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

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

("PIAC/CAC/COSCO/NPSCF")

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Executive Summary

ES1. The Public Interest Advocacy Centre (PIAC), Consumers' Association of Canada (CAC), Council of Senior Citizens' Organizations of British Columbia (COSCO), and the National Pensioners and Senior Citizens Federation (NPSCF), together "PIAC/CAC/COSCO/NPSCF", are pleased to provide comments on 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 television services* (21 January 2013), as modified by Broadcasting Notice of Consultation CRTC 2013-19-1 (5 February 2013)*.*

ES2. The primary consumer interest in broadcasting is ensuring that consumers benefit from access to a wide variety of programming in the broadcasting system that offers choice in an affordable manner. These values are reflected in several objectives of the *Broadcasting Act*, which focus on ensuring the Canadian broadcasting system provides access to programming that showcases Canadian expression and reflects the cultural, linguistic, and political diversity of all Canadians.

ES3. PIAC/CAC/COSCO/NPSCF's primary interest in this proceeding is ensuring that Canadians have access to the broadcasting system through affordable television services. Our affordability concern focuses on the entry-level point into accessing the broadcasting system – that is, the affordability of basic television service tiers. Concerns with the increasing cost of basic television service are shared by consumers at large. In a survey conducted by Environics for PIAC in August 2012, 82% of respondents said that the cost of television services was too high. Seniors in particular are concerned about the cost of basic television services. Television is important to seniors as an affordable form of entertainment, compared to "outside the home" entertainment, and an increase to the cost of basic television service could reduce the standard of living of seniors with low, fixed income.

ES4. PIAC/CAC/COSCO/NPSCF are troubled by trends suggested on the record of this proceeding. Many applicants expressed considerable challenges in negotiating carriage with Broadcasting Distribution Undertakings (BDUs) because they are often small-scale, independent broadcasters in discussions with more powerful BDUs who act as "gatekeepers" to consumers. This affects the ability of Canadians to access diverse, independent programming in the broadcasting system.

ES5. BDUs will no doubt argue that where additional services must be distributed on their basic service, their distribution requires additional costs for the BDU. BDUs may choose to pass on these charges to consumers directly by increasing their monthly cost of service and may expect to earn margin for the addition of mandatory distribution services. It is therefore unclear to PIAC/CAC/COSCO/NPSCF and to consumers how any increase in wholesale rates will manifest at the retail level. We urge the Commission to seek a full understanding of how any changes to wholesale rates will impact consumers at the retail level.

ES6. Given our concerns with the trend of increasing costs and package sizes of basic television service, it is important to carefully assess applications requesting mandatory distribution given the potential impact on consumer costs at the retail level for all television subscribers. Therefore, PIAC/CAC/COSCO/NPSCF have established the following six principles in assessing the applications for 9(1)(h) status:

1. Access
2. Affordability
3. Consumer Choice
4. Competition
5. Uniqueness
6. Transparency

ES7. PIAC/CAC/COSCO/NPSCF recognize the value of mandatory basic carriage to certain services. While we are very sympathetic to the challenges of independent broadcasters, we urge the Commission to apply the criteria for mandatory distribution narrowly to ensure a proper balance is struck between adding value to the broadcasting system through exceptional services and respecting key Commission objectives of consumer choice and flexibility in television services and affordable basic television services. Where broader problems with competition appear to emerge, such as in carriage negotiations with BDUs, the Commission should examine the ability of other policies in its regulatory framework to address these issues.

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1. Introduction

1. The Public Interest Advocacy Centre (PIAC), Consumers' Association of Canada (CAC), Council of Senior Citizens' Organizations of British Columbia (COSCO), and the National Pensioners and Senior Citizens Federation (NPSCF), together "PIAC/CAC/COSCO/NPSCF", are pleased to provide comments on 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 television services* (21 January 2013), as modified by Broadcasting Notice of Consultation CRTC 2013-19-1 (5 February 2013).

2. PIAC is a non-profit Ottawa-based organization that represents the concerns of ordinary and vulnerable consumers in important public services delivered by the private sector.[1] PIAC has previously been involved in Commission broadcasting proceedings where the consumer interest has been engaged and issues of access and affordability of broadcasting services are raised. CAC is an independent, non-profit, volunteer-based charitable organization with a mandate to inform and educate consumers on marketplace issues, to advocate for consumers with government and industry, and work with government and industry to solve marketplace problems.[2] COSCO is the largest federation of senior citizens' organizations in the province of British Columbia and is the umbrella organization of 79 seniors' organizations and a significant number of individual associate members.[3] NPSCF is a democratic, non partisan, non sectarian organization with the mission to stimulate public interest in the welfare of aging Canadians, composed of 350 seniors chapters and clubs across Canada with a collective membership of 1,000,000 Canadian seniors and retired workers.[4]

3. Broadcasting Notice of Consultation CRTC 2013-19 (21 January 2013) seeks comments on issues significant to Canadian television viewers and the Canadian broadcasting system, such as the composition and affordability of the digital basic television service. The Commission noted that mandatory distribution of programming services may constrain Canadians' choices over which services they receive, with cultural and financial impacts. These impacts are weighed against the benefits provided by the programming of these services and their contribution towards meeting the objectives of the *Broadcasting Act*.

4. In this intervention, PIAC/CAC/COSCO/NPSCF is only commenting on the sixteen applications of new and existing services for mandatory distribution status, and the six applications by existing services for renewal of their mandatory distribution status (section 1 and section 2 as described in the Notice of Consultation).

5. PIAC/CAC/COSCO/NPSCF request to appear at the oral hearing.

[1] See Public Interest Advocacy Centre, online: http://www.piac.ca.
[2] See Consumers' Association of Canada, online: http://www.consumer.ca/index.php4.
[3] See Council of Senior Citizens' Organizations of BC, online: http://coscobc.ca/.
[4] See National Pensioners and Senior Citizens Federation, online: http://www.npscf.org/.

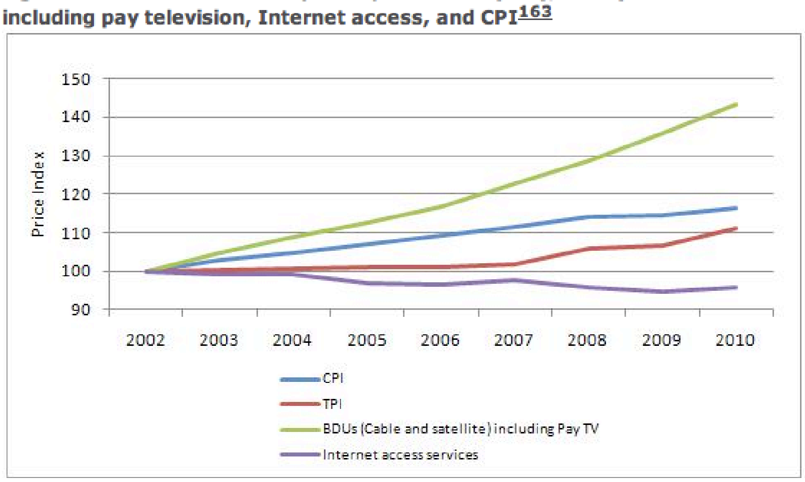
2. The Role and Importance of Basic Television Services to Canadians

6. The primary consumer interest in broadcasting is ensuring that consumers benefit from access to a wide variety of programming in the broadcasting system that offers choice in an affordable manner. These values are reflected in several objectives of the *Broadcasting Act*, which focus on ensuring the Canadian broadcasting system provides access to programming that showcases Canadian expression and reflects the cultural, linguistic, and political diversity of all Canadians. Balanced within these objectives is ensuring that Canadians can access programming tailored to Canadian communities that might not otherwise be served.

7. PIAC/CAC/COSCO/NPSCF's primary interest in this proceeding is ensuring that Canadians have access to the broadcasting system through affordable television services.[5] Our affordability concern focuses on the entry-level point into accessing the broadcasting system – that is, the affordability of basic television service tiers.

8. We have in past submissions to the Commission noted concern with the trend of rising prices for subscriptions to television services. Since 2002, BDU pricing has been on an upward trajectory in comparison with the overall consumer price index (CPI), increasing at a significantly higher rate than other communications services.

Figure 32 Price indices – telephone price index (TPI), BDU (cable and satellite), including pay television, Internet access, and CPI[163]



Source: Statistics Canada

Source: CRTC, "Navigating Convergence II: Charting Canadian Communications Change and Regulatory Implications" (2011) at p. 64-65, Figure 32.[6]

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[5] The *Broadcasting Act* articulates the objective of affordability in s. 3(1)(t)(ii).

[6] Figure 32 notes:

The TPI reflects the price changes experienced by a household for a basket of telephone services. The basket of telephone services reflects a weighted-average of consumer expenditures on basic local service, other local services (such as options and features), and long distance, installation and repair services. However, the TPI does not include wireless or Internet service expenditures. The BDU price index reflects the price changes experienced by a household for a basket of cable television services. The basket includes both "basic" and "extended" cable services. Basic cable service is the minimum service to which all customers must subscribe.

9. PIAC's scan of BDU basic service rates and packages suggests that basic service rates continue to increase, and that the average monthly rate for basic service has doubled since 1997 when basic service was deregulated.

Table 1: Average basic service monthly rates, 1996-1999

Distributor type	1996	1997	1998	1999
Class 1	$18.02	$18.70	$18.51	$19.02

Source: CRTC, Broadcasting Policy Monitoring Report 2000

Table 2: Basic service monthly rates, 2007

Cable Distributor	Basic package price
Rogers	$34.97 to $42.96
Shaw	$29.50
Mountain Cablevision	$47.95
Cogeco	$25.50
Videotron	$25.28

Source: PIAC market scan for Broadcasting Notice of Public Hearing CRTC 2007-10

Table 3: Basic service monthly rates, 2013

BDU	Basic Service Price
Bell (DTH)	$37.77 to $46.77
Bell Fibe TV	$43.41
Cogeco	$32.31
Rogers	$38.86
Shaw Cable	$34.90
Shaw Direct	$47.69
Telus Optik TV (IPTV)	$29.00 to $34.00

Source: PIAC market scan
See also Appendix A for PIAC's market scan comparing basic service package prices and number of included services for six local markets.

10. Seniors in particular are concerned about the cost of basic television services and sensitive to rate increases. An increase to the cost of basic television service could reduce the standard of living of seniors with low, fixed income. Television is important to seniors as an affordable form of entertainment, compared to "outside the home" entertainment. COSCO and NPSCF stress that their members stay connected to their communities through their televisions by keeping up with news and government actions that directly affect them and their involvement in the political process.

11. Concerns with the increasing cost of basic television service are shared by consumers at large. In a survey conducted by Environics for PIAC in August 2012, 82% of respondents said that the cost of television services was too high.[7] Consumers view large basic service tiers as impinging on their desired level of choice and flexibility in television

Extended service is the most popular package of additional channels. The index does not account for bundling discounts.

[7] PIAC notes that in a survey conducted in 2005, 44% of respondents stated that cable television service prices were too high.

services. PIAC's survey results in 2012 demonstrate that Canadian consumers continue to be dissatisfied with the level of flexibility and choice offered for television services:

- 39% of respondents were dissatisfied with the choice of pre-set packages offered by their television service provider;
- 35% of respondents were dissatisfied with the choice of additional pre-set "theme packs" of television channels;
- 43% of respondents were dissatisfied with their ability to pick and pay for a set number of television channels on top of their pre-set package; and
- 47% of respondents were dissatisfied with their ability to pick and pay for individual television channels on top of their pre-set package.

12. Where the Commission has deregulated basic service and packaging requirements, consumers rely only on effective competition in the marketplace to offer choice and flexibility in the packaging of services so that they can exercise choice. However, increased flexibility has not manifested in the television distribution market as broadcasting distribution undertakings have crammed more services into the composition of the lowest retail tiers, inflating the basic tier of service beyond the “basic” needs of consumers who have either less interest in or limited means to afford inflated services.

13. The Commission has previously expressed the view that the composition of the digital basic service should be informed by the policy objectives of the *Act* with a view to ensuring that subscribers have access to a basic service that among other things:
    - serves to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada;
    - is varied and comprehensive, providing a balance of information and entertainment programming at an affordable cost;
    - is drawn from local, regional, national and international sources;
    - includes educational and community programs; and
    - reflects and contributes to Canada's linguistic duality and ethno-cultural diversity, including the special place of Aboriginal peoples in Canadian society.[8]

14. We agree with the Commission's view of digital basic service, but stress that digital basic service has evolved into large package offerings that cram more services than needed to fulfill these policy objectives. The inclusion of more services leads to higher prices in the first access tier to television services, that is the basic television service.

15. Given our concerns with the current cost and composition of basic television service packages and the trend of increasing costs and package sizes of basic television service, it is important to carefully assess applications requesting mandatory distribution given the potential impact on consumer costs at the retail level for all television subscribers.

[8] Broadcasting Regulatory Policy CRTC 2010-629, *Criteria for assessing applications for mandatory distribution on the digital basic service*, at para. 10.

3. The Endangered Modern Broadcaster

16. PIAC/CAC/COSCO/NPSCF are troubled by trends suggested on the record of this proceeding. Many applicants describe challenges that are unique to independent broadcasters, particularly because the distribution market is dominated by a few large BDUs. These distributors act as a "gatekeeper" to consumers, which affects the ability of Canadians to access diverse, independent programming in the broadcasting system, and where the BDU refuses to offer the broadcasting service, this limits consumer choice.

17. Most of the applicants are independent broadcasters and some applicants have candidly commented on the challenges of independent broadcasters to launch, and if they successfully launch, to remain sustainable and viable. It appears that independent broadcasters attribute these challenges to the presence of large vertically integrated BDUs who are not only well-resourced, but also motivated to act anti-competitively. Some of these applicants state that they will only begin or continue to operate if they are granted mandatory distribution status, which suggests a broader problem with the ability of independent broadcasting services to contribute to the diversity of voices in the broadcasting system.

18. For example, Stornaway states:

> As a non-publicly-owned, non-vertically-integrated, smaller independent broadcaster, a 9(1)(h) order is fundamental to our ability to finance and deliver the service outlined in this application. We believe that the absence of such an order would make it impossible for this independent broadcaster to launch this service and to make this further contribution to the broadcasting system and the achievement of the objectives of the *Broadcasting Act* as outlined in our application.[9]

19. Vision TV states:

> 3. ... The recent unexpected and massive Consolidation and Vertical Integration within the broadcasting system has over-turned 90 years of previous practice and placed all leverage and bargaining power within the hands of a select few: Bell/CTV, Shaw/Corus/Global, Rogers/Citytv, and Quebecor/TVA. This previously prohibited state of affairs has completely up-ended the Canadian Broadcasting System, to the degree **that the ONLY way for an Independent Broadcaster such as VisionTV to remain an important alternative point of view and voice for Canada is through CRTC intervention and regulation.**
>
> 4. Without clear, effective regulation, (such as a 9(1)(h) mandatory order) there is little doubt that the Vertically Integrated companies will strive to eliminate most, if not all, Independent Players within the system over the next five years. This is not idle speculation – we have all seen and experienced first-hand the unfettered behaviour of the large players in the market-place. Their insatiable need to report every great profits every quarter must inevitably result in efforts to diminish the businesses and sustainability of non-owned services. Alas, the Commission's feeble "Code of Conduct" set out in the

[9] Stornaway, Application 2012-0705-1, Reply 2 to request for information at response to Question 22.

> Vertical Integration Policy released in 2011 has proven to be largely toothless and of no assistance.[10]

20. IDNR TV states:

> We believe that our independent status (i.e. not owned by one of the VI companies) is a contributing factor; notwithstanding the 3:1 rule we continue to experience difficulty in securing carriage despite the fact that IDNR-TV is offered for free to BDUs and that we have demonstrated significant support both from local communities and also from the natural resources industry.[11]

21. Maximum TV Canada states:

> Notwithstanding some modest protections introduced in the *Code of conduct for commercial arrangements and interaction* introduced in 2011-601, it remains inordinately difficult for independent services to secure carriage and build audiences and revenues, and get access to popular programming. Without access to the carriage and revenue streams that (for example) incumbent analog specialty channels enjoy because they had the good fortune to launch when the regulatory regime was more supportive, the independent services struggle to access capital, experienced talent, and top-drawer programming and are in some cases, more likely to sell out to one of the VI companies than to build robust businesses over the long term.[12]

22. Similarly, APTN states that it risks becoming marginalized in a broadcasting landscape dominated by a few, vertically-integrated, broadcasters.[13]

23. Many applicants expressed considerable challenges in negotiating carriage with BDUs because they are often small-scale, independent broadcasters in discussions with more powerful BDUs who act as “gatekeeper.” Below are examples of these challenges:

VisionTV:

> VisionTV has been providing service to Canadians for over a quarter of a century. As of September 2010 broadcast year, VisionTV was available to 9,325,802 home, but, as at 1 June 2012, we have been unable to secure long term distribution commitment contracts from Rogers, Cogeco, Shaw, Shaw Direct or Bell. Distribution agreements with these MSO’s expire during 2013. ... VisionTV has attempted repeatedly, and to no avail, to engage vertically-integrated BDUs in negotiations for long term distribution agreements, on a widely distributed digital tier sufficient to retain the level of distribution that VisionTV has had for more than two decades. Therefore, we have reason to believe that BDUs are awaiting the outcome of these 9(1)(h) proceeding before engaging in genuine negotiations.[14]

APTN:

> Given the increasingly competitive and conflicted nature of the distribution environment -- in which APTN’s largest Canadian competitors also control access to the vast majority of Canadian BDU subscribers – it is doubtful that competitive forces would enable APTN to negotiate carriage terms that would be sufficient to support APTN’s mandate and its contribution to the broadcasting system.[15]

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[10] Vision TV, Application 2012-0712-6, Supplementary Brief at paras. 3-4.
[11] IDNR-TV, Application 2012-0713-4, "Review of CRTC 9(1)(h) criteria as they apply to IDNR-TV" at p. 3.
[12] Maximum TV Canada, Application 2012-0707-7, Supplementary Brief at para. 56.
[13] APTN, Application 2012-0993-2, Supplementary Brief at p. 6.
[14] Vision TV, Application 2012-0712-6, Supplementary Brief at paras. 9-10.
[15] APTN, Application 2012-0993-2, Supplementary Brief at p. 18.

AMI:

> AMI is a small, not-for-profit independent broadcaster, unaffiliated with any vertically integrated media company or BDU. While we have been fortunate to have excellent relationships with major broadcasters and BDUs alike, we possess neither the economic clout nor the market power to negotiate on a level playing field with BDUs for carriage.[16]

Evan Kosiner:

> It is our opinion and based on experience working with BDUs that they would not voluntarily take on this service if it weren't mandated.[17]

Maximum TV Canada:

> However, securing carriage from BDUs, who are not receptive to the competition this service represents, makes 9(1)(h) status a prerequisite for launching the service. ... BDUs have developed stronger businesses and there is no longer any reason to deny the introduction of direct competition – especially since unregulated competitors such as OTT services are taking revenue away from the regulated system. ... MTC is completely dependent on distribution using the BDU platform and would be deemed competitive with the BDU and thus unwelcome.[18]

Starlight: The Canadian Movie Channel:

> However, whether or not BDUs would indeed carry the service on the same basis in the absence of any requirement to do so cannot be predicted or guaranteed. As a result, there is a real risk that market forces alone would not compel BDUs to carry the service.[19]

The Legislative Assemblies of Nunavut and Northwest Territories in their application state that they have been unsuccessful in attaining carriage on either satellite DTH service in their territories for several years.

24. Moreover, applicants referenced other concerns that threaten the sustainability of their services, such as relocation of their services to thinly distributed discretionary tiers or expensive tiers, and channel placement:

> VisionTV has had long experience with BDUs discharge of their privileged position as gatekeepers to sustainable access to distribution. Even with regulation as a dual status service, VisionTV has been subjected to arbitrary channel line-up changes; for examples, moved from positions in the 20s to positions in the 60s and 70s, with a significant effect on viewing and revenues, particularly with the service's older audience. ... Moreover, some large BDUs have already made known, their intention to remove services such as VisionTV from basic (or extended basic) at the first opportunity.[20]
>
> At a minimum, there is every reason to believe that following the fifth year BDUs could seek to reduce the service's monthly subscriber fee, relocate it on the dial, or some

[16] AMI-tv and AMI-audio, Applications 2012-0709-3, 2012-1095-5, 2012-1096-3, Supplementary Brief at para. 79.
[17] Evan Kosiner, Application 2011-1255-7, Reply 2 to Request for Information at response to Q12.
[18] Maximum TV Canada, Application 2012-0707-7, Supplementary Brief at paras. 4(e) and 50.
[19] Starlight: The Canadian Movie Channel, Application 2012-0714-2, Reply 1 to Request for Information at response to Q3.
[20] Vision TV, Application 2012-0712-6, Supplementary Brief at paras. 98-99.

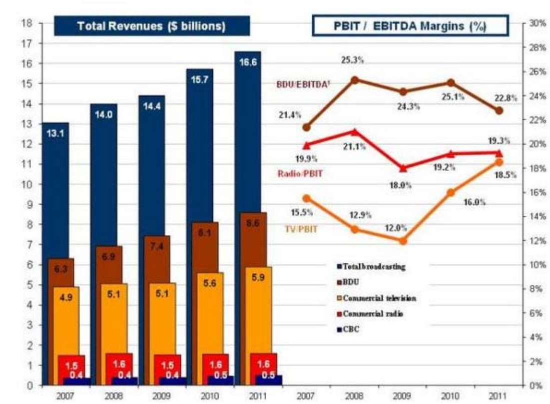
combination or threat of a combination of those activities. The longer the service has to establish itself with subscribers, the less likely that will be.[21]

25. PIAC/CAC/COSCO/NPSCF are concerned about the ongoing viability and sustainability of independent broadcasting services and its effect on Canadian access to diverse programming. Recent trends towards media consolidation and vertical integration threaten independent broadcasters and diversity of voices in the Canadian broadcasting system.

4. BDUs and Impact of Mandatory Increases to Wholesale Rates at the Retail Level

26. We note that the BDU sector has enjoyed significant growth and profitability. This is demonstrated by growing year-after-year average revenue per user (ARPU) and strong earnings before interest, tax, depreciation and amortization (EBITDA).

Figure 4.1.5 Total broadcasting revenues and PBIT/EBITDA margins



1. BDU revenues include non-reporting BDU revenues, but exclude exempt and non-programming services. BDU EBITDA represents only basic and non-basic services.
Source: CRTC data collection

Source: CRTC, 2012 Communications Monitoring Report

Table 4: Annual average BDU programming revenues per subscriber per month

Year	BDU programming revenues per subscriber per month*	% increase from previous year
2011	$61.86/mo	3.6%
2010	$59.73/mo	6.3%
2009	$56.18/mo	5.3%
2008	$53.36/mo	7.2%
2007	$49.79/mo	7.0%
2006	$46.56/mo	5.3%

Source: CRTC, 2012 Communications Monitoring Report, Table 4.4.1
* calculated by averaging total BDU revenues by total number of subscribers per month

[21] Starlight: The Canadian Movie Channel, Application 2012-0714-2, Reply 1 to Request for Information at response to Q3.

27. However, we note that this is an average and the entire industry may not enjoy the same level of revenue growth and profitability. For example, there are independent and small BDUs, some of which may operate on a non-profit basis within a municipality for instance. Small BDUs may also attempt to differentiate themselves from large BDUs that offer the "large package" cable model by offering innovative models with increased flexibility to consumers.

28. PIAC/CAC/COSCO/NPSCF note that approval of any mandatory distribution application could be accompanied by increased costs for subscribers to television services. It is unclear to PIAC/CAC/COSCO/NPSCF how any increase in wholesale rates will manifest at the retail level.

29. BDUs will no doubt argue that an increased wholesale rate is not the only cost they must factor in. Where additional services must be distributed on their basic service, BDUs may suggest that their distribution requires additional costs for the BDU. BDUs may choose to pass on these charges to consumers directly by increasing their monthly cost of service. It is also unclear to us whether BDUs would expect to earn margin for the addition of mandatory distribution services, which of course consumers would be expected to pay. We recognize that the Commission itself may not have this data to understand how monthly increases will manifest at the retail level - however, we urge the Commission to seek a full understanding of how any increases to wholesale rates will impact consumers at the retail level.

30. Some services request mandatory distribution without a proposed wholesale rate and their applications suggest that there should be no resultant increased cost to the consumer because there is no wholesale rate.[22] This assertion that there will be no increase to the retail cost of television service should be verified with the BDUs.

31. While we appreciate that BDUs are not required to pass on these costs to their customers, PIAC/CAC/COSCO/NPSCF are concerned that BDU subscribers will see price increases associated with Commission approval of mandatory distribution applications. We need only remind the Commission of the BDUs' track record in passing on separate line charges for the Local Programming Improvement Fund (LPIF), despite the Commission's explicit expectation that BDUs absorb the LPIF without the necessity of a price increase to subscribers.[23] Despite this explicit expectation, some BDUs passed on the cost of contributing to LPIF to their subscribers. PIAC previously submitted in the LPIF review hearing that the reason BDUs passed through the cost of contributing to LPIF to their subscribers was due to minimal competitive pressures for BDUs.[24]

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[22] For example, see the applications of IDNR-TV, Legislative Assemblies of Nunavut and the Northwest Territories, Canadian Punjabi Network, Maximum TV Canada.

[23] See Broadcasting Public Notice CRTC 2008-100 at para. 357: "In light of the performance levels of the BDU sector and the benefits accruing to BDUs as a result of other changes being made to the regulatory framework, the Commission is of the view that there is no justification for BDUs to pass along any increased costs relating to the LPIF - estimated to be on average approximately $0.50 per month - to their subscribers."

[24] See PIAC Intervention to Broadcasting Notice of Consultation CRTC 2011-788, *Review of Local Programming Improvement Fund* at paras. 11-18. See in the final decision, Broadcasting Regulatory

32. If prices in the market can be correspondingly raised at the retail level when the wholesale costs increase, this suggests a problem with the proper functioning of market forces in the retail BDU market which should be addressed by the Commission in a separate hearing.

5. The Public Interest Balance in 9(1)(h) Mandatory Distribution Status

33. The Commission in Broadcasting Regulatory Policy CRTC 2010-629 stated the view that there may be certain services for which mandatory basic carriage could be justified in a digital environment. The Commission noted that the distribution of such services as part of the basic service "ensures that they have access to a reasonably reliable revenue stream, thereby enabling them to meet meaningful programming obligations and contribute to the achievement of the objectives of the *Broadcasting Act*".[25] PIAC/CAC/COSCO/NPSCF recognize the value of mandatory basic carriage to certain services.

34. PIAC/CAC/COSCO/NPSCF generally supports the narrowly expressed criteria for 9(1)(h) status, which requires: exceptional contributions to the Canadian broadcasting system through Canadian expression and the digital basic service; exceptional commitments to original, first-run Canadian programming; and to meet an extraordinary need with the intended audience.[26]

35. We are, as noted above, concerned by the number of applications by independent broadcasters for national mandatory distribution and their arguments that they require this coveted status in order to be viable or remain sustainable. While we are sympathetic to the challenges of independent broadcasters, we urge the Commission to apply the criteria for mandatory distribution narrowly to ensure a proper balance is struck between adding value to the broadcasting system through exceptional services and respecting key Commission objectives of consumer choice and flexibility in television services and affordable basic television services.

Policy CRTC 2012-385, *Review of Local Programming Improvement Fund*, at para. 21. See in particular Commissioner Lamarre's dissent at para. 38.

[25] Broadcasting Regulatory Policy CRTC 2010-629, *Criteria for assessing applications for mandatory distribution on the digital basic service*, at para. 2.

[26] Broadcasting Regulatory Policy 2010-629 at para. 11.

6. Principles Guiding PIAC/CAC/COSCO/NPSCF's Examination of 9(1)(h) Applications

36. We have established the following six principles in assessing the applications for 9(1)(h) status.

37. **Principle One: 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.

38. **Principle Two: 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.

39. **Principle Three: Consumer Choice**
    * Any restriction on consumer choice or flexibility to select the broadcasting services consumers want should be minimal and necessary.

40. **Principle Four: Competition**
    * Competition is in the public interest if it encourages greater access to vital Canadian programming including news and information while passing through efficiencies in the form of lower prices and greater flexibility and choice for 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.
    * Where broader problems with competition appear to emerge, such as in negotiating carriage with BDUs, the Commission should examine the ability of its regulatory framework to address these issues. Requiring mandatory distribution on basic television service of all BDUs is a regulatory tool that imposes the maximum constraint on consumer choice and flexibility, thus the status should be granted sparingly.

41. **Principle Five: Uniqueness**
    * Mandatory distribution status should be granted in exceptional circumstances to services that meet unique, unmet broadcasting needs.

42. **Principle Six: Transparency**
    * The wholesale rate must be described transparently and clearly regarding how it will be allocated to make the exceptional contributions and commitments to Canadian programming.

7. Applications by New and Existing Programming Services for Mandatory Distribution Orders (Notice of Consultation Section 1)

7.1. Applications for new proposed services with mandatory distribution orders

7.1.1. The Legislative Assemblies of Nunavut and the Northwest Territories (Application 2012-1574-9)

43. The Legislative Assemblies of Nunavut and the Northwest Territories seek mandatory distribution of its services on the digital basic service of the direct-to-home satellite BDUs serving Nunavut and the Northwest Territories. PIAC/CAC/COSCO/NPSCF support the Legislative Assemblies' request for mandatory distribution in their territories; however, we prefer an alternative solution if it is available. The Legislative Assemblies' request for mandatory distribution is not accompanied by a request for a wholesale fee, meaning that the service is intended to be available without cost to subscribers. If mandatory distribution is granted, we submit that the status should not be granted indefinitely.[27]

44. This request is distinct from the other applications in this Notice of Consultation because it contains troubling suggestions that the two DTH satellite BDUs that service these areas have not been responsive to the Legislative Assemblies' persistent requests for carriage. PIAC/CAC/COSCO/NPSCF believe that the Legislatives Assemblies of Nunavut and the Northwest Territories meet the criteria for mandatory distribution on the digital basic service of DTH satellite BDUs serving Nunavut and the Northwest Territories. All Canadians should have access to programming that broadcasts the democratic and political decision-making processes at their regional and local levels as part of the digital basic service.

7.1.2. Evan Kosiner, on behalf of a corporation to be incorporated, Described Video Guide (Application 2011-1255-7)

45. Evan Kosiner seeks mandatory distribution of the Described Video Guide service on the digital basic service. The programming of the proposed service, Described Video Guide, will consist of information specific to BDUs regarding where television shows that are available with described video can be found on the dial. At this time, PIAC/CAC/COSCO/NPSCF oppose the request for mandatory distribution. We are concerned that the Applicant falls short in explaining that there is an "extraordinary need" among the intended audience for the proposed service given the application's reference to informal polls.[28]

46. The Applicant recognizes that DV-WG and AMI has established resources to assist consumers with questions about DV programming. The Applicant proposes to complement these existing resources to enhance access to broadcasting services by providing the channel number specific to each BDU in Canada. We question why BDUs do not provide this information in an accessible manner to their subscribers. Finally, we

[27] The Commission previously expressed concern with granting indefinite distribution orders in Broadcasting Regulatory Policy CRTC 2010-629 at para. 13.
[28] Evan Kosiner, Application 2011-1255-7, Reply 2 to Request for Information, response to Q8.

note that the Applicant has expressed willingness to work with DV-WG and AMI to further the development and share our resources to benefit their online/telephone guide service in order to better the lives of visually impaired Canadians. We would prefer initiatives to enhance existing services rather than the creation of an additional broadcasting service.

7.1.3. Canadian Punjabi Network Inc. (Application 2012-0679-8)

47. The Canadian Punjabi Network (CPN) requests mandatory distribution of its national ethnic third-language specialty Category B service on the digital basic service of all BDUs serving areas where more than 5,000 Punjabi speakers reside. Although PIAC/CAC/COSCO/NPSCF are supportive of third-language and ethnic television services, we oppose granting this service 9(1)(h) mandatory distribution status. While the service proposes to exceed Canadian expression and reflection made by Ethnic Category A services, it does not demonstrate that its contribution will significantly exceed the contributions normally made by a Category A service. While the service proposes interesting contributions for Canada's linguistic and ethno-cultural diversity, the Applicant has not demonstrated that it requires broad mandatory distribution in all BDU serving areas where more than 5,000 Punjabi speakers reside in order to fulfill its programming commitments.

48. Given that the Applicant is not requesting a wholesale fee, PIAC/CAC/COSCO/NPSCF would request a more detailed explanation of why they have not been able to secure carriage in these markets. The Applicant suggests that the problem is that BDUs may elect to ignore the service.

49. Finally, we are concerned that granting CPN mandatory distribution would encourage similar applications for mandatory carriage by other third-language services, which would significantly lower the threshold for 9(1)(h) status to a point where it is no longer reserved for exceptional cases.

7.1.4. La corporation de la télévision francophonie canadienne - ACCENTS (Application 2012-0683-9)

50. La Fondation canadienne pour le dialogue des cultures' proposed "ACCENTS" service focuses on the culture, history and concerns of minority Francophone communities in Canada. Although PIAC/CAC/COSCO/NPSCF believes it is important to support all Canadian OLMCs, many basic BDU packages already include French-language services, such as Station Radio-Canada and RDI, as well as TFO in Ontario. In fact, the Applicant noted that its service was meant to be complementary to these existing services.[29] PIAC/CAC/COSCO/NPSCF's principles of uniqueness, consumer choice and competition emphasize that a mandatory distribution service should be unique in meeting the needs of a specific community, and that a service should be left to competition in the market where the service is not unique or excessively restricts consumer choice. Although ACCENTS seeks to serve the needs of an important community, its proposals with respect to Canadian French programming lean against meriting the exceptional status that comes with national mandatory distribution.

[29] ACCENTS, Application 2012-0683-9, Mémoire Supplémentaire (Annexe 1A), p. 5.

51. Moreover, unfortunately the Applicant has not clearly justified its proposed wholesale rate of $0.25 or shown how the rate would impact the price of the basic package for consumers. Therefore, PIAC/CAC/COSCO/NPSCF oppose granting the Applicant's service 9(1)(h) status.

7.1.5. Stornoway Communications General Partnership Inc. and 1403318 Ontario Limited, carrying on business as Stornoway Communications Limited Partnership - FUSION (Application 2012-0705-1)

52. The Stornoway Communications' "FUSION" network proposes a multiplatform interactive service with "interactive zones" and live online feeds designed to attract the youth demographic. PIAC/CAC/COSCO/NPSCF oppose granting the FUSION service 9(1)(h) national mandatory distribution status. The Applicant has not successfully shown that it meets the 9(1)(h) criteria, particularly that it would not be able to fulfill its multiplatform programming commitments without mandatory distribution.

53. Notably, the Applicant has not justified the amount of its $0.32 proposed wholesale rate (for the English-language market) nor shown whether it would be widely acceptable to Canadians. Although the Applicant has made some commitments to original, first-run programming, it has not proven that there is extraordinary need among youth for a multiplatform interactive service. As a result, Stornoway Communication's request for mandatory distribution seriously restricts PIAC/CAC/COSCO/NPSCF's principles of consumer choice, affordability, and transparency. Specifically, FUSION has not demonstrated that its service warrants an imposed rate increase for BDU customers as well as a restriction on the flexibility to exclude the service from a basic cable package.

7.1.6. On Purpose TV Inc. (Application 2012-0707-7)

54. On Purpose TV Inc. seeks mandatory distribution of its national English-, French- and third-language video-on-demand (VOD) undertaking known as Maximum Television Canada (MTC) on the digital basic service. On Purpose TV does not propose a wholesale rate for the service, arguing that there will be no impact on the price of the basic package to consumers. Nonetheless, PIAC/CAC/COSCO/NPSCF oppose granting MTC mandatory distribution. In its application, MTC stresses its intention to act as a competitive VOD alternative for consumers. In our view, MTC's application fails in three respects. First, the applicant has not provided sufficient evidence that its programming service will make an exceptional contribution to the overall objectives of the digital basic service and to the objectives of the *Broadcasting Act*. Second, the applicant has not brought evidence of extraordinary need among the intended audience. Third, the Applicant has not demonstrated that it is dependent on broad national distribution to fulfill its programming commitments. Rather, the Applicant's business case suggests that BDUs will not negotiate carriage because MTC's service competes directly with BDUs' own VOD services. This issue, as outlined in PIAC/CAC/COSCO/NPSCF's competition principle, should not be addressed in the context of 9(1)(h) mandatory distribution status. If the Commission determines that such competition is needed, it should achieve this through another more appropriate regulatory mechanism.

7.1.7. Accessible Media Inc. (Application 2012-0709-3)

55. Accessible Media proposes "AMItv", a French-language described video service that would be 100% open format described video and closed captioning programming. PIAC/CAC/COSCO/NPSCF support granting AMItv 9(1)(h) national mandatory distribution status (for a $0.00 wholesale rate in the English-language market, as proposed by the Applicant) but oppose the proposed wholesale rate of $0.30. The objectives of the *Broadcasting Act* highlight the importance of strengthening the cultural, political, social and economic fabric of Canada. The Commission in its 9(1)(h) criteria stresses the need to reflect and portray persons with disabilities. PIAC/CAC/COSCO/NPSCF believe the Applicant has successfully shown that there is extraordinary need for a broadcasting service that specifically aims to meet the needs of Francophone individuals with disabilities. Furthermore, the Applicant has demonstrated the necessity of 9(1)(h) mandatory distribution by underlining that 65% of blind or partially sighted adults are unemployed and 50% live on less than $20,000 a year, so the majority do not purchase more than a basic BDU package.[30] Meanwhile, blind and partially-sighted Canadians spend more time with TV than any other type of media (radio and internet) - 44% spend two to three hours a day with TV.[31] Access should be a central aspect of the Canadian broadcasting system, so we would support AMItv's application for mandatory distribution.

56. However, PIAC/CAC/COSCO/NPSCF question the high proposed wholesale rate of $0.30. While we understand that the French-language market is smaller than the English market, the proposed rate is nonetheless 33% more than the rate for English-language AMItv and has not been fully justified by the Applicant.

7.1.8. 8094039 Canada Corp. - Starlight: The Canadian Movie Channel (Application 2012-0714-2)

57. 8094039 Canada Corp. seeks mandatory distribution on the digital basic service of its national English-language specialty Category B service to be known as Starlight: The Canadian Movie Channel for a proposed monthly wholesale rate of $0.45 per subscriber. The Applicant proposes to make significant contributions to Canadian expression and significant commitments to original, first-run Canadian programming in terms of exhibition and expenditures. PIAC/CAC/COSCO/NPSCF oppose Starlight's application for mandatory distribution.

58. In our view, the Applicant does not meet the criteria for mandatory distribution on the digital basic service in three respects. First, the Applicant fails to demonstrate how the programming of its service contributes in an exceptional manner to the overall objectives for the digital basic service. Second, in our view, the Applicant has not demonstrated that there is "extraordinary need" among the intended audience for the proposed service. The survey results suggest that there is strong interest in the service, but strong interest does not meet the evidentiary threshold of "extraordinary need" the proposed service. The Applicant must prove that their business plan is dependent on broad national distribution which constrains consumer choice in the most restrictive way

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[30] AMItv, Application 2012-0709-3, Appendix 1 – Supplementary Brief, paras. 77-78.
[31] *Ibid,* para. 48.

possible. Furthermore, the Applicant suggests that Canadian broadcasters continue to steadily reduce their support of Canadian feature films given the new definition of "programs of national interest". In our view, this is a broader problem with the broadcasting regulatory framework, which could be addressed through Commission scrutiny of regulatory framework issues at another time.

59. Third, and most significantly for PIAC/CAC/COSCO/NPSCF, the proposed service is the wholesale rate is the highest proposed wholesale rate of all applications for 9(1)(h) status and we are concerned with the affordability implications. The Applicant states that typically BDUs set a retail rate by doubling the wholesale rate.[32] While the Applicant's survey results found that 70% of respondents would support adding the Applicant's service to the basic services for 3 cents a day, the survey respondents respond to the hypothetical cost increase in isolation of other potential increases from other applicants for mandatory distribution orders. We question whether non-subscriber revenue sources have been fully explored. While the Applicant states the intention not to interrupt feature films with commercials, are other revenue sources possible such as commercial sponsorships? Finally, we question why Starlight does not seek a reduced monthly wholesale rate in French-language markets, given that it has not proposed commitments to French-language programming.

60. At present, PIAC/CAC/COSCO/NPSCF cannot support this application based on our principles of consumer choice, competition and affordability.

7.2. Applications by existing services for mandatory distribution orders

7.2.1. Takten Gyuermey Foundation (Application 2012-0670-7)

61. The Takten Gyurmey Foundation has applied for mandatory distribution status for its service, “EqualiTV,” which features original Canadian programming for individuals with disabilities. Although this service admirably seeks to broadcast original programming that reflects Canada’s social and cultural diversity, unfortunately PIAC/CAC/COSCO/NPSCF <u>oppose</u> granting its application for national mandatory distribution. While the Applicant has provided detailed information on the needs of individuals with disabilities, its proposal comes short of expanding on how its programming intends to meet those needs. The Applicant has also not successfully shown that the contribution it intends to make to Canadian expression and reflection significantly exceeds that normally made by a Category A service. For instance, the Applicant has only committed to broadcast 12 hours of original Canadian content per week, and spending 40% of revenues on CPE which is comparable to Category A services.[33]

62. Furthermore, the Applicant has proposed a wholesale rate of $0.25 with no explanation for that amount or its impact on consumers. At present, therefore, PIAC/CAC/COSCO/NPSCF cannot support this application based on our principles of consumer choice, affordability, transparency and uniqueness of a service.

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[32] Starlight: The Canadian Movie Channel, Application 2012-0714-2, Supplementary Brief at para. 136.
[33] EqualiTV, Application 2012-0670-7, Submission regarding proposed revisions to the criteria used to assess applications for mandatory distribution pursuant to an order under section 9(1)(*h*) of the *Broadcasting Act,* p. 17.

7.2.2. TVA Group Inc. and Sun Media Corporation, carrying on business as Sun News General Partnership (Application 2012-0687-1)

63. TVA Group Inc. and Sun Media Corporation seek mandatory distribution on the digital and analog basic service for national English-language specialty national news Category C service Sun TV News. PIAC/CAC/COSCO/NPSCF oppose granting this service 9(1)(h) status. In our view, the Applicant has not met the criteria for mandatory distribution. Specifically, the Applicant has not provided sufficient evidence that its programming contributes, in an exceptional manner, to the overall objectives of the digital basic service and the objectives of the *Broadcasting Act*. Given that the Commission has already determined that Category C news services are sufficiently competitive, special regulatory status for mandatory distribution is not necessary. Therefore, PIAC/CAC/COSCO/NPSCF would recommend leaving the continuation of this service to consumer choice and market competition so that mandatory distribution is only granted in exceptional circumstances. We contend that the Applicant has not provided sufficient evidence of "extraordinary need" among the intended audience for the Sun News service.

64. Finally, we are not satisfied with the response of the Applicant with respect to the likely impact of the proposed wholesale rate of $0.18 on English language households and $0.09 on French language households. The Applicant has not justified the amount of its proposed wholesale rate nor shown whether it would be widely acceptable to Canadians. As a result, granting the Sun News service mandatory distribution would unduly restrict PIAC/CAC/COSCO/NPSCF's principles of consumer choice, competition, and affordability.

7.2.3. All Points Bulletin Incorporated (Application 2012-0689-7)

65. All Points Bulletin seeks mandatory distribution in markets outside Quebec for its public safety and crime prevention television service. PIAC/CAC/COSCO/NPSCF support the Applicant's request for 9(1)(h) status, but recommends further scrutiny of the Applicant's proposals with respect to described video and closed captioning requirements. PIAC/CAC/COSCO/NPSCF agree that All Points Bulletin is a unique service that provides educational and community programs that promote public safety. Furthermore, since its 2006 application, All Points Bulletin has improved the practicality of its service on a national level, although we would appreciate more details on All Points Bulletin's intended programming. Finally, the Applicant has shown its commercial non-viability without 9(1)(h) status, since only one small BDU has agreed to carry the service thus far. This goes to PIAC/CAC/COSCO/NPSCF's principles of access, uniqueness, and fair competition, as the marketplace has shown that the larger, vertically-integrated BDUs have refused to carry a service that greatly enhances public safety and promotes public interest and diversity in the Canadian broadcasting system without placing undue financial burden on consumers.

66. The Applicant's proposed wholesale rate of $0.06 also appears reasonable given the service's inability to rely on other funding sources such as advertising. However, having examined the Applicant's arguments for less stringent described video and closed captioning conditions of licence, PIAC/CAC/COSCO/NPSCF would request a more

detailed explanation of why closed captioning should not apply to All Points Bulletin's live and near-live programming.

7.2.4. TV5 Québec Canada (Application 2012-0711-8)

67. TV5 Québec Canada has sought national mandatory distribution status for its TV5 International and TV5 Interregional services. Although PIAC/CAC/COSCO/NPSCF strongly support French language programming, we oppose granting mandatory carriage status to the TV5 services. The Applicant promises to showcase a huge range of original French programming that will reflect the diversity of the Canadian and international Francophone community. Although PIAC/CAC/COSCO/NPSCF support these objectives, the Applicant has not shown that its intended contribution to Canadian expression and reflection significantly exceeds that normally made by a Category A service nor that its service aims to support specific marginalized groups, such as OLMCs. Furthermore, the Applicant has not proven that its business plan requires national distribution in order to fulfill TV5's programming commitments. PIAC/CAC/COSCO/NPSCF do not see TV5 as a unique service that meets the specific needs of particular groups, and submits that its ongoing operation be left to our principles of consumer choice and market competition.

7.2.5. ZoomerMedia Limited (Application 2012-0712-6)

68. ZoomerMedia has sought national mandatory distribution status for its English-language multi-faith, multicultural specialty service, "Vision TV." Although Vision TV's mandate greatly enhances Canadian religious expression, PIAC/CAC/COSCO/NPSCF must oppose granting this service 9(1)(h) status. PIAC/CAC/COSCO/NPSCF recognize that Vision TV is a unique multi-faith service whose audience is primarily an older segment of the Canadian population with fixed incomes.[34] It certainly reflects Canadian attitudes, ideas and values, although the 9(1)(h) criteria do not specifically mention religious expression. However, the Applicant has not demonstrated that it is dependent on broad national distribution to fulfill its programming commitments. Rather, the Applicant's business case has shown that the problem lies in the reluctance of the vertically-integrated BDUs to negotiate fairly with some independent services. This issue, as outlined in PIAC/CAC/COSCO/NPSCF's competition principle, should not be addressed in the context of 9(1)(h) mandatory distribution status. We fear that granting Vision TV mandatory distribution would significantly lower the threshold for 9(1)(h) status to a point where it is no longer reserved for exceptional cases. Therefore, we oppose the Applicant's request for mandatory distribution but urge the Commission to scrutinize competition issues in the broadcasting market at another time.

7.2.6. The Natural Resources Television Channel - IDRN-TV/IDNR-TV (Application 2012-0713-4)

69. The Natural Resources Television Channel service, "IDNR-TV," dedicated to programming for resource-based communities, has requested mandatory distribution status. Although PIAC/CAC/COSCO/NPSCF acknowledge the Applicant's consideration of consumers in proposing a $0.00 wholesale rate, as well as its commitment to 100% Canadian content, PIAC/CAC/COSCO/NPSCF must oppose granting this service

[34] Vision TV, Application 2012-0712-6, Supplementary Brief, para. 12.

mandatory carriage. The Applicant has simply not demonstrated that its service's contribution to Canadian expression and reflection significantly exceeds that normally made by a Category A service nor that there is extraordinary need among the intended audience for the service. Therefore, PIAC/CAC/COSCO/NPSCF would recommend leaving the continuation of this service to consumer choice and market competition so that mandatory distribution is only granted under exceptional circumstances.

7.2.7. Education Through Media (Application 2012-0715-0)

70. Education Through Media has requested mandatory distribution for its service, "Dolobox TV," a User Generated Content-oriented channel that airs broadcasts written by youth. Although PIAC/CAC/COSCO/NPSCF strongly encourage youth expression and participation in Canadian broadcasting, unfortunately we <u>oppose</u> granting this service 9(1)(h) mandatory distribution status. The service certainly seeks to foster the social and cultural identity of Canadian youth. However, the Applicant has not demonstrated that it requires broad national distribution in order to fulfill its programming commitments. With respect to financial viability, for instance, the Applicant has noted that commercial sponsorships, charitable foundations, and government support are also other potential sources of funding.[35] Therefore, PIAC/CAC/COSCO/NPSCF submit that this service does not warrant exceptional 9(1)(h) status, which would restrict consumer flexibility and affordability. The ongoing operation of this service should be left to consumer choice and the natural forces of competition so that mandatory distribution is only granted under exceptional circumstances.

7.2.8. Canadian Broadcasting Corporation, on behalf of ARTV inc. (Application 2013-0002-9)

71. PIAC/CAC/COSCO/NPSCF note that ARTV is no longer applying for 9(1)(h) mandatory distribution but requests right of access (a type of "mandatory offer") on digital service in English-language markets. PIAC/CAC/COSCO/NPSCF <u>support</u> ARTV's request. ARTV showcases French-language arts as well as Canadian culture, which go directly to the objectives of the *Broadcasting Act*, and PIAC/CAC/COSCO/NPSCF believe consumer choice should not be restricted by the types of services offered by, in many cases, the national vertically-integrated BDUs. Moreover, there is a limited number of French services offered outside of Québec, and consumers living in Francophone OLMCs in particular should, at the least, have the choice to order ARTV. As ARTV has demonstrated, many BDUs have simply chosen not to offer ARTV outside of Quebec.[36]

8. Applications by Existing Programming Services for Renewal of Mandatory Distribution Orders

8.1. Aboriginal Peoples Television Network Incorporated (Application 2012-0993-2)

72. The Aboriginal Peoples Television Network (APTN) requests renewal of its 9(1)(h) status for mandatory distribution of its service. The Commission has previously recognized

[35] Dolobox TV, Application 2012-0715-0, Reply 1 to CRTC 18 July 2012 letter (24 August 2012), p. 22.
[36] Application 2013-0002-9, Avis de consultation de radiodiffusion CRTC 2013-19, article 16 : Demande 2013-0002-9 (ARTV), para. 10 and Annexe C.

acknowledged the enormous social benefit of APTN in strengthening the cultural identity of Aboriginal peoples and offering a cultural bridge between Aboriginal and non-Aboriginal Canadians. PIAC/CAC/COSCO/NPSCF support APTN's application for 9(1)(h) status renewal.

73. In our view, APTN meets the test for exceptional contributions to Canadian expression, contributes in an exceptional manner to the overall objectives for digital basic service and the objectives of the *Broadcasting Act*, and makes exceptional commitments to original, first-run Canadian programming in terms of exhibition and expenditures. It has also proven that there is an extraordinary need among the intended audience for the proposed service. Thus, we believe that all Canadians should have access to this unique and important service on the digital basic service.

74. APTN also proposes a monthly wholesale rate increase from $0.25 to $0.40 per subscriber. In our view, this is not an insignificant rate increase. APTN has stated that the increased rate will be used for three purposes: (1) maintaining its resource base at a level comparable to its base in 2005; (2) improvements in news and information programming which will engage more independent producers; and (3) providing additional new programming in Aboriginal languages and on multiple platforms. APTN notes that its primary strategic priority is to engage and serve the growing younger Aboriginal population in Canada. We support an increase to APTN's wholesale rate to maintain its resource base. However, although its other initiatives are admirable, we are sensitive to the affordability concerns of consumers and hesitate to support the entire proposed rate increase at this time. APTN argues that its proposed rate is proportionate to the resources available in the broadcasting system, given that BDUs are experiencing growth and consistently high profitability.[37] APTN appears to argue that BDUs should absorb the proposed wholesale rate increase. However, as we noted above, it is more likely that BDUs will pass on to subscribers any wholesale rate increase.

8.2. Avis de recherche incorporée (Application 2012-1051-7)

75. Avis de recherche seeks a renewal of its licence with 9(1)(h) status, as well as an increase in its wholesale rate to $0.08. PIAC/CAC/COSCO/NPSCF support the renewal of 9(1)(h) status for this service. Avis de recherche provides a unique service that includes educational and community programs that promote public safety. However, based on our principle of affordability and transparency, we question the proposed wholesale rate increase, as well as the Applicant's requests for less stringent described video and closed captioning requirements. The Applicant states that closed captioning costs consume 66% of its revenue.[38] However, it has puzzlingly requested a 33% increase in its wholesale rate in addition to a decrease in its described video and closed captioning obligations. Therefore, PIAC/CAC/COSCO/NPSCF oppose both the rate increase and the request to reduce described video and closed captioning requirements unless the Applicant provides a fuller justification for its requests.

[37] APTN, Application 2012-0993-2, Supplementary Brief, pp. 14-15.
[38] Avis de recherche, Application 2012-1051-7, Reply 1 to CRTC letter of 18 May 2012, Annexe 1, pp. 2-3.

8.3. Accessible Media Inc. (Application 2012-1095-5)

76. Accessible Media requests renewal of its 9(1)(h) status for mandatory distribution of its English-language described video digital specialty service, AMI-tv. PIAC/CAC/COSCO/NPSCF <u>support</u> AMI-tv's application for 9(1)(h) status renewal at the current wholesale rate of $0.20 in anglophone markets and $0.00 in francophone markets. The Commission in its 9(1)(h) criteria stresses the need to reflect and portray persons with disabilities. PIAC/CAC/COSCO/NPSCF believe that the Applicant has successfully shown that there continues to be extraordinary need for a broadcasting service for Anglophone individuals with disabilities. Furthermore, the Applicant has demonstrated that it meets the criteria for mandatory distribution pursuant to an order under s. 9(1)(h). In particular, AMI-tv contributes to the fulfillment of s. 3(1)(p) of the *Broadcasting Act* and increases access to programming by blind and partially sighted Canadians. Access should be a central aspect of the Canadian broadcasting system, so we would support AMI-tv's application for renewed mandatory distribution. Furthermore, AMI-tv proposes to maintain the monthly wholesale subscriber fee for AMI-tv of $0.20 in anglophone markets, and $0.00 in francophone markets to keep the service affordable for audience and BDU partners that distribute the service. PIAC/CAC/COSCO/NPSCF agree that mandatory distribution is necessary to ensure that BDUs carry this service on basic service.

8.4. Accessible Media Inc. (Application 2012-1096-3)

77. Accessible Media requests renewal of its 9(1)(h) status for mandatory distribution of its English-language audio television programming service, AMI-audio. PIAC/CAC/COSCO/NPSCF <u>support</u> AMI-audio's application for 9(1)(h) status renewal at the current wholesale rate of $0.04 in anglophone markets. The Commission in its 9(1)(h) criteria stresses the need for service to persons with disabilities. PIAC/CAC/COSCO/NPSCF believe that the Applicant has successfully shown that there continues to be extraordinary need for a broadcasting service for Anglophone individuals with disabilities. Furthermore, the Applicant has demonstrated that it meets the criteria for mandatory distribution pursuant to an order under s. 9(1)(h). In particular, AMI-audio contributes to the fulfillment of s. 3(1)(p) of the *Broadcasting Act* and increases access to programming by blind, partially sighted, and print-restricted Canadians. Access should be a central aspect of the Canadian broadcasting system, so we would support AMI-audio's application for renewed mandatory distribution. Furthermore, AMI-audio proposes to maintain the monthly wholesale subscriber fee for AMI-audio of $0.04 in anglophone markets to keep the service affordable for audience and BDU partners that distribute the service. PIAC/CAC/COSCO/NPSCF agree that mandatory distribution is necessary to ensure that BDUs carry this service on basic service.

8.5. Cable Public Affairs Channel Inc. (Applications 2012-1107-8 and 2012-1109-4)

78. The Cable Public Affairs Channel (CPAC) requests renewal of its 9(1)(h) status for mandatory distribution of its service on the digital basic service. PIAC/CAC/COSCO/NPSCF <u>support</u> CPAC's application for 9(1)(h) status renewal and <u>support</u> the proposed wholesale rate increase. PIAC/CAC/COSCO/NPSCF believe that CPAC is unique service that connects Canadians to political and democratic processes and provides access to political and democratic decision-making processes that affect

the lives of all Canadians. We wholeheartedly agree with CPAC's submission that "the need for CPAC is directly related to the need for unobstructed and easily accessed window into the daily life of Canadian democracy."[39] We agree that CPAC is not viable without 9(1)(h) status, given that it would not be distributed voluntarily on the basic service without the order and the fact that CPAC is not permitted to broadcast advertising. CPAC also proposes a monthly wholesale rate increase from \$0.11 to \$0.12. In our view, this increase is reasonable to ensure that CPAC can remain sustainable and continue to provide exceptional coverage of Canadian democracy and politics.

8.6. Vues & Voix (Application 2012-1411-3)

79. Vues & Voix requests a renewal of its mandatory carriage licence for its reading radio service, “Canal M.” PIAC/CAC/COSCO/NPSCF <u>support</u> the renewal of Canal M’s 9(1)(h) status but <u>oppose</u> the proposed wholesale rate increase. PIAC/CAC/COSCO/NPSCF believe that Canal M is a unique service that creates accessible general, social and cultural information to individuals who are illiterate or who have visual impairments. Based on our principle of access, it is important that the Canadian broadcasting meet the needs of groups who have limited access to Canadian expression and creativity, consistent with s. 3(1)(p) of the *Broadcasting Act*. The Commission’s 9(1)(h) criteria specifically mention the needs of persons with disabilities.

80. However, PIAC/CAC/COSCO/NPSCF oppose the Applicant’s proposed 100% wholesale rate increase. The Applicant has stated that the increased rate will be used for several purposes, including acquiring more original programming, producing special programming, and developing an interactive web platform.[40] Although these objectives are admirable, we are sensitive to the affordability concerns of consumers, and do not believe a 100% rate increase is justified at this time. PIAC/CAC/COSCO/NPSCF would be more prepared to support a \$0.01 increase to a total monthly subscriber wholesale rate of \$0.03.

9. Summary of PIAC/CAC/COSCO/NPSCF's Positions on Applications for 9(1)(h) Status

81. We urge the Commission to examine the cumulative wholesale rate impact of any applications that it may approve.

82. To assist the Commission, the following tables summarize PIAC/CAC/COSCO/NPSCF's positions on the applications for 9(1)(h) status in this proceeding and the cumulative required wholesale rate if the applications we support are granted mandatory distribution.

[39] CPAC, Schedule "2" Supplementary Brief at p. 10.
[40] Canal M, Application 2012-1411-3, Annexe 1: Mémoire supplémentaire, p. 23.

Table 5: PIAC/CAC/COSCO/NPSCF Positions on New and Existing Services Requesting 9(1)(h) Status

SERVICE	English-language proposed wholesale rate	French-language proposed wholesale rate	POSITION
1. Legislative Assemblies of Nunavut and NWT	$0.00 (only NWT/Nunavut)	--	YES
2. Evan Kosiner, Described Video Guide	$0.02	--	NO
3. Canadian Punjabi Network Inc	$0.00	$0.00	NO
4. ACCENTS	$0.25	$0.25	NO
5. Stornoway FUSION	$0.32	$0.16	NO
6. Maximum Television Canada	$0.00	$0.00	NO
7. Accessible Media Inc.	--	$0.30	YES - concern with rate proposed
8. Starlight: Canadian Movie Channel	$0.45	$0.45	NO
9. EqualiTV	$0.25	$0.25	NO
10. TVA Group Sun TV News	$0.18	$0.09	NO
11. All Points Bulletin	$0.06	--	YES
12. TV5 Quebec Canada	$0.30	$0.30	NO
13. Zoomer Canada's Faith Network	$0.12	$0.12	NO
14. Natural Resources TV Channel	$0.00	$0.00	NO
15. Dolobox TV	$0.04	$0.04	NO
16. CBC ARTV	--	--	YES to mandatory offer
Cumulative wholesale rate of above services supported by PIAC/CAC/COSCO/NPSCF (if rate proposal approved without modification)	**$0.06**	**$0.30**	

Table 6: PIAC/CAC/COSCO/NPSCF Positions on Existing Services Requesting Renewal of 9(1)(h) Status

SERVICE	English-language proposed wholesale rate	French-language proposed wholesale rate	POSITION
17. Aboriginal Peoples Television Network	$0.40 ($0.25*)	$0.40 ($0.25*)	YES to renewal YES to rate increase component to maintain base
18. Avis de recherche incorporée	--	$0.08 ($0.06*)	YES to renewal NO to rate increase
19. Accessible Media	$0.20	$0.00	YES to renewal
20. Accessible Media	$0.04	--	YES to renewal
21. CPAC	$0.12 ($0.11)	$0.12 ($0.11*)	YES to renewal YES to rate increase
22. Vues & Voix Canal M	--	$0.04 ($0.02*)	YES to renewal NO to rate increase
Cumulative wholesale rate of above services supported by PIAC/CAC/COSCO/NPSCF (if rate proposal approved without modification)	**$0.76**	**$0.64**	

* denotes current wholesale rate

Table 7: PIAC/CAC/COSCO/NPSCF Positions on Existing Services With Approved 9(1)(h) Status Outside Scope of Hearing

SERVICE	English-language proposed wholesale rate	French-language proposed wholesale rate
CBC News Network	--	$0.15
Réseau de l'information	$0.10	--
Weather Network/Météomedia	$0.23	$0.23
TVA	$0.00	$0.00
Cumulative wholesale rate of above services	**$0.33**	**$0.38**

Table 8: Total wholesale rate and number of services for mandatory distribution supported by PIAC/CAC/COSCO/NPSCF

Services	English-language proposed wholesale rate	# of services	French-language proposed wholesale rate	# of servic es
Cumulative wholesale rate of already approved mandatory distribution services	$0.33	3	$0.38	3
Cumulative wholesale rate of services seeking renewal of mandatory distribution status supported by PIAC/CAC/COSCO/NPSCF**	$0.76	4	$0.64	5
Cumulative wholesale rate of new and existing services seeking mandatory distribution status supported by PIAC/CAC/COSCO/NPSCF**	$0.06	1	$0.30	1
TOTAL	**$1.15**	**8**	**$1.32**	**9**

** this assumes that the rate proposed by these services is approved by the Commission without modification. PIAC/CAC/COSCO/NPSCF note that we have presented concerns with the some of the proposed rates in earlier arguments.

10. Conclusion

83. We reiterate our view that the primary consumer interest in broadcasting is ensuring that Canadian consumers benefit from access to a wide variety of Canadian programming in the broadcasting system that offers choice in an affordable manner.

84. PIAC/CAC/COSCO/NPSCF urge the Commission to apply the criteria for mandatory distribution narrowly to each application to ensure a proper balance is struck between adding value to the broadcasting system through exceptional services and respecting key Commission objectives of consumer choice and flexibility in television services. The Commission should also scrutinize whether the proposed wholesale rate is indeed justified.

85. Finally, we urge the Commission to consider the impact of the cumulative wholesale rate of any applications that are deserving of mandatory distribution status on the affordability of the retail cost for basic television services paid by Canadian consumers.

APPENDIX A:

Selected Metropolitan Market Comparison of Basic Television Service Monthly Rates, 2013

VANCOUVER		
Company	**Monthly Rate ($)**	**# Channels in Basic Package**
Novus (Cable)	24.95	70 channels (40 Music)
Shaw (Cable)	34.90	120 (20 HD, 60 Music)
Telus Satellite (DTH)	32.90 (includes $3.00 LPIF)	79 (22 HD, 50 Music)
Telus Optik (IPTV)	29.00	125 (20 HD, 74 Music)

CALGARY		
Company	**Monthly Rate ($)**	**# Channels in Basic Package**
Bell (DTH)	37.77 (includes $3 digital service fee, $0.20 LPIF)	157 (30 HD, 70 Music)
Shaw (Cable)	34.90	120 (20 HD, 60 Music)
Telus Satellite (DTH)	37.90 (includes $3.00 LPIF)	182 (20 HD, 73 Music)
Telus Optik (IPTV)	34.00	244 (42 HD, 166 Music)

WINNIPEG		
Company	**Monthly Rate ($)**	**# Channels in Basic Package**
Bell (DTH)	37.77 (includes $3 digital service fee, $0.20 LPIF)	157 (30 HD, 70 Music)
MTS (IPTV)	41.50	100 (90 Music)

TORONTO		
Company	**Monthly Rate ($)**	**# Channels in Basic Package**
Bell (DTH)	46.77 (includes $3 digital service fee, $0.20 LPIF)	157 (30 HD, 70 Music)
Bell Fibe (IPTV)	43.41	147 (23 HD, 70 Music)
Cogeco (Cable)	39.64 (includes LPIF)	100 (40 Music)
Rogers (Cable)	38.86 (includes $2.99 digital service fee, 1.5% LPIF)	60 (40 HD, 70 Music)

HALIFAX		
Company	**Monthly Rate ($)**	**# Channels in Basic Package**
Bell (DTH)	37.87 (includes $3 digital service fee, $0.30 LPIF)	157 (30 HD, 70 Music)
Bell Aliant (Cable)	58.95 (unbundled price)	45
Bell Aliant FibreOP TV (IPTV)	58.95 (unbundled price)	45
Eastlink (Cable)	29.98	82
Shaw Direct (DTH)	$47.69	104 (41 Music)

MONTRÉAL		
Company	**Monthly Rate ($)**	**# Channels in Basic Package**
Bell (DTH)	33.10 (includes $3 digital service fee, $0.10 LPIF)	100 (19 HD, 62 Music)
Bell Fibe (IPTV)	33.27	95 (18 HD, 52 Music)
Cogeco (Cable)	32.31 (includes LPIF)	47 channels (40 Music)
Vidéotron (Cable)	25.23	108 (0 HD, 56 Music)

Source: PIAC market scan

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