

May 17, 2018

VIA Electronic Intervention Comment Form

Mr. Claude Doucet
Secretary-General
CRTC
1 Promenade du Portage
Les Terrasses de la Chaudière
Central Building
Gatineau, QC
K1A 0N2

Dear Mr. Doucet:

Subject: Broadcasting Notice of Consultation CRTC 2017-365: Applications for the renewal of services with mandatory distribution on the basic service pursuant to section 9(1)(h) of the *Broadcasting Act*

1. The Canadian Communication Systems Alliance (“CCSA”) speaks for independent communications distributors – smaller broadcasting distribution companies, telephone companies and ISPs – across Canada. CCSA represents more than 110 companies operating from sea to sea to sea, including across the North.
2. With respect to requested increases in wholesale rates for certain 9(1)(h) services, CCSA emphasizes the following comments from its initial written submissions in this proceeding, as follows:

Introduction of the freedom to experiment with the small basic service has given exempt BDUs a new way to compete and, more importantly, a new way to give their customers the flexibility to combine affordable television packages with content from online sources. That being said, the economics of a new small basic offering are not easy for the smaller BDUs.

Whereas the large MSOs have generally set their retail prices for small basic at the regulated \$25 maximum, price competitiveness is of the utmost importance to the smaller, exempt BDUs.

CCSA respectfully submits that the Commission should take care with respect to setting precedents for wholesale rate increases for services that already benefit from mandatory carriage orders and, as such, have a right to distribution on the small basic service.

At a time when Canadians are cutting and shaving their purchases of Canadian programming services, any regulatory decision that serves to increase the price they must pay for the small basic service, is a move in the wrong direction. Accordingly, the Commission should deny the proposed rate increases.¹

3. Finally, CCSA said:

Given the fixed network and capacity costs involved in offering a small basic service, CCSA members who are experimenting with such a service are pricing, at retail, as aggressively as they can. CCSA is therefore concerned about any upward pressure on the wholesale rates that the “9(1)(h)” services are authorized to charge.²

4. As that comment indicates, the ability of CCSA’s members to experiment with innovative and competitively priced small basic offerings depends in part, on their ability to rely on “fixed network and capacity costs” for distribution of the small basic service.
5. In that regard, CCSA has significant concerns with Pelmorex’s proposals for mandated basic carriage of both the SD and HD versions of The Weather Network and Météomedia by all BDUs and for mandated basic carriage of both services by BDUs in “bilingual” markets.
6. CCSA’s concerns with such proposals are heightened now that, due to revision of the “Terms and conditions of the exemption order for terrestrial broadcasting distribution undertakings serving fewer than 20,000 subscribers” by Broadcasting Order CRTC 2015-544, all exempt BDUs that serve 2,000 or more subscribers must distribute “all programming services that must be distributed pursuant to

¹ CCSA submission, “Broadcasting Notice of Consultation CRTC 2017-365: Applications for the renewal of services with mandatory distribution on the basic service pursuant to section 9(1)(h) of the Broadcasting Act” - Executive Summary”, December 8, 2017 at paras. 18-18 and 26-27.

² *Ibid.* at para 20.

mandatory distribution orders under section 9(1)(h) of the *Broadcasting Act*, under the terms and conditions of each mandatory distribution order”.³

7. CCSA notes Shaw’s statement, in its initial intervention, that “[f]or Shaw, the cost impact of these requests would be even more significant than a rate increase.”⁴
8. CCSA has a similar view of the matter and, like Shaw, considers that, if the proposed amendments are granted, then at least some CCSA members will be “forced to significantly increase channel capacity allotted to Pelmorex’s services and would likely be forced to drop other services.”⁵
9. CCSA agrees with Shaw’s statement that:

If the applicant’s objective is to secure carriage of the HD version of its programming services, . . . the proposed remedy of seeking the distribution of both the HD and SD versions on the digital basic service of all BDUs is highly disproportionate. Moreover, Pelmorex’s request ignores the fact that market conditions already govern the distribution and availability of HD services.⁶

10. CCSA also agrees with Shaw’s submission that:

. . . the mandated distribution of signal format would effectively – and inappropriately – amend the Commission’s General Authorizations for Broadcasting Distribution Undertakings, which gives BDUs the discretion to distribute either the SD or HD version of a programming service. It would also set an inappropriate precedent for all mandatory services to be carried both HD/SD.

11. With respect to the proposed carriage requirement for bilingual markets, CCSA notes and agrees with Shaw’s comment that:

In granting Pelmorex’s services mandatory distribution, the CRTC clearly circumscribed the carriage obligation of each service by language market. These terms have been maintained throughout each subsequent renewal or amendment to the order set out in BO 2009-340. Pelmorex is effectively

³ Broadcasting Order CRTC 2015-544 at para. 15.

⁴ Shaw, “Re: Broadcasting Notice of Consultation CRTC 2017-365 – Applications for the renewal of services with mandatory distribution on the basic service pursuant to 9(1)(h) of the *Broadcasting Act*”, December 8, 2017 [hereinafter *Shaw Intervention*] at para. 34.

⁵ *Shaw Intervention* at para. 34.

⁶ *Shaw Intervention* at para. 41.

attempting to *de facto* amend this carefully tailored order in the guise of a housekeeping amendment in its renewal application.⁷

12. In short, Pelmorex has proposed significant policy changes in the context of an application to renew its mandatory distribution order. Those proposed policy changes:
 - stand to significantly impair the ability of independent BDUs to compete with innovative small basic service offerings;
 - are beyond the scope of matters that should be considered in the context of a renewal application; and
 - if made, will create unfortunate precedents that, as other programming services demand similar treatment, could seriously damage the ability of independent BDUs to offer affordable programming to their customers.
13. CCSA wishes to emphasize that it is sympathetic to Pelmorex's objectives underlying these proposed changes; that is, the needs to extend the reach of its services in HD format and to ensure that basic service customers can view those services in the language of their choice without additional cost.
14. CCSA also considers Pelmorex to be a responsible partner that works with and supports the needs of smaller, independent BDUs.
15. CCSA's real concern is with the prospect that Pelmorex's requests, if granted, could result in policy and regulatory changes much broader than those required to address Pelmorex's objectives; policy and regulatory changes that could result in substantial harm to independent BDUs and, especially, the ability of those BDUs to offer innovative, affordable and competitive basic service offerings to their customers.
16. CCSA supports the recommendation of Shaw and other BDU intervenors that, in accordance with the current regulations, it remain the BDU's option to deliver programming services in either SD or HD format.
17. CCSA supports the recommendation of Shaw and other BDU intervenors that it be the BDU's option to deliver both The Weather Network and Météomedia in a given

⁷ Shaw Intervention at para. 37.

market according to the demands of that market. As it was put during the oral hearing, the “Commission could give the option, but not mandate it, and especially not in bilingual markets only”.⁸

18. CCSA thanks the Commission for the opportunity to provide these comments.

Sincerely,



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⁸ 2017-365 Transcript, Hearing May 1, 2018, Volume: 2, May 1, 2018 at para. 2384.