Small Market Independent Television Stations (SMITS) Coalition
c/o Canadian Association of Broadcasters
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Ottawa, Ontario
K1P 1A4

Mr. John Traversy
Secretary General
Canadian Radio-television &
Telecommunications Commission
Ottawa, ON, K1A ON2

March 9, 2015

Dear Mr. Traversy:

Re: Request for Emergency Interim BDU Funding for Small Market Independent
Television Stations (SMITS)

1. The purpose of this letter is to respectfully request Emergency Interim Funding for
Small Market Independent Television Stations (SMITS), based on the proposals made by
SMITS at the Let’s Talk TV (LTT) proceeding. Such Interim relief would take effect as
soon as possible, and remain in place until the CRTC makes final decisions on the
“funding of locally relevant and locally reflective television programming” as
contemplated in the Commission’s Local TV Decision issued January 29th, 2015.1

Context

2. Members of the SMITS Coalition provide television service to Canadians through local
over-the-air (OTA) television stations operating in Canada’s smallest television markets
– markets with fewer than 300,000 persons.2

3. SMITS Coalition members are comprised of:
   - Jim Pattison Broadcast Group (3 stations; 2 BC (Kamloops and Prince George) &
     1 Medicine Hat, Alta)
   - Newcap (2 stations in Lloydminster Alberta)
   - Thunder Bay Electronics (2 stations in Thunder Bay)
   - Corus (CKWS Kingston & CHEX Peterborough)
   - RNC Media (3 stations in Quebec – 2 Rouyn-Noranda; 1 Val-d’Or0
   - Télé Inter-Rives (4 stations in Quebec – 3 in Rivière du Loup; 1 in Carleton)
   - Miracle Channel, Lethbridge
   - Newfoundland Broadcasting, St. John’s
   - CHEK-TV, Victoria

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1 Broadcasting Regulatory Policy CRTC 2015-25.
2 One SMITS Coalition Member, CHEK-TV Victoria, serves a market of 340,000, but was determined by the
CRTC to be eligible for the SMLPF in December, 2013, given that the station met 3 of the 4 criteria and "suffers
from the pressures noted above in the same way as other independent television stations that benefit from
the SMLPF” Broadcasting Decision CRTC 2013-739. CHEK-TV accordingly joined the SMITS Coalition in 2014.
4. The record of the Let’s Talk TV (LTT) proceeding has yet to be closed and SMITS believes has a sufficient evidentiary record on which the CRTC can base a decision to provide interim funding for SMITS. As of this date, two further LTT decisions are anticipated. One to be issued on March 12th, 2015 on the “The way forward – Creating compelling and diverse Canadian programming”3 and one on/or about March 19th, 2015 on distribution and unbundling.

5. As confirmed during the LTT proceeding, including in the Local TV Decision, Canadians value local television, and particularly local TV news, highly. Among the evidence on the record of the LTT proceeding is the following:

- Over 40% of viewing in the English-language market and over 50% in the French-language market is to conventional over-the-air (OTA) television stations during the prime time hours of 7 to 11 pm4.
- Conventional stations garner 40% of the news programming viewing market share5.
- Over-the-air TV signals are widely available to Canadians: 97% of the population live within range of a transmitter6.
- 8.1% of Canadians have chosen to access the television system free, over the air7. (This number is understood to be higher in most small markets.)
- Over 95% of the participants who posted comments on the topic of over-the-air television in the online consultation held during Phase 3 referred to the importance and value of the ability to receive television programs inexpensively over the air and opposed proposals to shut down transmitters8.
- Canadians value local news, with a CRTC commissioned poll putting the number who consider it “important” at 81%9.
- Canadians value local programming as much in small markets as they do in large markets10. The difference is that in small markets the local television broadcaster can be, and often is the only local media outlet11.

6. In addition, in its Local TV Decision, the Commission stated:

While some have suggested that conventional television will disappear and be replaced by online video, specialty or other services, the Commission considers that the large audiences consuming programming on conventional stations indicates that these stations continue to play a significant role in the lives of Canadians for the moment. In particular, conventional stations continue to be an important source of news, information and analysis for Canadians.

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3 http://www.crtc.gc.ca/eng/decisions.htm
5 Broadcasting Regulatory Policy CRTC 2015-25.
7 Broadcasting Regulatory Policy CRTC 2015-25. A reason the Commission confirmed the right of Canadians to continue to receive OTA TV.
8 Broadcasting Regulatory Policy CRTC 2015-25.
9 CRTC Phase II research. Let’s Talk TV proceeding. A Nanos poll cited at the hearing put this number at 95%. Transcript, Volume 3, Para 6176.
11 The only SMITS Coalition member exception is CHEK TV, Victoria.
7. At the LTT proceeding, the SMITS Coalition provided significant evidence and background on the regulatory history and financial circumstances of SMITS. We noted the dire economic challenges facing SMITS, and the fact that they are materially different than those facing larger market stations, and their typically large associated corporate groups. We noted that much of the dire financial situation facing SMITS is due to increased costs due to new CRTC obligations, and historic CRTC decisions that did not ensure that long-standing priority carriage and rights protection measures are fully respected.

8. Financials filed by SMITS demonstrated that since 2011, without the Local Programming Improvement Fund (cancelled by the Commission in 2012), SMITS would have been barely viable, and without the LPIF and Small Market Local Programming Fund (SMLP) (ongoing, but declining), SMITS would not have been viable at all. We accordingly responded to Commission inquiries on how to ensure SMITS remain “sustainable” by proposing new targeted funding for SMITS to be derived from the current 5% BDU contribution\(^\text{12}\).

9. Over the course of the proceeding, SMITS provided detailed proposals and, at the request of the Commission, alternative options for the implementation of new support for SMITS and for local television and local programming more generally\(^\text{13}\). As noted by the SMITS Coalition in its Final Submission, while different parties proposed different mechanisms to support local TV, some broader in scope than the SMITS Coalition proposals, none provided contrary evidence to SMITS’ proposal to, at minimum, support independent small market local television.

10. At the oral phase of the LTT process, Vice Chair Pentefountas, who was responsible for questioning the SMITS Coalition, did not question us on the plight of SMITS or the rationale or merits of support to ensure the sustainability of SMITS, but merely on the type of mechanism we propose, including issues like eligibility\(^\text{14}\).

11. In our Final Submission we respectfully concluded as follows:

   Soon to be filed 2014 annual returns will show negative PBIT margins for our group – some SMITS members will still be making money (although the level of profitability will be marginal), but many more will not. And this is with the last of the LPIF money. Next year, without LPIF and given reduced distant signal revenues, only further cost cutting and extraordinary performance in local sales will prevent a disaster.

   SMITS recognizes that the earliest realistic date for the implementation of a new fund is likely to be September 2015. We know we have to somehow get through this year on our own.

   We understand that the Commission’s intent is to issue a decision on this process as quickly as possible.

\(^\text{12}\) SMITS June, 2014 Submission to CRTC in Let’s Talk TV Process.
\(^\text{13}\) See SMITS Response to Undertaking 2, issued September 20, 2014.
\(^\text{14}\) Transcript Volume 9, paragraphs 20739 – 20747 (and beyond).
In light of the urgent situation facing independent small market local television in Canada, we urge the Commission to do everything possible to ensure a sustainable regulatory solution is in place by September 2015, including consideration of the possibility of releasing a positive decision on a new small market independent television fund before that of the full decision in this proceeding.

12. In its Local TV Decision, the CRTC accepted SMITS Coalition submissions that any new fund come out of existing BDU 5% contributions, but declined to make a final decision on any such funds, instead deciding to defer the matter to a future proceeding to be held in the 2015-2016 timeframe\(^\text{15}\).

13. As the Commission would be able to confirm, 2014 annual returns filed since our Final Submission of October 3\(^\text{rd}\), 2014 reveal that while SMITS Coalition stations as a group remain marginally in the black, with a PBIT of 4.5%, the majority of individual SMITS are in the red.

14. Moreover, all things being equal, with the phase out of LPIF now complete, the SMITS Coalition stations as a group will be in the red this broadcast year, given the loss of the $5.4 million contributed by LPIF last year. Anticipated revenue losses, particularly from ongoing declines in national sales for most SMITS and the termination of CBC affiliation agreements for some, suggest SMITS revenues for the 2015 broadcast year will drop materially more than this, meaning that without dramatic cuts, stations could be forced to close\(^\text{16}\).

15. This of course is an aggregate picture. Some stations will sustain the revenues losses better than others. Those that cannot sustain any further revenue losses are in serious financial trouble.

16. As made clear in our Final Submission, this is not sustainable for more than the briefest of time periods. As small independent television stations, most SMITS do not have the ability to cross subsidize their local operations from profitable specialty, BDU or ISP businesses. If SMITS cannot stand on their own financially, and have little prospect of a turn around, they will be forced to shut down their operations since they will not have the means to maintain operations while the CRTC completes its proceedings on the issue of local TV funding.

17. In our Final Submission, the SMITS Coalition underlined the fact that time was of the essence, and urged the Commission to have a \textit{regulatory solution in place by September, 2015}. Under the Commission’s proposed process, we understand that \textit{Fall 2015 is the earliest the proposed proceeding would commence} to examine “the overall state and funding of locally relevant and locally reflective television programming offered in the broadcasting system”. In practice, this would mean that a decision on SMITS’ request for a new small market independent television fund would likely be released early in 2016, for implementation no earlier than September 1\(^{\text{st}}\), 2016 (the 2016-17 broadcast year).


\(^{16}\) Projections filed in the LTT proceeding show a different revenue baseline, but give some indication of revenue and expense deltas.
18. This means that SMITS stations would have to survive a full two years (broadcast years 2014-15 & 2015-16) before any potential new funding could replace the LPIF and make stations sustainable. This is much too long.

19. Two aspects of the Commission’s Local TV decision\(^\text{17}\) that will also negatively affect small market local broadcasters loom on the horizon:

- The decision to eliminate, effective 2017, simultaneous substitution on the Super Bowl removes the value of a major promotional and revenue franchise for which affiliated SMITS would have local market rights. It is not just a loss to Bell; and
- The decision to eliminate the option of shutting down transmitters, as local stations must maintain over-the-air transmitters in order to retain key regulatory privileges, such as simultaneous substitution and priority carriage on the basic service of BDUs. While not a preferred option for most SMITS, as a “last ditch” effort to cut costs and stay operating, some SMITS may have wished to consider it.

20. To make matters worse, and as a matter of public record, in a proposal issued by Industry Canada in December 2014, local TV stations across Canada are expected to vacate and relocate from their current over-the-air channel slots as early as 2016/17, at their own expense, so Government can auction the spectrum for mobile broadband.

21. Costs, for SMITS originating stations alone, could be $1 to $1.5 million per station or between approximately $20 and $30 million for the SMITS Coalition as a group. This is after already incurring $9 million in costs to voluntarily covert 85% of SMITS originating transmitters to DTV transmission under the current allotment plan, a plan SMITS had every reason to expect would remain in place for the foreseeable future.

22. In the U.S., whose spectrum plans Industry Canada seeks to align with, a $1.75 billion TV Broadcaster Relocation Fund has been established from which the FCC is to reimburse costs incurred when the broadcast spectrum is repacked. No such equivalent has been proposed, or even apparently contemplated by, Industry Canada.

23. For the Commission’s reference, the SMITS Coalition encloses its recent submission to Industry Canada on point, dated February 26, 2015.

24. The significance of this should be self-evident. SMITS deteriorating financial situation combined with the CRTC’s deferral of a decision on implementing a new small market independent television fund combined with the prospect of unaffordable over-the-air transmitter relocation costs adds up to an outlook that for a number of SMITS makes imminent closure a real possibility, if not likelihood.

Relief Sought

25. The SMITS Coalition respectfully requests that the Commission issue an interim decision forthwith, based on the record of the LTT proceeding and SMITS’ original proposal of June 27, 2014, to create a new local independent television fund, open to eligible SMITS only, sourced from a modest contribution of 0.3% of revenues from cable and an incremental 0.1% of revenues from DTH, both from within the discretionary or local expression portion of current BDU 5% contributions.

\(^{17}\) Broadcasting Regulatory Policy CRTC 2015-25.
26. Such an interim decision would take effect no later than September 1, 2015 through an expedited process to amend the BDU regulations, which would be open to further public comment. The decision, and associated BDU regulations, would be subject to revision and amendment following the conclusion of the Commission’s anticipated process on the “funding of locally relevant and locally reflective television programming” as contemplated in Local TV Decision.

27. The granting of this request would not prejudice other parties or stakeholders. In particular we note, based on the record of the LTT proceeding:

- No other broadcaster serving small or medium sized markets has argued that their stations are subject to imminent potential closure. Indeed, as noted by the Commission in the Local TV Decision, Bell Canada, which serves the largest number of small and medium sized market through its CTV and CTV-2 stations, has expressly committed to keeping all its conventional stations open through to 2017\[18\]; and

- Independent groups serving major markets placed no evidence on the record of the LTT proceeding that new BDU supported funding was required. Moreover, such players have far greater revenues on which they can manage costs\[19\].

28. By contrast, granting this SMITS Coalition request would ensure the immediate sustainability of small market independent stations serving three million Canadians living in some of the sparsest parts of this country.

**Conclusion**

29. In his speech in London, the CRTC Chair spoke about local TV as a pillar that supports our democracy. In the context of larger broadcasters, the Chair also raised concerns about “reduction in funding of local television stations”.

30. Without immediate CRTC action, however, it is local TV in small markets that is at risk.

31. We believe it is imperative that Canadians voice and reflection on local television is maintained in Canada’s smallest television markets. As the CRTC has recognized, local television plays too crucial a role in times of emergency, and in providing news and information on current affairs, including local and national election coverage, to accept otherwise.

32. The Commission’s proposed process to examine local TV and local programming, while welcome, will not bring relief quickly enough to ensure local TV in Canada’s smallest
markets survives. Unless support along the lines of SMITS proposal is in place by September 2015, the likelihood of stations going dark is extremely high.

33. This is not a risk we should take.

34. The CRTC’s Local TV Decision rightly finds that Canadians continue to want their local TV. Granting the SMITS Coalition’s interim funding request will ensure that the most underserved Canadians, in the smallest markets, get to keep it.

All of which is respectfully submitted.

Sincerely,

Rick Arnish
Chair
Small Market Independent Television Stations (SMITS) Coalition

Encl.

cc. CRTC Commissioners
   Scott Hutton, CRTC
   Peter Foster, CRTC