CCSA

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December 8, 2017

VIA Electronic Submission

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

Dear Mr. Seidl:

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 Cable Systems Alliance ("CCSA") speaks for independent communications distributors – smaller cable and IPTV companies, telephone companies and ISPs – across Canada. CCSA represents more than 115 companies operating from coast to coast to coast.

2. CCSA wishes to appear at the oral hearing of this matter to speak to its concerns regarding increases to the wholesale fees and signal transport costs sought by some of the applicants in this matter and to respond to the applicants' replies to its submissions.

Executive Summary

3. CCSA addresses two issues in these comments. Those are its:

    1. opposition to proposed wholesale rate increases because of the effect they would have on retail pricing and the perceived precedent that they could set; and

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2. opposition to the request by TV5 to be relieved of the obligation to pay for transport of its signals to the headends of BDUs in order to benefit from mandatory carriage.

<u>CCSA Opposes Applications for Wholesale Rate Increases Because of Their Impact on Pricing of the Small Basic Service</u>

4. CCSA notes that AMI-audio, AMI-tv, AMI-télé, TV5/Unis, TWN and the Legislative Assemblies of Nunavut and the Northwest Territories have applied for renewals but have not requested any increase to the wholesale fees they are authorized to charge BDUs for distribution of their programming services.

5. Other applicants have requested increases to the wholesale rates they are permitted to charge BDUs for distribution of their services. Those are:

   - CPAC – increase of $0.01, to $0.13 per subscriber per month;
   - APTN – increase of $0.05, to $0.36 per subscriber per month; and
   - Canal M – increase of $0.02, to $0.04 per subscriber per month.

6. Those services already benefit from mandatory distribution to the digital basic subscribers of all Canadian BDUs that serve more than 2,000 subscribers.

7. The mandatory distribution orders were designed to effectively guarantee those services the revenue they require to meet their regulatory obligations.

8. Conversely, increases to those authorized wholesale rates would impose added costs on every digital subscriber to any Canadian BDU that carries these services.

9. For the reasons set out below, CCSA submits that the negative impact approval of these proposed rate increases would have on Canadian BDU customers would outweigh any positive impact they may have for the services themselves, and that approval would set an unfortunate precedent at precisely the wrong time.

10. As CCSA pointed out in its submission in response to BNC CRTC 2017-359:

> Consumers now demand video content from a variety of traditional television and online sources. That behavior will become more widespread over time. Consumers' interest in "skinny" bundles of traditional off-air and cable

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channels is high and demand for such smaller, reasonably priced bundles of traditional television services has exceeded industry expectations.[1]

11. In BRP CRTC 2015-96, the Commission announced that licensed BDUs would be required to offer a small basic service which would include only certain, specified programming services and which would have to be priced at $25 or lower. [2]

12. While those "skinny basic" requirements were not imposed upon exempt BDUs, the exempt BDUs were effectively encouraged to experiment with their own, less restricted, small basic service offerings.

13. Those BDUs have welcomed that challenge and have, indeed, been experimenting to the benefit of their customers.

14. In its response to BNC CRTC 2017-359, CCSA advised the Commission that:

> A number of those independent distributors have had considerable success with the design and pricing of "skinny basic" offerings and have seen encouraging customer take-up of these packages which, in some cases, are priced below twenty dollars.[3]

15. The table below sets out a few examples of the retail pricing CCSA members offer customers for their small basic service[4]:

Company	Package Name	Retail Price
Mascon Communications	Digital Starter	$20.00
Seaside Communications	Essentials	$19.95
Access Communications	Micro HD (Includes one HD STB)	$21.95
Execulink	LinkTV Starter	$20.00
CCAP	Base Numérique	$15.20
VMedia	The Skinny	$17.95

[1] Canadian Cable Systems Alliance, Inc., "Broadcasting Notice of Consultation CRTC 2017-359: Call for comments on the Governor in Council's request for a report on future programming distribution models", December 1, 2017 at para. ES-11.
[2] Broadcasting Regulatory Policy CRTC 2015-96, "A World of Choice - A roadmap to maximize choice for TV viewers and to foster a healthy, dynamic TV market", March 19, 2015, at paras. 26-29.
[3] Canadian Cable Systems Alliance, Inc., "Broadcasting Notice of Consultation CRTC 2017-359: Call for comments on the Governor in Council's request for a report on future programming distribution models", December 1, 2017 at para. 12.
[4] Per individual CCSA member websites, accessed on December 4, 2017.

16. Generally, those small basic packages include local and regional off-air stations, mandatory 9(1)(h) services, the US 4+1 networks, educational, legislative and community channels, local radio stations and Stingray music channels.

17. Some CCSA members have experimented with a different model that includes both the services noted above and the premium sports channels[5]:

Company	Package Name	Retail Price
Cable Cable	Skinny Starter (Includes TSN 1-5, Sportsnet and discretionary specialties)	$30.00
Mornington Communications	Basic (Includes TSN 1-5 and discretionary specialties, especially news and children's programming)	$30.95

18. 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.

19. 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.

20. 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.

21. It should also be remembered that, by providing their customers with increased choice by introducing a new small basic service, CCSA members will inevitably be subjected to increased wholesale costs for services on their larger, legacy basic tier.

22. That is because the programming services have generally imposed automatic increases to their wholesale rates whenever their penetrations fall below 100%, which will happen to services excluded from the smaller basic tier once that tier is introduced.

[5] *Ibid*.

23. That fact, alone, continues to prevent some exempt BDUs in CCSA from introducing a new small basic service, with the unfortunate consequence that their customers miss out on the programming choice and flexibility it offers.

24. For those reasons, CCSA must oppose the wholesale rate increases some of the mandatory carriage programming services seek in this proceeding.

25. CCSA is also acutely aware that there will be renewal applications to follow from CBC News Network, OMNI, RDI and TVA, all current "9(1)(h)" services owned by players far larger and more powerful than CCSA's members.

26. 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.

27. 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.

CCSA Opposes TV5's Request for Relief from its Obligation to Pay to Transport its Signal to BDU Headends in Order to Benefit from Mandatory Carriage

28. In its application, TV5 seeks to make a change to its existing distribution order which, if approved, could have a significant negative impact on smaller BDUs and substantially increase prices for their customers.

29. That change relates to TV5's existing obligation to deliver its signals to the BDUs' headends and to pay the costs of that delivery.

30. Like almost all "9(1)(h)" services, TV5 was granted mandatory distribution rights, in part, on the basis of its agreement to pay the costs of signal transport to the BDU's headend.

31. Specifically, section (d) of Broadcasting Order CRTC 2013-374 provides that a BDU must distribute TV5/Unis on its digital basic service only if the programmer:

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(i) ensures the transmission of the service to each broadcasting distribution undertaking's head end located within the area for which it is licensed or to a satellite uplink centre located within that area; and

(ii) bears the costs of the transmission.[6]

32. As a general proposition, CCSA members do not have satellite uplink centres in their service areas. For most CCSA members, that means that, in practice, the programmer has an obligation to pay the costs of delivering its services to the BDU's headend.

33. CCSA sees no basis for changing that requirement.

34. Rather, it would be patently unfair to continue to require smaller BDUs to distribute the service while, at the same time, imposing substantial new signal transport costs upon them.

35. In its application, TV5 requests an amendment to the terms of its distribution order as follows:

> "(*d) Notwithstanding the foregoing, distribution licensees shall not be required to distribute the TV5/UNIS' programming services pursuant to this order unless the licensee or a third party:*
>
> *(i) ensures the transmission of the service to the BDU by any technological means available and approved between the BDU and the service, including, and not limited to, transmission to a satellite uplink centre, IP (Internet Protocol) transmission, transmission to an Internet exchange point (IXP), to a signal distributor or to the head end;*
>
> *(ii) bears the costs of transmission to the connection point, which are normally assigned in accordance with the industry practices, given the technological means chosen.*"[7]

36. According to TV5's proposed wording, TV5's obligation could be satisfied by delivering its signal to "a satellite uplink centre", "an Internet Exchange Point" or a BDU's headend.

[6] Broadcasting Order CRTC 2013-374, "Distribution of the programming service of TV5 Québec Canada known as TV5/UNIS by licensed broadcasting distribution undertakings", August 8, 2013 [emphasis added].
[7] TV5, Application 2017-0637-6, Annexe 1, "Mémoire Supplémentaire" at para. 172 [as translated by CCSA].

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37. CCSA is concerned that such wording could permit TV5 to discharge its obligation to BDUs by delivering its service to any satellite uplink centre, for example, one in Mississauga, or any IXP, for example at 151 Front Street in Toronto.

38. If such was the case, that would make the individual BDU responsible both for distributing the service to its digital basic subscribers and for the costs of transporting the signal from the satellite uplink centre or the IXP to its headend.

39. As reasons for its request, TV5 cites "technological options" for BDUs that have "evolved and diversified". TV5 says that, for example, "many cable operators prefer to get the signal directly from the broadcaster" or to get their signals "via IP links", including connection to the 151 Front Street network exchange.[8]

40. TV5 estimates it will save some $570,000 annually as a result of the proposed change.

41. CCSA's concern is that the $570,000 will come almost exclusively at the expense of customers of the small BDUs that CCSA represents. Those are the distributors who, because they are often remotely situated, cannot yet connect to the central IXPs.

42. Those are the distributors who, today, have no choice but to take their signals via satellite.

43. The Commission may rightly introduce new technological flexibility into the language of that part of the distribution order but it cannot let programmers like TV5 abandon their responsibility to bear the cost of delivering their signals to the BDUs .

44. That responsibility is an essential *quid pro quo* for the mandatory distribution privilege and it is especially important to the smaller, often remotely situated BDUs that CCSA represents. Accordingly, the Commission should deny TV5's request to be relieved of its obligation to pay for the costs of transmission of its signals to the BDU's headend.

[8] *Ibid*. at paras. 169-171.

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

Sincerely,

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Vice-President, Regulatory Affairs

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