



## Broadcasting Public Notice CRTC 2004-46

Ottawa, 9 July 2004

### **Channel placement of certain services whose national distribution has been required pursuant to section 9(1)(h) of the *Broadcasting Act* - Call for comments on tools to promote and improve the visibility of these services**

*In Call for comments on the channel placement of services whose distribution has been required pursuant to section 9(1)(h) of the *Broadcasting Act*, *Broadcasting Public Notice CRTC 2002-49*, 16 August 2002, the Commission sought comment on questions concerning the channel placement of programming services, in particular the Aboriginal Peoples Television Network and TVA, that have been licensed for mandatory carriage as part of the basic service pursuant to section 9(1)(h) of the *Broadcasting Act*. The Commission has determined that, instead of mandating the channel placement of these services, it will require all distributors to assist in improving the visibility of such services through improved promotion. Accordingly, in this public notice, the Commission seeks comment on what specific tools could be used to promote and improve the visibility of these mandated services.*

#### **Background**

1. Pursuant to section 9(1)(h) of the *Broadcasting Act* (the Act), the Commission “may require any licensee who is authorized to carry on a distribution undertaking to carry, on such terms and conditions as the Commission deems appropriate, programming services specified by the Commission.” As described below, the Commission has used this authority to require the national distribution of four services as part of the basic service: the French-language television network TVA (TVA), the Aboriginal Peoples Television Network (APTN), the programming service of National Broadcast Reading Service Inc. (VoicePrint) and the programming service of Cable Public Affairs Channel Inc. (CPAC) (collectively the mandated services).
2. In Decision CRTC 98-488, 29 October 1998, the Commission determined that the national distribution of TVA would help increase the availability of French-language television services across Canada and would contribute to promoting Canada’s linguistic duality and cultural diversity, in keeping with several policy objectives of the Act. Accordingly, the Commission approved the national distribution of TVA. Subsequently, in *Order respecting the distribution of the French-language television service of TVA Group Inc.*, Public Notice CRTC 1999-27, 12 February 1999, corrected in Public Notice CRTC 1999-27-1, 19 May 1999, the Commission directed the licensees of Class 1 and Class 2 broadcasting distribution undertakings (BDUs) and direct-to-home (DTH) BDUs to distribute TVA as part of the basic service.

3. Similarly, in Decision CRTC 99-42, 22 February 1999, the Commission approved the national distribution of APTN on the grounds that the service would strengthen the cultural identity of Aboriginal peoples through new and diverse Canadian programming and offer a cultural bridge between Aboriginal and non-Aboriginal Canadians, also in keeping with the policy objectives of the Act. Thus, in *Order respecting the distribution of the Aboriginal Peoples Television Network*, Public Notice CRTC 1999-70, 21 April 1999, the Commission directed the licensees of Class 1 and Class 2 BDUs and DTH BDUs to distribute APTN as part of the basic service.
4. In Decision CRTC 2000-380, 11 September 2000, as corrected by *Erratum: Distribution Order 2000-1*, Decision CRTC 2000-380-1, 21 September 2000, the Commission concluded that VoicePrint provided a unique service of particular benefit to Canadians who are blind, visually impaired or print handicapped. In keeping with the accessibility objectives of the Act, the Commission directed the licensees of analog Class 1 and Class 2 BDUs serving Anglophone markets to distribute VoicePrint on CBC Newsworld's secondary audio programming (SAP) channel. Licensees of digital Class 1 and Class 2 BDUs were directed to distribute VoicePrint on an audio channel (adjacent to CBC radio, where possible). Further, the Commission directed DTH licensees to distribute the service on an audio channel (adjacent to CBC radio, where possible) in basic service packages that have a preponderance of English-language services.
5. Finally, in *Licence renewal for CPAC; and issuance of a distribution order*, Broadcasting Decision CRTC 2002-377, 19 November 2002 (Decision 2002-377), the Commission found CPAC's licensed public affairs programming to be a significant and valuable complement to its coverage of the proceedings of the House of Commons, and determined that, consistent with the objectives of the Act, granting CPAC mandatory carriage on the basic service would contribute to maintaining and enhancing Canada's national identity and cultural sovereignty. The Commission thus ordered the licensees of Class 1 and Class 2 BDUs, DTH BDUs, and the licensees of certain digital Class 3 BDUs<sup>1</sup> to distribute CPAC as part of the basic service.
6. In respect of APTN and TVA, it soon became clear that many cable BDUs were distributing these signals on channels higher than 55, i.e., above discretionary, pay and pay-per-view (PPV) channels (top-end channels); this meant that subscribers with older televisions that were not able to display the top-end channels would not receive APTN or TVA, and that subscribers who channel "surf" might be less likely to look beyond the scrambled pay and PPV channels. Accordingly, in *Call for comments on the channel placement of services whose distribution has been required pursuant to section 9(1)(h) of the Broadcasting Act*, Broadcasting Public Notice CRTC 2002-49, 16 August 2002 (Public Notice 2002-49), the Commission indicated that it was concerned over whether APTN and TVA were actually as widely available and as readily accessible to Canadians as they should be. More importantly, the Commission stated that it considered this

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<sup>1</sup> Specifically, *Distribution Order 2002-1*, set out in Appendix 2 to Decision 2002-377, describes the "licensees of Class 3 distribution undertakings that have a nominal capacity of at least 550 MHz and that deliver any programming services on a digital basis, and licensees of Class 3 distribution undertakings whose distribution system is totally interconnected with another system" as those licensees of Class 3 BDUs that must distribute CPAC as part of the basic service.


channel placement above 55 to be potentially inconsistent with its objectives in mandating the distribution of these services as part of the basic service pursuant to section 9(1)(h) of the Act and called for comment on questions concerning the channel placement of these services and related issues. The Commission received 169 comments with respect to Public Notice 2002-49.

### **Positions of the parties**

7. APTN and 146 individuals, producers, and organizations representing Aboriginal people expressed their support for the lower channel placement of APTN. APTN and its supporters stated that many viewers have not heard of APTN, and that many of those who have are unaware that it is part of their basic service. APTN and its supporters suggested that the service should be distributed on the lower basic channels, i.e., the first 20 to 30 channels, on a restricted channel, or on a channel now used to distribute home shopping, alphanumeric, non-priority Canadian (duplicate or distant signals) or foreign services.
8. Friends of Canadian Broadcasting, Vision TV: Canada's Faith Network/Réseau religieux canadien (Vision TV), and three individuals supported improved channel placement for both APTN and TVA, or for licensed Canadian services in general. Vision TV argued that not-for-profit channels whose mandates are to address specific public policy goals, and public interest channels created pursuant to a legislative or regulatory policy process in furtherance of an identified public policy goal, should benefit from priority channel placement.
9. For its part, TVA stated that, although its higher channel placement has limited its accessibility, channel placement rules would not be the most appropriate solution given the constraints of analog technology. TVA also expressed other concerns that are addressed in the section below entitled "Distribution in apartment buildings and hotels."
10. A number of parties, including three individuals, eight representatives of the BDU industry, the Canadian Association of Broadcasters (CAB), Torstar Corporation, and TVA, opposed the creation of specific channel placement rules for these services. The Canadian Cable Television Association (CCTA), the Canadian Cable Systems Alliance Inc., and many distributors, including Quebecor Media Inc., Saskatchewan Telecommunications and Mountain Cablevision Ltd., noted that APTN and TVA are already available to 100% of the subscriber base through their carriage on the basic service. The distributors suggested that the technical concerns mentioned by the Commission are transitory, given that older television sets are being replaced and are not usually the main set in the home. The distributors also stated that realignments would be disruptive for viewers and would create additional costs for distributors.

11. While very few parties commented on alternative mechanisms to ensure that the APTN and TVA services are more widely available and readily accessible, many parties raised concerns about which services would be displaced to accommodate these services. For example, the CAB expressed concern that special placement rules for the services could have a negative impact on priority over-the-air services that have negotiated channel placement outside the basic band (channels 2-13). According to the CAB, specific channel placement rules for APTN and TVA would provide those services with a higher priority than some local over-the-air services, which would be inconsistent with the Commission's traditional approach to such priority services. The CAB suggested that the most appropriate approach would be to ensure that cable subscribers are aware of the availability of these services and their location on the dial through such tools as barker channels and TV listing channels.

### **The Commission's analysis and determination**

12. Channel placement has long been a subject of contention. Cable BDUs and subscribers tend to object whenever popular services are relocated to accommodate new technology or new services. Broadcasters who value carriage on particular channels for marketing purposes have also objected to the relocation of their signals from established dial positions.
13. Furthermore, the trapping technology used by the majority of analog cable operators further complicates the issue of channel placement. In particular, the traps used to block signals that subscribers have not purchased do not permit the addition of services. Therefore, if a cable operator wishes to add a service to a tier or on the lower basic channels, it must displace an existing service to accommodate the added service. As noted by several parties in this proceeding, such channel realignments can be disruptive to subscribers. Furthermore, BDUs incur additional costs associated with channel realignment, including the cost of billing inserts, new channel line-up cards, and additional customer service representatives.
14.  *Access rules for broadcasting distribution undertakings*, Public Notice CRTC 1996-60, 26 April 1996, the Commission stated the following:

Due to the complexity of [the issue of channel placement], the number of parties involved, and the difficulty and regulatory burden associated with establishing rules applicable to a myriad of circumstances, yet that would be capable of accommodating various necessary exceptions, ... such matters should properly be the subject of negotiation between the parties concerned.

15. In respect of the mandated services,<sup>2</sup> the Commission has considered whether their placement on lower channels would increase the size of their audiences to a degree that would justify the costs that BDU operators would incur in realigning their channel offerings. In this context, the Commission has weighed the fact that, while some older television sets may not be able to display top-end analog channels, the television equipment available in Canadian households increasingly allows access to these channels. The Commission also finds that there is no conclusive evidence that channel surfing diminishes the amount of tuning to services distributed on top-end channels. On balance, although there may be some correlation between channel position and viewing share, the Commission is not satisfied that the potential increase in tuning that the mandated services might experience on lower channels is sufficient to outweigh the substantial costs that the BDU industry would incur if obliged to realign their channel assignments to accommodate these services on lower channels. This is particularly the case at this time, as the industry is in transition from analog to digital distribution. Accordingly, the Commission has decided not to regulate the channel placement of the mandatory services.
16. Instead, the Commission considers that the objectives of section 9(1)(h) of the Act would be more appropriately achieved by improving the visibility of the services through improved promotion, not only by the services themselves, but also by BDUs. Among other benefits, such an approach would offer a long-term solution as the industry makes the transition to digital distribution.
17. A number of tools are available to improve the promotion of the mandated services, including the use of the local availabilities of non-Canadian services, barker channels, community channels, TV listings channels, and billing inserts. However, the record of this proceeding did not offer any information or guidance on how best to employ these and other tools for the purpose. Accordingly, the Commission seeks comment on what specific tools could be used by all BDUs to promote and improve the visibility of the mandated services.

#### **Distribution in apartment buildings and hotels**

18. As a separate issue, TVA noted that channel placement would not eliminate its concern that, in some instances, the channel used to distribute its service is used in apartment buildings for security monitoring, which often precludes the distribution of the TVA service in those buildings. TVA further stated that often its service is not carried in hotels outside Quebec. Several other parties expressed similar concerns with respect to the carriage of APTN in hotels.

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<sup>2</sup> Given VoicePrint's unique carriage status on the SAP channel of CBC Newsworld, its channel placement was not specifically considered in this proceeding. Nor was that of CPAC, as Public Notice 2002-49 predated Decision 2002-377, and as CPAC is a cable-owned service.

#### *Apartment buildings*

19. The Commission is of the view that carriage of the mandated services on channels used for security purposes in apartment buildings is inconsistent with its policy objectives. The Commission, therefore, expects BDUs to take steps to ensure that such signals are made available to subscribers in apartment buildings. The Commission is prepared to intervene where warranted.

#### *Hotels*

20. In *Exemption order respecting closed circuit video programming undertakings*, set out in *Final revisions to certain exemption orders*, Public Notice CRTC 2000-10, 24 January 2000, and revised in 2000-10-1, 27 March 2001, the criteria are noted to which owners of hotels and other institutions with closed circuit video programming undertakings must adhere in order to be exempt from licensing. One criterion is that the undertaking must be operated in a manner that does not prevent a hotel guest from receiving priority, over-the-air signals distributed by a BDU to the hotel as part of the basic service. The exemption order does not currently prohibit the displacement of the mandated services. The Commission intends to review the terms of the exemption order in the near future.

#### **Call for comments**

21. As noted above, the Commission is seeking comment on what specific tools could be used by all BDUs to promote and improve the visibility of the mandated services. While the Commission has set out a number of general questions below, it wishes to advise parties that it seeks specific proposals intended to improve the visibility of those services whose contributions to the objectives of the Act are deemed important enough to warrant the issuing of distribution orders pursuant to section 9(1)(h) of the Act.
22. The Commission is currently considering a proposal by the CCTA in *Proposal by the Canadian Cable Television Association to amend the policy regarding the use of local availabilities - Call for comments*, Broadcasting Public Notice CRTC 2004-47, and an application by Vidéotron ltée in Broadcasting Public Notice CRTC 2004-48, both also issued today, with respect to the policy regarding the use of local availabilities. The Commission advises parties that, in those proceedings, it will also consider mechanisms for using local availabilities to promote the mandated services. The determinations of the proposal and the application could therefore affect the Commission's determination with respect to this public notice.
23. With respect to the matters that are the specific subject of the present notice, the Commission invites comments concerning the following questions:
  - a) Should the Commission require distributors to dedicate a portion of their local availabilities to the promotion of the mandated services and, if so, should it require that such time be provided without charge to the service provider?

- b) Are there ways to provide distributors with an incentive to use local availabilities or other mechanisms for the promotion of the mandated services?
- c) Should the Commission amend its policies with respect to barker channels and/or community channels to require that a proportion of any time devoted to promotion be dedicated to the mandated services?
- d) Should the Commission require distributors to provide the mandated services with an opportunity to distribute billing inserts, and should these opportunities be made available for free?
- e) How could the Commission ensure that TV listing channels and/or electronic program guides contribute to the improved visibility of the mandated services?
- f) Should the tools used to promote and improve the visibility of the mandated services depend on the service in question? Specifically, should a commercial service, such as TVA, or a cable-owned service, such as CPAC, be able to access the promotional tools that are the subject of this notice?
- g) Are there any other mechanisms for ensuring the improved visibility of the mandated services?
- h) What is the best way to implement these new requirements? For example, should the Commission amend the relevant distribution orders?

24. The Commission will accept comments that it receives on or before **7 October 2004**.

25. The Commission will not formally acknowledge comments. It will, however, fully consider all comments and they will form part of the public record of the proceeding, provided that the procedures for filing set out below have been followed.

#### **Procedures for filing comments**

26. Interested parties can file their comments to the Secretary General of the Commission by using ONE of the following formats:

- Intervention/Comments form available from the Commission's web site by indicating and selecting the public notice number under the *Decisions, Notices and Orders* section

OR

- **by electronic mail to** [procedure@crtc.gc.ca](mailto:procedure@crtc.gc.ca)

OR

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

OR

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

27. Submissions longer than five pages should include a summary.
28. Please number each paragraph of your submission. In addition, please enter the line \*\*\*End of document\*\*\* following the last paragraph. This will help the Commission verify that the document has not been damaged during transmission.
29. The Commission will make comments filed in electronic form available on its web site at [www.crtc.gc.ca](http://www.crtc.gc.ca) but only in the official language and format in which they are submitted. Such comments may be accessed in the *Public Proceedings* section of the CRTC web site. Copies of all comments, whether filed on paper or in electronic form, will also be placed on the public examination file.
30. The Commission encourages interested parties to monitor the public examination file and the Commission's web site for additional information that they may find useful when preparing their comments.

**Examination of public comments and related documents at the following Commission offices during normal business hours**

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Secretary General

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