

## **Broadcasting Notice of Consultation CRTC 2013-19**

**Applications for mandatory distribution on cable and satellite distribution systems pursuant to section 9(1)(h) of the *Broadcasting Act* and applications for the licence renewal of independent conventional, pay and specialty services**

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**Oral Comments of the Public Interest Advocacy Centre, Consumers' Association of Canada, Council of Senior Citizens' Organizations of British Columbia, and the National Pensioners and Senior Citizens' Federation**

**(“PIAC/CAC/COSCO/NPSCF”)**

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Delivered on April 26, 2013

1. Good afternoon Mr. Chair and Commissioners of the panel. My name is Janet Lo and I am Legal Counsel to the Public Interest Advocacy Centre (PIAC). With me is Alysia Lau, PIAC's Articling Student. We are here today representing the Consumers' Association of Canada, the Council of Senior Citizens' Organizations of British Columbia, and the National Pensioners and Senior Citizens Federation.
2. We are pleased to appear before you today to share our views on the applications for mandatory distribution on basic service under s. 9(1)(h) of the *Broadcasting Act*. In particular, we would like to share with you Canadian consumers' views on the composition and affordability of the digital basic television service.

### **Basic Service Should be Basic**

3. The *Broadcasting Act* articulates the objective of affordability in s. 3(1)(t)(ii): "distribution undertakings should provide efficient delivery of programming at affordable rates." Our concern with affordability focuses on the entry-level point through which consumers access the regulated broadcasting system – that is, the affordability of basic television service.
4. Canadian consumers are concerned about the cost of basic television services and are sensitive to rate increases. Television is important to all Canadians as a lifeline connection to news and information about social and political events in their community. TV is also one of the least expensive forms of in-home entertainment.
5. Any rate increase to basic television service has a disproportionate impact on low-income Canadians. A rate increase could result in a reduced standard of living in the household in order to maintain the TV subscription, or a household decision to cut the cord to save the monthly expense.

6. And yet, all data shows the trend of rising cost of television services, increasing at a significantly higher rate than other communications services and the Consumer Price Index. Since the Commission deregulated basic television service in 1997, the average monthly rate for basic service has doubled. In our view, this access point to Canadian television – the basic television service – is currently not affordable.
7. But cost is not the only concern for Canadian consumers. Consumers want maximum choice and flexibility in the television services they subscribe to. PIAC's 2012 consumer survey shows that not only do consumers think the cost of television is too high, consumers are also dissatisfied with the level of flexibility and choice offered for television services.
8. The Commission has deregulated basic service and packaging requirements and as such, consumers rely only on effective competition in the marketplace to offer choice and flexibility in the packaging of services. However, competition is not working for all Canadian consumers. Increased BDU flexibility has not manifested in more flexible offerings to consumers in the television distribution market as BDUs continue to cram more services into basic service.
9. Consumers want a “skinny” all Canadian basic television service. A skinny basic service would meet Canadians' needs to access essential Canadian television services such as local and regional news and content, educational and community programming, and select services that make exceptional contributions to Canada's linguistic and ethno-cultural diversity – all at an affordable price. In our view, a skinny basic service would also give consumers the flexibility and choice to add to the basic service any channels they want. Consumers might be willing to pay for many of the applicants' services if the choice is offered in the market. However, this does not mean that the services should be forced into all basic service packages and paid for by all consumers.

[ALYSIA LAU]

### **The public interest balance in 9(1)(h) mandatory distribution status**

10. We recognize the value of the 9(1)(h) regulatory tool to ensure access to services that fulfill the specific needs of certain groups – needs that have not been met in the broadcasting market. However, consumer access to affordable and flexible basic service packages must be a central consideration for the Commission. Therefore, mandatory distribution is a regulatory tool that should be granted on an exceptional basis – the criteria for 9(1)(h) status should be applied narrowly. Furthermore, the full burden must be on the *applicants* to show that their service meets all of the 9(1)(h) criteria established by the Commission.
11. In our view, the public interest balance between access to exceptional services and consumer flexibility and affordability can be achieved if mandatory distribution is only granted in exceptional cases.
12. Many applicants in this proceeding are independent broadcasters and have referenced ongoing challenges in carriage negotiations with BDUs – and the vertically-integrated BDUs in particular. Thus, they maintain that they need mandatory distribution in order to be viable. This problem lies in the reluctance of the vertically-integrated BDUs to negotiate fairly with some independent services and should not be addressed with mandatory distribution.
13. We are very sympathetic to the plight of independent broadcasters – consumers do value the voices of independent broadcasters. Therefore, we support their request for a separate regulatory framework review.

[JANET LO]

## Our principles in assessing 9(1)(h) applications

14. To guide our examination of the applications for 9(1)(h) status, we established the following six consumer principles:

- **Principle 1: Access.** Canadians should have access to television services that meet specific diversity, cultural, linguistic and social needs that fulfill the objectives of the *Broadcasting Act* where those needs have not been met by the broadcasting market.
- **Principle 2: Affordability.** The cost of basic television service must be affordable so that cost is not a financial barrier to the ability of Canadians to access broadcasting services.
- **Principle 3: Consumer Choice.** Any restriction on consumer choice or flexibility to select the broadcasting services consumers want should be minimal and necessary.
- **Principle 4: Competition.** Competition is in the public interest if it encourages greater access to vital Canadian programming while passing through efficiencies such as lower prices, greater flexibility and choice to consumers. Where broadcasting needs and policy objectives are not met by market forces, regulatory tools may be needed to ensure that these needs and policy objectives are met. Broader problems with competition should be addressed in the regulatory framework, but not through mandatory distribution which imposes the maximum constraint on consumer choice and flexibility.
- **Principle 5: Uniqueness.** Mandatory distribution status should be granted in exceptional circumstances to meet unique, unmet broadcasting needs.
- **Principle 6: Transparency.** The wholesale rate must be transparent and clearly allocated to make exceptional contributions and commitments to Canadian programming.

15. We analyzed all of the applications for 9(1)(h) status and chose to support a select few services that, in our view, meet the Commission's criteria and our principles. We support renewal of mandatory distribution orders for APTN, Avis de Recherche, Canal M, CPAC, AMI-tv and AMI-audio subject to reservations noted in our written submission. We also support the applications of the Legislative Assemblies of Nunavut and the Northwest Territories, AMI-tv Français, All Points Bulletin, and ARTV again with reservations noted in our written submission.

**The Commission must consider the cumulative affordability impact of any approved applications**

16. Finally, we urge the Commission to examine the cumulative affordability impact of any applications that meet the 9(1)(h) criteria. An important component of the Commission's analysis will be scrutiny of the applicants' proposed wholesale rate.
17. However, the Commission's scrutiny cannot end there. BDUs have stated that approvals of 9(1)(h) status will result in a significant increase in the price of basic television services for their customers. We note that many BDUs are appearing next week, with the notable and disappointing exception of Bell who is a major BDU with a large subscriber base. We urge the Commission to ask all BDUs how any wholesale rates approved for mandatory distribution would manifest in price increases at the retail level. Moreover, the Commission should parse out the components of any markup to the wholesale rate. For instance, it is unclear whether BDUs expect to earn margin for the addition of mandatory distribution services, which consumers would pay for. In our view, it would be inappropriate for BDUs to use any approved 9(1)(h) service as an excuse to increase prices to consumers to expand their margins.

18. We also urge the Commission to ascertain the current cost and composition of the basic service offered by these BDUs. In our written intervention, we compiled the retail cost of basic service in select metropolitan markets for the Commission's information, but our market scan cannot be a substitute for comprehensive and proper information collection by the Commission.
  
19. Finally, we urge the Commission to examine BDUs' claims that 9(1)(h) services will restrict consumer flexibility for TV services. With respect, our view is that BDUs themselves control the level of packaging flexibility they offer consumers. Even if a few deserving services are awarded the privilege of mandatory distribution, this would not restrict BDUs' ability to give consumers more flexibility with non-9(1)(h) services.

## **Conclusion**

20. Thank you for the opportunity to present consumers' views on the cost and composition of the basic service in this proceeding.
  
21. We would be pleased to answer any questions.