



February 22, 2008

Fifteen pages

Mr. Robert A. Morin
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario
K1A 0N2

Dear Mr. Morin:

Re: *Broadcasting Notice of Public Hearing CRTC
2007-10-01,02,03,04 – Review of the regulatory
frameworks for broadcasting distribution
undertakings and discretionary programming
services*

1. Friends of Canadian Broadcasting welcomes the opportunity to comment on selected submissions of other parties in response to the Notice. Friends is a watchdog for Canadian programming supported financially by 100,000 Canadians. The following comments should be read in conjunction with our October 19th and January 25th submissions.
2. In the first phase of this process, broadcasting distribution undertakings (BDUs), with considerable endorsement from the Dunbar-Leblanc report and, to some extent, the Commission's own call, argued for virtually total BDU deregulation. In essence: let market forces (in our view a euphemism for BDU operators) decide what is in the public interest. Get rid of the access rules, as well as the tiering and linkage rules that have, until now, ensured that less popular but nonetheless important services continue to form a part of the fabric of a diverse Canadian

broadcasting system. Then allow BDUs to bring in any American service that they wish, excepting only those that compete directly with existing Canadian services.

3. All this would have the effect of ensuring that there would be absolutely no chance for the proven successful model of Canadianizing popular US networks to remain viable in future years. At the same time, the BDUs have advocated a move to a simple preponderance test for the carriage of Canadian channels. On most systems this would likely lead to a significant drop in the number of Canadian channels carried and a substantial drop in Canadian program spending.¹ Even the long-standing practice of simultaneous substitution, which the Commission developed decades ago, has been called into question.
4. When, on November 5th, 2007, the Commission opened up the hearing to include a further discussion on fee for carriage and on November 30th, distant signals, we noticed that the gloves came off.
5. As might be expected, BDUs abhor the thought of an additional fee that would increase the cost of their product to the subscriber while not dropping to their bottom line. Bell Canada, Rogers Communications, and Telus Communications partnered in the creation of an economic impact study (authored by Suzanne Blackwell and Steven Globerman) which purports to demonstrate the economic impact of implementing fee-for-carriage. This study concluded that fee for OTA carriage would lead to the virtual demise of the industry. This scare tactic brings to mind cable's "Death Star" predictions from 1993 when they told the Commission about the forthcoming demise of their business should DTH satellite technology be permitted in Canada.
6. Some of the key conclusions of the Blackwell/Globerman study:

¹ A review of the CRTC BDU Financial Database for the year 2006 indicates that 88% of all affiliation payments by BDUs were made to Canadian pay (29%) and specialty (71%) channels while non-Canadian services received 12% of total affiliate payments (this latter amount still exceeding \$200 million). A simple preponderance analysis would suggest that it is acceptable for affiliate payments to Canadian services to drop to 51% of total affiliate payments. To put this scenario into context, affiliation payments to Canadian channels would have dropped by \$608 million (from \$1.45 billion to \$842 million) had they been effective in the 2006 broadcasting year.

7. "...a fee for carriage is expected to cause at least 565,000 to almost 1.8 million subscribers to cancel their BDU services, many of whom could shift to unregulated sources of video content including black/grey market satellite and the internet."²
8. "Among those subscribers that retained their BDU services, a significant proportion would likely downgrade their service. The Canadian survey results reviewed in Section III (C) indicate that a price increase of \$5 in basic services will cause more than one-third to one-half of BDU subscribers to downgrade their existing BDU services. The impact analysis assumes that 30% of remaining BDU subscribers will downgrade by an amount sufficient to offset the price increase from a fee for carriage."³
9. "Consumer disconnections and downgrades would result in substantial revenue losses for BDUs, ranging from more than \$400 million to more than \$1 billion annually. Specialty and pay services would suffer revenue reductions as a result, ranging from \$140 million to almost \$350 million annually. These negative impacts would far outweigh the \$360 million to \$580 million that a fee for carriage could bring to OTA broadcasters."⁴
10. Bell, Rogers and Telus also sponsored a Harris-Decima poll examining subscribers' response to a \$4.00 increase in their monthly BDU bill for payment to local privately owned over-the-air (OTA) channels and \$1.00 per month for the CBC/SRC. As might be expected, the survey concluded that that 84% of those surveyed opposed paying for additional fees for the private services that they currently receive without charge, and 75% opposed paying additional fees for CBC/SRC.
11. We have reviewed the methodology underlining two surveys submitted by interested parties, and offer detailed comments in the Appendix to this submission. In summary, we note that the Harris-Decima online survey published a margin of error which we believe to be contrary to ESOMAR⁵ standards and the soon

² Blackwell/Globerman par. E7

³ Blackwell/Globerman par. E8

⁴ Blackwell/Globerman par. E9

⁵ <http://www.esomar.org>

to be adopted Marketing Research and Intelligence Association (MRIA)⁶ rules.

12. Such margins in online surveys are generally considered to be false and misleading. Also, owing to the online sample, there is a significant built-in bias, particularly in questions regarding Internet use and online media. Using an online panel can be counted on to bring out a higher level of favourable responses to Internet use-related questions than will other methodologies. Further, consumers will always oppose any price increase, regardless of product or sector, when they are presented with no context in which to evaluate an increase, such as any benefits, reasons or alternatives.
13. Two-thirds of those who indicated they would discontinue service said they would do so in favour of alternative media, such as the Internet – this from an online survey! But people who say they will discontinue rarely do. The question is therefore flawed. Discontinue to what? When placed in context, with the benefits or reasons for the increase, or the available alternatives, or even due to sheer resignation, we submit that subscribers will rarely follow through to discontinue.
14. While BDUs state that they do not believe that there is a financial crisis in OTA television, they have also asked the Commission not to consider the financial results of OTA broadcasters separate and apart from the corporate results of the major players, citing the fact that many of them also have a significant interest in specialty services.
15. The introduction of specialty channels in Canada has created significant diversity and viewing choice while at the same time, in the case of Canadian specialty services, creating hundreds of millions of dollars of additional Canadian program spending, as well as many thousands of hours of incremental Canadian programming. US specialty services have been well received by Canadian viewers and, as various submissions to this proceeding have concluded, very little US specialty programming is not currently available in Canada as part of Canadian specialty schedules. It should also not be forgotten that the introduction of specialty services has dramatically transformed the BDU

⁶ <http://www.mria-arim.ca>

business and fuelled significant increases in profitability, as the Commission's data make clear.

16. For their part, the OTA broadcasters have pointed to the fact that BDUs have made enormous profits by reselling their signals. They have also pointed to declining profits which have occurred primarily as a result of the introduction of new services, time shifting and the existence of multiple same-time-zone viewing options, all of which have fragmented audiences. They also point out correctly that the advent of specialty services has been extremely profitable for the BDU sector and, even though cumulative digital specialty losses are in the hundreds of millions of dollars, BDUs have certainly benefited significantly from the introduction of digital services.
17. OTA broadcasting profits are in decline largely because of audience fragmentation, but also because programming costs, especially foreign acquisition costs, are rising as a result of increased competition for programming rights. This increased competition has resulted from the creation of more services bidding for the same programming. So, while diversity has increased, it has done so at a cost. It is in no Canadian party's interest to see expenditures on the acquisition of foreign programming rise. However, most recognize that this foreign programming generates the vast majority of OTA revenue.
18. OTA broadcasters also correctly state that BDUs are, and have for some time, been generating profits that far exceed those of the broadcasters whose signals they sell to their customers. In addition to not being compensated for local carriage, the broadcasters correctly assert that time-shifting and the addition of alternative same-time-zone viewing options have significantly and negatively impacted their business.
19. These are complex issues which should be viewed through the lens of the Commission's announced goal of ensuring a strong Canadian presence in the Canadian broadcasting system. While Friends has consistently supported the strong presence of priority programming in Canadian OTA services, we have also spoken out for the presence and importance of local programming, which today consists largely of local news.

20. We recognize that local programming depends on the existence of revenue streams to fund it. For this reason, we support BDU access to local advertising, provided the incremental revenues are allocated to additional community channel spending – as a Condition of Licence. We support this proposal because we have observed that, in many smaller and mid-sized communities, the only local TV news is that which is available through community channels. In larger centres, the cable community channel adds to diversity of voices.
21. But it is for this same reason that we support fee-for-carriage, because we recognize that without a healthy revenue base, the desired programming result will not occur. Furthermore, it seems patently unfair that BDUs should be able to continue to profit from the resale of OTA signals without compensation, especially when only 11% of Canadians still get their television over the air, and this number continues to shrink, slowly.⁷
22. While we do not oppose changes in regulation that might make the broadcasting system easier to administer, or provide greater flexibility and diversity for consumers, we are convinced that the success of the Canadian broadcasting system today is largely a result of a complex and interactive matrix of CRTC initiatives which have been, over time, interwoven and inextricably linked in a regulatory ecosystem. We strongly caution the Commission about the unintended consequences which will result from *ad hoc* changes to this ecosystem.
23. The existing tiering and linkage rules favour services based on when they were licensed as opposed to the contribution they make to the system. As a result, some services have benefited simply by being part of a package with other services. The time has come to address this favouritism, as very few consumers want to pay for services that they do not use. However, we do not believe that popularity should be the sole criterion for carriage.
24. Friends believes that the contribution of independently-owned specialty channels is just as critical for the health and diversity of

⁷ Canadian Media Research Inc., *How Many Canadians Rely on Over-the-Air TV Reception and what Do They Think About TV: A Profile of OTA Viewers and Special Survey Results*; Department of Canadian Heritage, June 2007.

the broadcasting system as the presence of independent program creators and producers. A 'market forces' approach puts these small independent groups at the mercy of the five very large BDUs. As the Commission has heard throughout the Diversity Hearing process, as well as from many written submissions in the present process, fair and equitable access for the independents is possible only if and when the Commission maintains and enforces rules to overcome the BDUs' dominant power, and thereby levels the playing field.

25. There is no reason to believe that this dominant BDU controlling position will decrease going forward. Shaw, for example, has continued to purchase any system put up for sale in its territory. Rogers has done the same while, at the same time, making significant investments in Cogeco. It is logical to conclude that the purpose of this investment is to position itself to take over Cogeco if and when the opportunity arises.
26. Recently, when an initial offer by Rogers to purchase Aurora Cable was rebuffed, Rogers filed an application with the Commission to overbuild Aurora. On February 13, 2008, Rogers announced that it had reached an agreement to purchase the company. One might question what real choice the owners of Aurora might have had, considering that their effective alternatives might have been either to sell their business, or to watch its value shrink under the dominating influence of a much bigger company entering its market.
27. During Friends' appearance before the Commission's Diversity of Voices panel on September 21, 2007, the Chair asked: "*Are we fixing something as opposed to fixing itself because the Telcos are coming on, there is also a question of doing access by way of YMAX, etc. and, you know, the whole delivery of these things over wireless, might technologically fix what you see as presently in your advantage about cable companies?*"⁸
28. While Friends agrees with the Chair that competition may evolve over a much longer term, the reality is that for the foreseeable future, the distribution of television in Canada is and will be controlled by a very small number of companies. As detailed in the Commission's 2007 Broadcast Monitoring Report, in 2006

⁸ CRTC Diversity of Voices Hearing transcript, September 21, 2007, paragraph 8219.

cable reached nearly 74% of Canadian homes served by a BDU. Of this number, the top four cable companies: Rogers, Shaw, Vidéotron and Cogeco, with almost seven million homes combined, represented 92% of total cable homes and 68% of all homes. DTH and MDS combined reached only 26% of BDU homes.

29. Rogers, Shaw and Vidéotron dominate their respective territorial monopolies. While they express themselves as champions of competition, Friends asks what competition in broadcast distribution exists in Canada, short of a seismic policy change permitting the arrival of real competition from the likes of Time Warner or Comcast. While the majority of Canadian subscribers have other options, none of these offer the robust high-bandwidth advantages of cable, and the entry costs are much less affordable.⁹
30. How should the Commission respond to the polarized points of view in the various submissions? As subscribers, Canadians have experienced fee increase after fee increase at the hands of their respective BDUs. As pointed out in the CEP submission, these increases have escalated substantially since rate deregulation. Yet, there is absolutely no indication that BDUs, especially cable BDUs, have lost substantial numbers of customers or profitability as a result.
31. However, according to the Blackwell/Globerman report, the implementation of fee-for-carriage at even modest levels will cause the virtual collapse of the cable industry. We don't think so. As pointed out in Friends' January 25th submission, Rogers has just announced fee increases for dozens of its services, none of which seem designed to put Rogers out of business. In fact, Rogers¹⁰ charges a monthly \$2.99 'digital services fee' just to allow a customer who has purchased a PVR access to its system, and \$12.95 a month to rent an HD digital box. Yet a \$3.00 to \$5.00 monthly fee-for-carriage increase per month is expected to cause hundreds of millions of dollars in cancellations and downgrades!

⁹ See Friends' October 19 submission, paragraph 29.

¹⁰ Based on rates for Rogers Cable in Toronto.

32. As evidenced by the Harris-Decima poll, if one asks average consumers if they want to pay more for the same services that they are now receiving free of charge, the overwhelming response will be no. But this is obvious, and is a clear case of eliciting the desired response by asking a question that, without context, will always generate a largely negative response. As the Commission is well aware, the reality is that television is a service that most Canadian homes choose to acquire and history has shown that what consumers may say they will do in surveys and what is actually done are often very different. (See Appendix for details.) Furthermore, if the Commission were to accept Friends' recommendation that fee-for-carriage be applied only to digital customers, then implementation would have no impact on analog service customers.
33. When the Commission made the decision to approve DTH in Canada, it provided the great equalizer to several millions of Canadian homes lacking access to cable, or wanting an alternative to cable. DTH has provided access to the same programming that was hitherto widely available in major urban centres, and eliminated the former access inequity that existed between rural and urban Canadians. While there have been some incidents along the way, cable's 1993 contention that the "Death Stars" would put them out of business has proven to be utterly baseless.
34. A highly desirable outcome from this proceeding would be public policy that balances the competing interests of OTA broadcasters, specialty services and BDUs; and that balances the interests of subscribers as consumers and also as Canadian citizens wishing to see their own stories and issues portrayed on their television screens.
35. In conclusion, we recommend that:
36. The Commission recognize that the interactive matrix of regulations it has created over several decades has enabled the flowering of a distinct Canadian television system, offering more choice than is available to typical US subscribers. It is an ecosystem of rules and policies. Tinkering with some of these in isolation would most likely have long-term unintended and negative consequences that would undercut the stated objective

of “ensuring a strong Canadian presence in the Canadian broadcasting system”.

37. Friends believes that BDUs should be allowed to sell advertising on the community channel in exchange for incremental expenditures to strengthen local programming, supervised through an appropriate Condition of Licence.
38. Friends supports the implementation of fee-for-carriage for digital subscribers provided OTA broadcasters commit to maintain and, where feasible, increase their commitment to local programming; these commitments to become Conditions of Licence during the 2009 group licence renewals.
39. Most important, the Commission should ensure access to the system for independent channel owners in a manner which recognizes the dominant position of BDUs in the negotiating process. The Commission has heard witness after witness explain that, except for the few major station groups, unless one has the clout to go toe-to-toe with the BDUs, there is no such thing as a fair negotiation. This constitutes a fundamental flaw in the system.
40. Just as it is desirable to have independent producers substantially represented in the system, so it is equally important to have independent owners participate – properly protected from BDU abuse of dominance. Given the BDU concentration of ownership and dominance that the Commission has sanctioned over time, this recommendation is essential for the continuing diversity of the system.
41. Finally, simple preponderance will result in a significant reduction in the carriage of Canadian channels. Also, simple preponderance could be expected to greatly reduce the flow of funds to Canadian specialty and pay services, and therefore their capacity to commission and acquire Canadian programming.¹¹ Friends therefore recommends strongly that the Commission reject this proposal.

¹¹ See footnote 1.

42. However, Friends considers that the existing tiering and linkage rules can be amended to provide BDUs with greater flexibility in how they package existing services to their customers.
43. Friends reiterates its request to appear at the public hearing beginning on April 7, 2008 to offer a viewers' and listeners' perspective.

Yours sincerely,

A handwritten signature in black ink that reads "Ian Morrison". The signature is written in a cursive, slightly slanted style.

Ian Morrison
Spokesperson

For information: Jim Thompson 613-567-9592

Appendix

Comments on the
Ipsos-Reid and Harris-Decima
Public Opinion Polls
Submitted to PN CRTC 2007-10

General Comments

1. Much of the questioning refers to Canadian content, lumping various types of programming into one category. This is very misleading. Reading the data, one can surmise that respondents seem to be responding as if programming were drama, rather than news, public affairs, cultural, or sports programming. Readers of the survey reports are left to wonder if responding Canadians understood that they were also talking about Canadian news, Canadian sports or some other programming in their responses.
2. These two surveys emphasize the potential for migration to alternative media, online in particular. This appears well placed to play to the known concern of the Commission regarding migration of viewing from regulated to unregulated services.
3. The Ipsos-Reid study shows that francophones and Quebecers, due to their unique position, have stronger feelings about the importance of preserving their culture than do other Canadians. Although probably unintended by the sponsors, this outcome can be read as an affirmation of the importance of the CRTC's statutory responsibility to ensure Canadian choices in an English-language audio-visual system dominated by Hollywood entertainment programming. The Harris-Decima and Ipsos-Reid studies can be read as pointing to an Internet shift, particularly in the younger demographic, leading to less awareness and identification with Canadian culture. Without the offset of continuing protection from the CRTC, this could become an irreversible trend.
4. None of the studies brings into focus the well-known research finding that people trust traditional media more than online media. Particularly among the under-35 demographic, there is known to be a very high level of layered consumption of media:

simultaneous consumption of online and traditional media. Are Canadians who say they are going to move to online media really going to abandon traditional media, which they trust more?

5. Ipsos-Reid

6. Slide 6: Are Canadians interested in more non-Canadian services as a replacement or substitute for Canadian services? What competing services? More cable and satellite companies?
7. Slide 8: Younger Canadians say they will use new media to access content, but will they pay for it? It is all free at present. All types of programming are lumped together, without context.
8. Slide 9: Saying that Canadians are looking at content on the Internet is akin to saying that they eat apples. So what? It is all free. There is no consideration of consumption patterns, including layering.
9. Slide 10: No price context is provided. Therefore the study compares apples to oranges. Will people pay for what they get online? Does the response assume a level quality playing field?
10. Slide 11: Regarding the agreement with Canadian programming: the important questions are not posed. Would you want Canadian programming, including news and sports, replaced by foreign programming? Do you think producers can survive in an unregulated free market? Do you think deregulation would help or damage Canadian culture and identity? Is this important to you?
11. Slide 12: 87% agree that if the industry were deregulated, they would still want to watch Canadian programming. But how would they be able to do so and what mechanism do they anticipate to ensure its availability?
12. Slide 13: Why the 'more' part? Who is trusted? Overall, the question lacks adequate context.
13. Slide 14: Context again lacking. Why is the status quo not presented as an option?

14. Harris-Decima

15. ESOMAR, and the soon to be adopted MRIA rules, specifically disallow quoting margin of error on online surveys. This practice is generally accepted as false and misleading. As a completely online sample, there is significant bias, particularly in questions regarding Internet use and online media. The respondents are online people!
16. Consumers always oppose any price increase. The key is: does that really translate into any action, and when presented with a contextual choice, what will they pick? None of this is explored here.
17. The executive summary says there will be some who will “discontinue their service”, but what will they discontinue to? Have they ever discontinued as a result of past fee increases? Two of three of those who would discontinue say they will do so in favour of alternative media, such as the Internet. This is an online survey; of course respondents would be predisposed to say that! Two in three oppose added fees to convert to HD: how many know what HD is? “Are you intending to acquire a new TV in the next two years? Will it be a high definition set?”
18. Why did the survey ask if there is support for additional fees to help broadcasters in financial difficulty? Is this relevant? It is highly biased. This question sets up the whole survey from that point on, and also implicates the CRTC as the entity which may hit up consumers to bail out marginal broadcasters.
19. On the final page of the executive summary, the results of questions about future Internet use are presented. Studies have shown that only about 1% of the population answers online surveys. And these persons are more inclined than the other 99% towards Internet-oriented answers, thereby biasing the data.
20. In the proposed fee structure question, there is no distinction made between different tiers on cable; and the descriptions are biased and very leading. In proposal #2, the survey is effectively saying: that there is going to be a fee increase for the CBC; that there are going to be no programming changes as a result, so that there is no value-added benefit; and that you can get it free currently. Considering how loaded the question is, it is a

remarkable tribute to CBC/SRC Television that 25% of respondents replied in the affirmative!

21. Why would the survey lump private and public broadcasters together when it is well known that attitudes and awareness to each may be so different?
22. Questions 13 and 14: It has not been made clear what respondents would be paying for, and when combined with the earlier inference of bailing out financially-troubled broadcasters, or paying for (undefined) HD conversion, the context is flawed and the questions loaded. Also, due to the structure, respondents have already committed themselves to a position by this point. This demonstrates very flawed, biased methodology.
23. It would be useful to know whether the names in Question #17 were rotated, or whether the CRTC was uniformly listed in first position. If the latter, the answer would be unreliable methodologically. However, the preceding questions are so loaded and the context so biased that the answer to #17 is substantially pre-determined in any case.
24. Question 18: see the general comments above.
25. In sum, this is a hugely biased, loaded line of questioning that commits the respondent early to a position that is then followed throughout, leading to the “blame” question – which is set up virtually as a threat to the Commission.

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