic has to earn a profit for the distributor, so you have to figure out what all of that is.

6807 If the negotiations change the value of the skinny basic over time, you have to sort of reset the price and then what about inflation and all those sorts of things. So on a pragmatic side I would say there is a reasonable complexity there for the Commission and distributors and I guess those costs eventually get pushed back to consumers or taxpayers.

6808 In terms of would there be a take for it, hard to say definitively, but my sense is the viewership for the local broadcasters has continued to fall as more and more programming choices have been brought to Canadians through cable and satellite in terms of specialty.

- 6809 Many specialties of course, Canadian, and I think that's a big success. I watch lots of Canadian specialties, History Channel, Discovery Channel, it's great programming. It's Canadian, so I like that but, to be frank, will that take up the slack for many people, I was struck by -- I think her name was Marjorie Lemieux, when she was here on the BDU panel, she simply said, you know, she doesn't watch local and she would have to pay more or cut back if she was forced to take a skinny basic.
- 6810 COMMISSIONER MORIN: Because she wasn't interested.
- 6811 MR. PEACOCKE: She wasn't interested. So my sense would be if you go down that path -- and then I remember Mr. Asper quoting the example of EastLink where he said they offer a relatively small basic at \$22, so he said you could cut that into Canadian at \$18 and then the 4+1 at \$4.00, so that's \$22, but as I understand the model that \$18 isn't going to be \$18 any more, it goes up because of the value for signal charges.
- 6812 So if you want to get back to where you were in your old basic, you take \$18-plus dollars, and then the \$4.00 and you get to a higher number to get back where you were. So my sense, I don't think it's the right way to go.
- 6813 THE CHAIRPERSON: Okay.
- 6814 Thank you very much.
- 6815 THE SECRETARY: Please open your microphone.
- 6816 THE CHAIRPERSON: Thank you very much for having taken the time and shared your views with us.
- 6817 I think that terminates our proceedings.
- 6818 Right, Madame la Secrétaire?
- 6819 THE SECRETARY: No.
- 6820 THE CHAIRPERSON: You have some --
- 6821 MR. WATSON: Do I get to answer that question?
- 6822 THE CHAIRPERSON: Oh, my apologies. I looked up and I thought you were all finished.
- 6823 Go ahead, please.
- 6824 MR. WATSON: I'm feeling marginalized.
--- [laughter]
- 6825 THE CHAIRPERSON: You are not. You have the floor to yourself.
- 6826 MR. WATSON: Commissioner Morin, could I just get a clarification there?
- 6827 Did you say the skinny basic you talked about included the OTAs?
- 6828 COMMISSIONER MORIN: It will include the OTA if they don't get or they don't bill a value for the signal to the BDU. They will have to be carried on the basic service as it exists today, the basic we know, but this new basic, this new skinny basic service, if they don't charge any fee to the BDU, they will be under skinny basic service because it will be free.
- 6829 MR. WATSON: Okay.
- 6830 Obviously my proposal is the skinniest basic you can get, because there is just a charge for the pipeline and then you pick what you want.
- 6831 So to understand you, it's basically the broadcasters would make a choice between mandatory carriage or a fee?
- 6832 COMMISSIONER MORIN: Exactly.
- 6833 MR. WATSON: Okay.
- 6834 I can't speak for the company, but as a person that seems reasonable to me.
- 6835 COMMISSIONER MORIN: Thanks

It was evident. The reaction to the establishment of a skinny basic service was unanimous. The introductory presentation by Ms. Barb Johns was in agreement. Here is what she had to say:
“...one million Ontario adults who are disabled and unable to find meaningful

employment...What do these people do when they're job hunting unsuccessfully, they watch television. For most of these Ontario citizens, this is their only form of entertainment and ongoing education." She also stated: "...4.4 million people in Canada have disabilities, representing 14.3 percent of Canada's population and approximately 1.85 million people in Ontario, representing 15.5 percent of Ontario's population, have disabilities. I would like to speak on behalf of these disabled persons in Ontario and across Canada." And in closing, she described her situation as follows: "I am a single mother of four children. Three of my children have recognized disabilities. My sons are 14, 15 and 17. They each have an autism spectrum disorder. Two have Tourette's Syndrome, one is hearing impaired, two have sensory integration disorders, and two have obsessive/compulsive disorder. All three have battled depression and anxiety disorders. I receive funding to help with our household costs and I am grateful for this, but I am unable to work because I care at home full time for one of my sons. Even with special funding, our monthly income never outlasts our monthly expenses. My annual taxable income is about \$22,000. My cable costs at this time are approximately \$660 annually, that's the cost of basic cable plus some educational channels. I do not have movie channels, sports channels or digital receiver boxes. This represents over three percent of my annual income. The average adult on a disability pension in Ontario receives about \$850 per month. The cost for basic cable as it stands now, where I live in Oakville, is approximately \$35 per month. This represents at least four percent of their monthly income. To put this into perspective, 1.85 million disabled persons in Ontario must pay for their rent, utilities, phone, TV, transportation and food out of \$850 a month. Increasing the cost for television for these individuals by even \$1.20 and where I am it's going to be more like \$4 to \$6, for families with disabilities, for seniors on fixed incomes and for new immigrant families is not acceptable because this will be a financial burden that many cannot afford. As it is, many of these Canadian citizens are already marginalized and need to rely on food banks just to eat. Are you really suggesting that any annual increase can be absorbed by them?"

Interestingly enough, the final series of comments from the five representative consumers from the largest province in the country came from a CTV manager speaking on his own behalf.

A skinny basic service is in my opinion and according to these consumers the answer to the question of affordable access raised by the government. Ultimately, with a reduced basic service, it is the consumer who would have chosen to pay or not to pay for the value of the signals from the private conventional broadcasters.

To sum up, the Commission should have simply recognized that the familiar push culture is being replaced by the pull culture. When it comes to services that were previously free of charge and that are henceforth likely to be billed to consumers, it seems obvious to me that the services of CTV, Global or TVA are not what one might call "essential services" and that it is up to the consumer to decide whether or not he or she wishes to subscribe to them.

The Commission's decision might indeed lead to the opposite. If TVA were to receive 50 cents per month per subscriber for the value of its signal, can we seriously believe that Vidéotron will remove it from its basic service and leave the choice up to the subscriber?

The skinny basic service model would fall within a larger trend in which the consumer has greater freedom (even under our system) to choose the discretionary services that he or she

wishes, which is what Pierre-Karl Péladeau, the President and CEO of Quebecor and Quebecor Média, did in fact convey during his presentation to the Commission on 7 December of last year:

460 Mr. Chairman, for the past eight years Vidéotron has been offering packages whereby the subscriber chooses the channels he or she wants. We call them “Pick 15”, “Pick 20” and “Pick 30”. The subscriber chooses the 15, 20 or 30 channels he or she wants in addition to the basic service. These packages continue to be more and more popular, and have been growing in number at the same rate up until 2007.

461 However, for the past two years, their growth in popularity has revealed a trend: currently, 50% of our new clients are choosing a pick-your-own package over thematic packages. With this type of acceleration, we expect that over half of our digital clients will opt for this type of freedom of choice that the technology allows.

462 Within the very near future, the large thematic components that impose channels on the consumer will be history.

463 This trend is eloquent testimony to this evolution in the audiovisual landscape that is not waiting for the 2011 deregulation and is being defined by a type of pick-your-own consumerism which fairly reflects Web-based consumption.

More choice for the consumer—that is the type of future that Mr. Péladeau is predicting! A limited basic service – one that would be less expensive because it would include a reduced number of imposed discretionary channels – would have fit in perfectly with this shift toward the pull culture, one of freedom of choice for the consumer. This service would have resolved the problem of affordable access by giving the consumer the option of subscribing and therefore paying for a private conventional channel which, because of a recognized value assigned to its signal, would no longer be offered free of charge.

It seems obvious to me that once Canadian content regulations have been taken into account, if we want to have a dynamic broadcasting system it is essential that the consumer be its first partner, that the consumer be free to choose rather than have imposed on him or her, through more expensive hybrid basic services, discretionary services or thematic packages that have been negotiated by the major broadcasters.

Currently, between 5 and 10 percent of subscribers to BDU services make do with the basic service. This is enormous! This means that out of almost 11 million subscribers, approximately 700,000 limit themselves, be it by choice or by necessity, to just the basic service available in their region. To this number we should add the 900,000 Canadian households that, according to the Commission, are “excluded from the system” (either because they capture their signal through somewhat unevenly efficient antennas or because they simply steal the signal) and there we have close to 3 million consumers for whom the cost of basic service is an important, even definitive factor. Why should we take for granted existing BDU subscribers? According to a recent survey by Park Associates, 6% of Canadian households and 8% of U.S. cable and satellite subscribers are considering cancelling their subscriptions in favour of Internet services (see the *Globe and Mail*, March 10, 2010 and http://newsroom.parksassociates.com/article_display.cfm?article_id=5214).

By establishing a basic service that is less expensive and more competitive (because it’s identical), the Commission could have not only brought a solution to the problem of affordable access in a manner entirely consistent with the Act but also facilitated via regulation the keeping

of the not-so-well-off's in the system and the recruitment of those who still refuse to subscribe to Canadian distribution services for monetary or other reasons. Further, it would have protected Canadian consumers from increases like those that they have seen over the past ten years which I mentioned earlier.

Section 6.2: A hasty recommendation to the government

In section 6.2 of its report, the Commission requested that the government order it to establish an agency to be funded by the BDUs which, like the Commissioner for Complaints for Telecommunications Services (CCTS), would receive consumer complaints involving distribution or broadcasting services. The Commission no doubt sees this as a way to make the industry more accountable to consumers, which is much to its credit. However, no such self-regulated industry exists in the United States, Great Britain or France – though these countries have a long regulatory history. In those countries, complaints are always dealt with by the regulators, namely the Federal Communications Commission, Ofcom and the CSA, respectively.

Moreover, I must point out that this service, which would ultimately be funded by consumers, is already being offered by the Commission. Over 7,000 complaints last year! During the hearings, no one came forth to complain about the service being provided by the Commission. No one called for a resurrection of the Cable Television Standards Council (CTSC) which ceased operations following the dissolution of the Canadian Cable Television Association (CCTA). No consumers' association or industry association has even raised the appropriateness of establishing such a new service. Worse still, none of the 13 commissioners, Chairman or Vice-Chairmen of the Commission broached this possibility over the three weeks of hearings held in November and December of last year.

Under the circumstances, the Commission's proposal appears to me to be not only hasty but also misguided. When a regulator attempts to divest itself of certain responsibilities, it has a duty to do so in full transparency within the framework of a public hearing. In this case, there is no public file on the necessity to proceed with a transfer of jurisdiction. Obviously, as with the telephone industry Complaints Commissioner, the Commission would retain a kind of "ultimate" jurisdiction, as a last resort, in cases where it deems it necessary or appropriate to hear a complaint that has or has not already been addressed at the lower level. The fact remains that most if not all of future complaints would be handled by this self-regulated body.

Unlike what occurred following the deregulation of the telephone companies in 2007, the government has not even made any mention in its order of the possibility of such an option.

Certainly, consumers and consumers' associations have complained about the cost of the basic services and the packages proposed by the BDUs, but no one has even alluded to the possibility of establishing a new complaints service to be funded by the industry and eventually billed directly or indirectly to BDU subscribers, as was the case with the establishment of the LPIF, though the Commission had officially wished that its cost (equivalent to 1.5% of the subscriber's bill) be born entirely by the industry. The rest as they say is history. As the BDUs had promised, the full cost was passed on to consumers. Why would it be any different this time? The least we can say is that this never-announced public file suffers from a serious deficit when it comes to its justification. There was no great urgency such that the Commission, 13 Commissioners and

some 400 employees strong, should even consider bringing a halt to handling complaints from consumers regarding BDUs.

And what exactly did consumers complain about at the hearings? Was anyone listening when they talked about the lack of choices, the excessive cost of basic services, the packages to which they had to subscribe to receive THE discretionary service in which they were interested? What are consumers constantly complaining about to the Commission? The same thing. It was true yesterday and it is still true today. Over half the 7,000 complaints received last year by the Commission involved subscriber billing by cable and satellite services.

And what is the Commission's answer today? What will a self-regulated service funded by the industry answer tomorrow? The same thing. Rates were for the most part deregulated almost ten years ago and the undertakings have had a free hand to charge consumers for their services, without any constraints other than those imposed on them by the market. A new structure for receiving consumer complaints would change nothing.

If the issue were to reduce the number of consumer complaints concerning BDUs, the most effective means over the short term would have been to establish a skinny basic service that would have been less expensive because it would not have included the discretionary services favored by the distributors.

I would also like to point out that between those complaints referred to in section 6.2 and their merit, there is quite a gap. When I asked if the complaints resulted in fines, refunds or orders, the answer was much shorter than the question. You can guess what it was.

In this case, the Commission made the easy observation that there was an avalanche of complaints regarding the BDUs but it did not question itself as to the validity or the nature of those complaints. That is the analysis it should have done and made the results public before proposing the establishment of a new bureaucratic apparatus the urgency of which is not being claimed by anyone, least of all by the consumers! The Commission would have been better advised to reduce the size of the basic service provided by the BDUs and offer subscribers a greater choice. In my view, that would have been the best way to reduce the volume of complaints from consumers exasperated by the size of the hybrid basic services offered by the BDUs, which are no longer justified in an environment where customers, thanks to digital technologies, are enjoying increased independence and a greater range of choices.

Let's be clear. Even with the establishment of an affordable basic service, the cable companies would not have been deprived of the means to offer even more services. Honestly! They are not the poor relatives of the system! There are still 900,000 households that rely solely on over-the-air reception to receive their signal. Moreover, the ability of BDUs to innovate never ceases to astonish us. For example, over the last few weeks, Rogers became the first Canadian cable BDU to offer the technology known as video mosaics, a revolutionary service that two American undertakings have been offering over the last short while—Time Warner Cable Oceanic (Hawaii) since 2006 and Cablevision since last October. Launched in Canada at the time of the Olympic Games in Vancouver, this technology is now offered for children's and news programs. This is undoubtedly just the beginning. Using this mosaic, the subscriber is able to view simultaneously, on a single screen, thematic groupings of six conventional or discretionary

channels, compare them and choose one within a few seconds. It would be difficult to find the equivalent so quickly on the Internet! This feature will make it easier to navigate a digital universe that is getting enriched by the day. Truth be told, the cable companies will shortly be adding a new tool to their arsenals to convince us to purchase even more discretionary services.

But let's get back to the Order in Council. It made no reference whatsoever to the consumer complaints, founded or otherwise, handled by the Commission. So I can't understand why the Commission is hastily proposing the establishment of a self-regulated body without making itself demonstrate publicly the necessity and the benefits of the transfer to a new entity, especially considering that were the government to retain this option it would inevitably translate, if the BDUs wanted to retain their current profit margins, into additional costs that would be passed on to the 11 million BDU subscribers.

In this regard, if I may be permitted an aside, the Commission has suggested a new agency that would be akin to the CCTS for telephone services. I would have preferred a reference to the Canadian Broadcast Standards Council (CBSC), which is very familiar with the broadcasting industry and enjoys a solid credibility. Over 70% of its decisions come down against the industry, even though it is funded by the industry. Further, with its 736 members, the CBSC already has the necessary infrastructure and human resources. It would have been easy to publicly contemplate broadening the mandate of the CBSC to handle consumer complaints regarding their distribution services. The CBSC, which is over 100 years old, is to be abolished next June by the Canadian Association of Broadcasters. The Commission could have used appropriate regulatory measures to fund the CBSC, whose mission has always been limited to complaints regarding the content of broadcasters' programming. Why try to reinvent the wheel by creating another agency and even more bureaucracy? Why not consider a single window approach for complaints involving broadcasting and distribution undertakings, both for the content they provide and the cost and nature of their services? While we are witnessing a convergence with respect to the ownership of broadcasting and distribution services in North America, why should consumers have to address two distinct entities?

And to close this aspect of the report, I would like to point out that what I heard during the hearings – and in this I disagree with the Commission's perception – was consumers that want, not a new agency to complain to, but rather more choice and more options, with a skinny basic service to boot. In this sense, a skinny basic service by the BDUs would have met their expectations better than the creation of another Complaints Commissioner similar to the one that now exists for the telephone industry.

Let's not put the cart before the horse. The real problem is the cost of accessing the basic service and not the body that will handle consumers' complaints.

Conclusion

Since the end of the public hearings last December, my opinion has not changed. Last February, I sent the following e-mail to all my Commission colleagues:

The essence of our recommendation to the Minister should be that we have done our homework, and we have taken care of the issue of affordability for the consumer.

1. For the first time, the Commission will recognize the value of the OTA broadcasters' signals.
2. To do so, starting September 1st 2011, each OTA broadcaster will have the right to get remuneration for its signal, based upon its negotiations with the BDUs.
3. OTA broadcasters will have the right to withdraw their signals as has been the case in the United States for the last nineteen years.
4. If the broadcaster gets value for its signal, it won't be carried on the basic service, as it is now. Because it's currently free, as far as the signal is concerned, we won't change that.
5. The Commission will finally create a truly pared-down basic service with a limited set of channels (CBC, 9(1)(h), Education channels, etc.). This service could be called the "skinny basic service", since it is very different from the hybrid models which exist now. It will be up to the BDUs to determine the price of this basic service, but it appears that the price will be less than for the current ones because the BDUs won't have the opportunity to stack their basic service offerings with whichever channels they want.
6. If an OTA broadcaster wants to be carried on this basic service, no value for its signal will be recognized.
7. The affordability issue will be addressed:
 - a) The consumer will be in command, able to choose a service with a value for its signal or not.
 - b) In the end this will result in greater consumer choice and a cheaper basic service for Canadians for the years ahead.

Instead of seizing this historic occasion to establish a skinny basic service that is less costly for the consumer, both today and over the longer term, the Commission blindly forges ahead by recommending to the government that it mandate the establishment of a central agency whose mission would be to handle consumer complaints regarding BDU services. Given the situation on which I have expanded at length above, I fear that this recommendation is nothing more than an effort to pull the wool over people's eyes.

Also, before the government considers this recommendation, I would like to suggest that it require the Commission to provide it with a more substantial case on the advisability of establishing a new body which, I repeat, has not been proposed by any of the participants that were heard during the 15 days of hearings that took place in November and December of last year.

In my view, the best way for the Commission to consider "implementing a compensation for the value of the local television signal" and to respond to the expectations flowing from the government's order was to establish a skinny basic service, a selection of public services, 9(1)(h) services and private conventional services who have not negotiated the value of their signals.

In this way, consumers – and especially persons with disabilities and low-income earners, as well as retirees who, more often than not, are forced to rely on non-indexed sources of income – would have had the freedom to purchase or not to purchase, on a tier separate from the basic service, conventional programming services that were free until now but which will probably

become billable in the future, with no guarantee of improvement in the quality or increase in the Canadian content of their programming.

Since I did not attend the public hearings held last November and since my colleagues and I several months ago lost the 40-year-old privilege of issuing a minority opinion on the content of the so-called “general policy” public hearings, I am forced to limit my comments to the December hearings and to silence my opinion on the hearings held in November, which dealt primarily with an ownership group approach to licensing.

Therefore, I feel that at the public hearings held in December, the Commission, acting on the government’s order concerning affordable access to distribution services, should have seized the opportunity to respond to a greater extent to the well understood interests of a skinny basic service, one that would have been tailored to each of the two linguistic markets. Such transparency with respect to pricing for the same number of services offered would have encouraged competition among BDUs. It should come as no great surprise that the BDUs unanimously opposed it! What is important to them is increasing shareholder value, and who could blame them?

As the regulator, even if we can’t presume to know the final bill for the current basic hybrid service that will result from the negotiations or even less how it will play out in the future, we had an obligation to ensure that on the eve of the digital transition and the possible implementation of some form of negotiated compensation for the signals of local broadcasters, the Canadian consumer would have a menu to choose from and the choice to foot the bill or not.

For all of the above reasons and in view of the unanimity of my 12 colleagues, I must offer yet another minority opinion as part of my five-year term at the Commission, my ninth since my appointment in August 2007. They all testify to various degrees to my desire to provide for greater competition in the Canadian broadcasting system and thereby increase the number of choices for consumers.

- [Reconsideration of Broadcasting Decision 2008-222 pursuant to Orders in Council P.C. 2008-1769 and P.C. 2008-1770](#), Broadcasting Decision CRTC 2009-481, 11 August 2009
- [Video-on-demand service](#), Broadcasting Decision CRTC 2008-366, 23 December 2008
- [Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services](#) – Regulatory Policy, Broadcasting Public Notice CRTC 2008-100, 30 October 2008
- [Licensing of new radio stations to serve Ottawa and Gatineau](#), Broadcasting Decision CRTC 2008-222, 26 August 2008, corrected by [Licensing of new radio stations to serve Ottawa and Gatineau – correction](#), Broadcasting Decision CRTC 2008-222-1, 28 August 2008

- [*Change in the effective control of TQS inc. and licence renewals of the television programming undertakings CFJP-TV Montréal, CFJP-DT Montréal, CFAP-TV Québec, CFKM-TV Trois-Rivières, CFKS-TV Sherbrooke, CFRS-TV Saguenay and of the TQS network*](#) – Broadcasting Decision CRTC 2008-129, 26 June 2008
- [*CRTC Report to the Minister of Canadian Heritage on the Canadian Television Fund \(Annex 2\)*](#), announced in [*The CRTC presents its report on the Canadian Television Fund*](#) News Release, 5 June 2008
- [*Licensing of new radio stations to serve Kelowna, B.C.*](#) – Broadcasting Decision CRTC 2008-62, 14 March 2008
- [*CIGR-FM Sherbrooke – Acquisition of assets*](#), Broadcasting Decision CRTC 2007-435, 24 December 2007