

# Integration and Cultural Diversity

Report of the Panel on  
Access to Third-Language  
Public Television Services



Presented by: Clifford Lincoln, Roger Tassé and Anthony Cianciotta



September 27, 2004

The Honourable Liza Frulla  
Minister of Canadian Heritage  
15 Eddy Street  
Gatineau, Quebec K1A 0M5

Dear Minister:


We, the undersigned, members of the expert panel on access to third-language public television services, appointed on August 17, 2004, respectfully submit the following report.

We are of the opinion that access to third-language television services in Canada presents particular challenges that can only be met through policies, a regulatory framework and measures adapted to their nature. In our report, you will find a number of recommendations which, in our view, will provide greater access to the cultural diversity offered by television services from around the world, and which are relevant to any particular language group in Canada.

In making our recommendations, we also paid special attention to measures which will strengthen existing Canadian services and help to create new Canadian services offering programming in a third-language. Our panel was reminded of the major contribution that these Canadian services make toward the cultural diversity and multicultural nature of Canada. We fully endorse this objective. We are mindful, however, that the core of the Canadian broadcasting system, operating in the two official languages, must remain the principal instrument for the integration of immigrants into our Canadian society.

Our panel recognizes the significant role of the Canadian Radio-television and Telecommunications Commission (CRTC) in meeting the challenges presented by the access to third-language television services. We are of the view that the *Broadcasting Act* gives the CRTC sufficient flexibility in its regulatory powers, and the ability to set its own rules of procedures in order to play a more proactive role in finding timely solutions to those challenges. You will find a recommendation in our report on this issue.

In preparing our report, we relied extensively on information already available through the public record on access to third-language services, and some research undertaken on our behalf. We are grateful to the many officials from Canadian Heritage who assisted our Secretariat in its work. We would also like to thank the Government's legal advisers from Justice Canada, and the staff of the CRTC for their assistance.



The panel also benefited from a number of submissions made by individuals, associations or corporations. We want to convey to you that their submissions were very helpful to us in reaching our conclusions. A special thank you is in order to those who have agreed to meet with us, at our request, to give us the benefit of their views on some of the more complex issues.

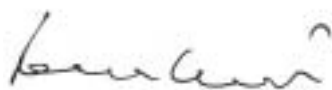
Finally, we want to give special recognition to our dedicated Executive Secretary, Jean Guérette, and to our expert adviser and writer, David M. Black, for their indispensable contributions. Without their help, this report could not have been written in the short time available.

In closing, we hope that this report, and the recommendations we have submitted, will assist you and the Government in developing an effective policy response on access to public third-language television services – a matter of great importance to so many Canadians. We want to thank you, Minister, for giving us the opportunity to provide our contribution.

Yours truly,



Clifford Lincoln,  
Chairman



Roger Tassé



Anthony Cianciotta

# Executive Summary

The report of the expert panel on access to third-language public television services describes the work of the panel, lists the important issues that are involved in access to third-language television services, and makes a number of recommendations.

The panel focused on “public broadcasters” defined as “the principal, or a significant, broadcaster(s) in a foreign country that provides generalist programming culturally relevant to a particular language group in Canada.”

In the panel’s view, the current approach to approving third-language broadcasters, while it has been largely successful, needs to be reviewed and modified.

Modifications, in particular, need to focus on the need for a policy framework for third-language broadcasters that supports the third-language sector within an approach rooted in the principles of Canada’s *Broadcasting Act*.

The report makes twelve recommendations that address the need for a regulatory framework for third-language services.

The core recommendations that will support such a policy involve the CRTC being more timely and proactive in the way it facilitates access to third-language services. In addition, the report recommends the creation of a third-language production fund available to Canadian third-language services.

The report stresses the fact that all third-language services must contribute in some way to Canada’s broadcasting system. The panel is convinced that the preferred option is for foreign services to enter into a partnership with Canadian services.

In those situations where the CRTC is convinced that partnerships and alliances are not possible, foreign services could be added to the list of eligible services with the understanding that they will make a contribution to the Canadian system. This provision would apply to existing services.

The recommendations, if acted upon, would support third-language programming services while recognizing that such services will make important cultural contributions to the Canadian system.



# 1.0 Introduction

On August 17, 2004, the Honourable Liza Frulla, Minister of Canadian Heritage, established a panel to “focus on the most appropriate way to increase access to third-language, non-Canadian public television services ...”<sup>1</sup>

The panel was asked to pay particular attention to three issues:

1. The current availability to Canadians of third-language television services – including those that are licensed services and those that are listed by the CRTC as eligible non-Canadian services.<sup>2</sup>
2. Analysis of the implications (for existing Canadian-licensed, third-language services) of increasing the number of non-Canadian, third-language public television services distributed on a digital basis.
3. Recommendations concerning the means by which the Government could give Canadians greater access to third-language services, while respecting Canadian values and the broadcasting policy objectives set out in the *Broadcasting Act*.



<sup>1</sup> The full text of the terms of reference is attached as Appendix I.

<sup>2</sup> A full list of the current and eligible third-language services is attached as Appendix II.

The panel was asked to complete its report to the Minister of Canadian Heritage by September 30, 2004. At the request of the Government, the panel will file its report with the CRTC by October 13, 2004.

The panel began its work in mid-August 2004, immediately after its appointment. Mindful of the time constraints, the panel reviewed legislation, regulations and existing research on the status of third-language television services available in Canada. In addition, it held informal discussions with a number of people who are directly involved in Canada's broadcasting system or who are

interested in issues of third-language services. These discussions included officials from the CRTC as well as distributors, broadcasters, third-language programmers, non-governmental organizations, and individuals with a long involvement in the development or application of broadcasting policy in Canada.

The panel's report consists of five chapters, starting with this brief introduction. Next, Chapter 2 presents the necessary background to understand the origin and current situation of third-language broadcasting in Canada. Chapter 3 briefly summarizes the main issues stemming from the panel's research and discussions. Chapter 4 describes the principles that guided the panel in its approach to developing the recommendations and suggestions it believes will deal with the issues. Chapter 5 presents the panel's recommendations. A modest amount of supporting information is presented in appendices.

Time constraints prevented the panel from holding an extensive series of public hearings with witnesses, and making a call for comments. However, the panel feels that the steps taken enabled it to adequately address the questions asked.





## 2.0 Background

Section 3 of the *Broadcasting Act* sets out a number of objectives for Canada's broadcasting system. The system is to be responsive to the needs of Canadians, and is to be Canadian-owned and controlled. Section 3 (1) (b) states that the Canadian broadcasting system operates "primarily in the English and French languages..." Section 3 (1) (d) further states that Canada's broadcasting system should:

- (iii) through its programming and the employment opportunities arising out of its operations, serve the needs and interests, and reflect the circumstances and aspirations, of Canadian men, women and children, including equal rights, the linguistic duality and multicultural and multiracial nature of Canadian society and the special place of aboriginal peoples within that society, and
- (iv) be readily adaptable to scientific and technological change.



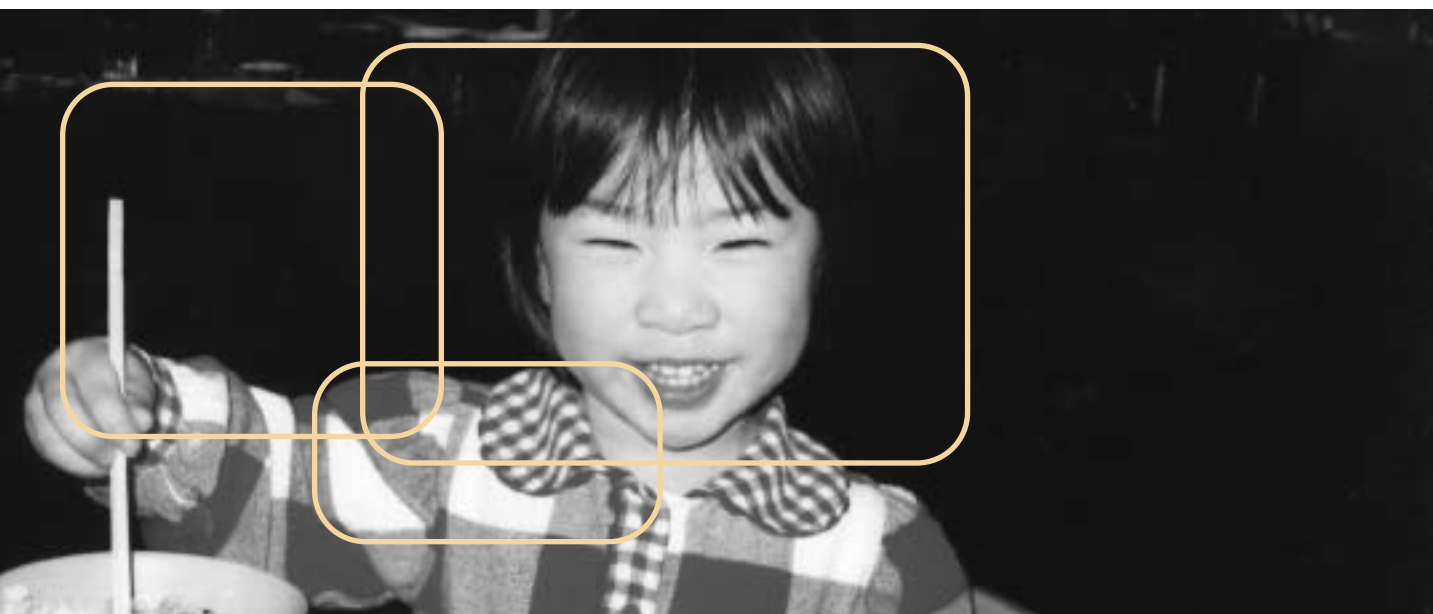
This general orientation has led to the development of a sophisticated and complex broadcasting system that serves French and English language populations as well as Aboriginal Canadians. In addition, a number of third-language services have been approved so that Canada now has, in terms of languages, one of the most varied systems in the world.

By the end of the 20<sup>th</sup> century, Canada was a diverse and multicultural society. The future will bring an even more diverse society. While the multicultural and multiracial nature of Canadian society is recognized in the *Broadcasting Act*, there are other indications of Canada's interest in the diversity of cultural expression. One of these is Canada's initiative and leadership in the development of a draft convention "on the protection of the diversity of cultural contents and artistic expressions."<sup>3</sup> One of the main objectives of the convention is "to protect and promote

<sup>3</sup> This convention is being developed through the United Nations Educational, Scientific and Cultural Organization (UNESCO).

the diversity of cultural expressions” and “to facilitate the development and adoption of cultural policies and appropriate measures for the protection and promotion of the diversity of cultural expressions.”<sup>4</sup>

Canada has also participated in an international working group that considers issues of cultural diversity and globalization. One of the objectives of the working group is to “ensure that cultural diversity is promoted and preserved in the face of the opportunities and challenges introduced by, *inter alia*, globalization, trade liberalization and technology.”<sup>5</sup>



Canada’s interest in these initiatives partly reflects a long-standing encouragement and support for cultural diversity within Canada. One way these interests are supported and encouraged is through the provision of third-language services within the Canadian broadcasting system.

Third-language programming in Canada falls under the Canadian Radio-television and Telecommunications Commission’s (CRTC) ethnic broadcasting policy.<sup>6</sup>

The panel recognizes that there has been considerable success in Canada over the past 20 years in the growing provision of ethnic and third-language services. As the CRTC recently pointed out:

The current ethnic broadcasting landscape consists of a variety of licensed Canadian ethnic services including 5 over-the-air television stations, 17 radio stations, 10 specialty audio services, 5 analog specialty services and 11 launched Category 2 digital specialty services. All of these services devote all or part of their schedules to third-language programming. In addition, the Commission has approved applications for approximately 50 Category 2 ethnic services that have yet to be launched.<sup>7</sup>

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<sup>4</sup> *Preliminary draft convention on the protection of the diversity of cultural contents and artistic expressions*, Unesco, Paris, France, July 2004, p.2.

<sup>5</sup> *Draft International Convention on Cultural Diversity by the Working Group on Cultural Diversity and Globalization*, International Network on Cultural Policy, July 2003, p.11.

<sup>6</sup> CRTC 1999-117.

<sup>7</sup> Broadcasting Public Notice CRTC 2004-53, paragraph 6.

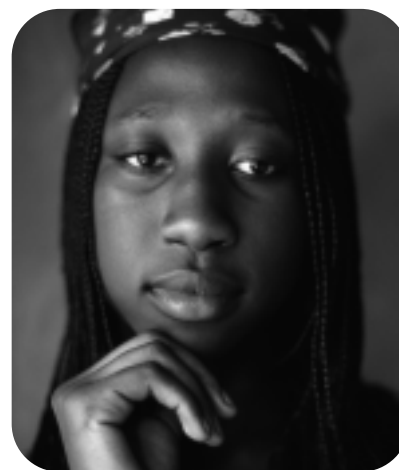
## 2.1 The Approval Process

The process of approving third-language services is a complex one and has changed over time. Between 1985 and 2000, third-language services were approved in the same way that other services were approved. The CRTC reviewed the business plan, considered the contributions that might be made to Canada's broadcasting system and then the Canadian broadcaster would be granted a licence. The licence included conditions that required certain minimal amounts of Canadian content (e.g., local news). Once the licence was granted, the service was launched.

Services can also become available if the CRTC adds a foreign service provider to the list of eligible satellite services (often referred to as the "eligibility list"). The foreign service provider (i.e., one that is not Canadian-owned) is not "licensed" but the programming can be carried by a Canadian-owned broadcast distributor if the service is on the eligibility list.<sup>8</sup>

A different avenue for licensing third-language services became available in 2000 when the CRTC adopted a new policy for the licensing of digital pay and specialty services.<sup>9</sup>

At present, there are two different categories of digital pay and specialty services.



Category 1 services are digital pay and specialty services that make a strong contribution to the development, diversity and distribution of Canadian programming. Broadcasting Distribution Undertakings (BDUs) that offer programming services using digital technology must distribute all Category 1 services as provided under the *Broadcasting Distribution Regulations*.

Category 2 services are digital pay and specialty services that are competitive with one another and are licensed on a more open entry basis. BDUs are not required to carry Category 2 services.<sup>10</sup>

In 2000, the CRTC licensed more than 300 Category 2 services. More than 50 of these were third-language services. This licensing process was considerably different than a traditional CRTC process. For example, the licence was approved with only a minimal review of the business plan and the licensee was required to find a distributor (either cable or satellite) to carry the service. Of the more than 50 third-language services licensed in 2000, only 15 have been "launched" on a cable or satellite system.<sup>11</sup>

<sup>8</sup> See Broadcasting Public Notice CRTC 2003-43 for a revised list of eligible satellite services.

<sup>9</sup> See Public Notice CRTC 2000-6.

<sup>10</sup> CRTC 2004-53.

<sup>11</sup> The Category 2 licences for services approved in 2000 but not yet launched are in effect until November of 2004.

There are a variety of reasons why only a few of these services have been launched. In some cases, a Category 2 service that was licensed in 2000 may not have secured access to third-language programming. In other cases, the service has been unable to make suitable arrangements with a distributor. Both of these reasons may be related to either the economics of the business case or the lack of an adequate market for the service.<sup>12</sup>

## 2.2 The Current Situation of Third-language Broadcasters

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Due to the three mechanisms described above (the traditional approval process, in effect between 1985 and 2000; the eligibility list; and the approval of Category 2 services in 2000), Canadians have access to an interesting range of third-language programming. Indeed, Canada probably has one of the more diverse sets of third-language services in the world.

While there has been considerable success, from which one can derive a sense of accomplishment, there are a number of important issues that need to be resolved if third-language programming is to continue to grow.

The issues that need to be dealt with are discussed in the following chapter.



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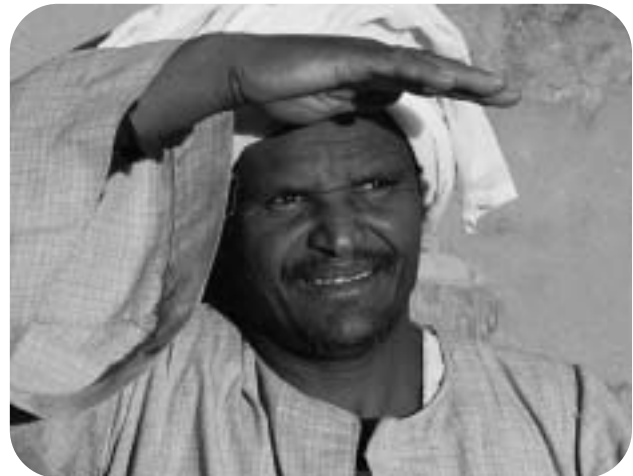
<sup>12</sup> These reasons have some application to all of the Category 2 services approved in 2000 that have not been launched.

# 3.0 The Issues

The panel had informal discussions with officials from the CRTC. It also sought the opinions of a number of people familiar with Canada's broadcasting system and the regulatory process that determines how third-language services are approved. The individuals and groups the panel met included broadcasters, distributors, third-language programmers, non-governmental organizations and individuals with long experience in various aspects of broadcasting policy.

From the panel's research, consultations and wide-ranging discussions, a number of issues concerning the current system for licensing or approving third-language services came to light. These issues are grouped, in summary form, under the following headings:

- Defining Public Broadcasters
- Culture and Audiences
- Competitiveness
- Partnerships
- Category 2 Digital Services
- Conditions
- Capacity and Technical Considerations
- The Culture of the CRTC
- The Black and Grey Market



Each item above is discussed in the next few sections of this chapter.

## 3.1 Defining Public Broadcasters

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One of the first questions that arose in the panel's discussions with those we met was the approach the panel would take to the definition of “public broadcaster” mentioned in the panel’s mandate. This issue was raised frequently. A fundamental problem is that the term means different things to different people. A second problem is that the term is not used consistently among different countries.

From Canada’s long association with public broadcasting, Canadians typically associate the term with the Canadian Broadcasting Corporation or the British Broadcasting Corporation. That is, they think of a public broadcaster as being largely supported with public funds, and operating at arm’s length from government. While other countries have similar arrangements to those in Canada and Great Britain, many countries have quite different arrangements. The Public Broadcasting System (PBS) in the United States is partly supported by public funds, private donations and advertising. Some broadcasters are wholly-owned by government (e.g., in China) but are not mandated to operate at arm’s length from government.

Thus, the panel rapidly came to the conclusion that it was impossible to carry out its mandate if restricted to the notion of a “public broadcaster,” as it is commonly understood in Canada. There is simply too much diversity in the way the expression is used to make sense of the panel’s mandate. Accordingly, for the purpose of this study, the panel chose to define a “public broadcaster” to be “the principal, or a significant, broadcaster(s) in a foreign country that provides generalist programming culturally relevant to a particular language group in Canada.”



## 3.2 Culture and Audiences

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A constant theme that ran through the comments heard by the panel was that the current approach to the approval of third-language services did not place sufficient emphasis on the cultural issues involved from the viewpoint of the relevant third-language community. While the current approach does examine the impact that new services might have on existing service providers, it would seem that insufficient consideration is given to the interests and needs of consumers.



Frequently, the point was made that the third-language community is interested in the service for cultural reasons, and that this cultural interest is not looked at in the same way as other decisions to purchase a broadcasting service. For example, second generation immigrants may desire the service in order to better understand the cultural interests of their parents. Indeed, this cultural interest is reflected in the reasons a foreign broadcaster wants to offer a service to members of a particular language community. The rationale seems to be more cultural than economic.

The panel was told that the various tests that are applied are almost all defined in terms of the CRTC's criteria, rather than the interests of the potential audience for the service. This "inward" looking review even extends to the question of competitiveness. Competitiveness is looked at from the impact on existing services. Far less attention is paid to the third-language audience's ability as consumers (and thus, as a market) to support an additional service.

This restricted examination of the interests of the audience and consumers can be seen in the way competitiveness issues are handled. This is discussed in the next section.

## 3.3 Competitiveness

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The current policy addresses the competitive impact of new services as follows:

The Commission's policy precludes the addition of non-Canadian services to the lists if the Commission determines them to be either partially or totally competitive with Canadian specialty or pay television services. This serves to ensure that Canadian licensed services are in a position to fulfill their commitments and obligations regarding the airing of Canadian programming, a responsibility that their non-Canadian competitors do not have.<sup>13</sup>

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<sup>13</sup> Broadcasting Public Notice CRTC 2004-53, paragraph 11.

The panel was told that the current method for examining the appropriateness of a new service was too dependent on considerations of competitiveness and that the application of the competitiveness test was unduly broad. It appears to be based on a negative view of competition and does not consider that competition can produce positive benefits.

At the present time, the Commission finds it relatively straightforward to consider “niche” programming because of the “focused nature of the programming of the non-Canadian service.”<sup>14</sup> However, when it comes to programming of a more general nature, the test is more difficult. If there is overlap in a programming area (e.g., if the two services both offer drama), then the Commission is likely to deny the requested service for this reason. This denial can occur when the two services are quite different (e.g., 24 hours of commercial-free programming compared with an existing service that offers five hours with commercials). If there is an overlap in the programming, even though the programming is quite different, permission can be denied. Indeed, this was one of the reasons given for denying the request by Rogers Cable Inc. (Rogers) to add an Italian-language service, Radiotelevisione Italiana (RAI International), to the digital lists<sup>15</sup> and for denying Spanish-language services from Spain, Chile and Mexico and the Portuguese-language public broadcasting service of Portugal.

While the RAI case was complicated by special factors, certain comments made to the panel pointed out that the complexity of cases was likely to increase, not decrease. As well, the current rules seem to suggest that no general purpose third-language programming provided by a non-Canadian service will be allowed. This was described as a restriction that was unduly broad and did not take into account the significant cultural interests of the third-language audience.



<sup>14</sup> Ibid., paragraph 18.

<sup>15</sup> The decision to deny the Rogers request is a complex one and the full text can be found in CRTC 2004-50.



A second consequence of the current rules is that they seem to grant a perpetual monopoly to existing Canadian service providers – regardless of the nature of the service being offered by the non-Canadian service and regardless of the cultural interests of the third-language audience.

There were suggestions made as to how the competitiveness test could be improved. The main points were:

- There should be a more rigorous test to demonstrate why competition is negative.
- The test should require proof that there is material harm.
- The test for competitiveness should not consist of a simple comparison of the nature and scope of programming.

There are also other different elements to the competitiveness issue. The most important element is the acquisition of rights to third-language programs for distribution in Canada. Basically, the CRTC requires the non-Canadian service to agree not to hold exclusive rights to programming (in the third language) and thus deny it to other services operating in Canada. The CRTC's Notice 2004-53 states that requests for listing as an eligible service must include:

an undertaking from the non-Canadian service provider that it does not hold, will not obtain, nor will it exercise, preferential or exclusive programming rights in relation to the distribution of programming in Canada.<sup>16</sup>



There was no criticism of the importance of prohibiting the holding and the acquisition of exclusive rights. However, it was made clear that this rule, by itself, did not guarantee access to programming by Canadian broadcasters and that conflicts that may arise in this regard would require some form of resolution mechanism.

## 3.4 Partnerships

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There are a number of successful third-language services that provide programming to Canadians on the basis of partnerships or alliances with a non-Canadian broadcaster. Indeed, most of the third-language programming that Canadians see and hear is the result of some form of a partnership or alliance. The Asian Television Network (ATN) and Fairchild Television are examples of the benefits that can occur from alliances with non-Canadian broadcasters.

The large number of Category 2 licences issued in 2000 assumed that this pattern of alliances and partnerships would continue. One of the problems facing the CRTC in its recent decisions was the fact that existing partnerships appeared to have broken down.

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<sup>16</sup> CRTC 2004-53, paragraph 10.

While this was the first time that the CRTC had been faced with this particular problem with the launch of third-language services, it will probably not be the last. Indeed, as the number of third-language services increases it is quite likely that, over time, other existing partnerships or planned partnerships will be subject to change.

Thus, the observation was made that simply because partnerships had broken down, this did not seem to be a sufficient reason to deny a particular third-language service. The issue is complicated because the breakdown of the partnership changes the potential analysis of the competitive issues.

## 3.5 Category 2 Digital Services

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In 2000, the CRTC adopted a different method for granting licences. This was reflected in the way that Category 2 licences were approved. Before that time, the CRTC granted a licence after an extensive review of the business plan for a broadcaster. This included an assessment of the Broadcasting Distribution Undertaking (BDU) that was going to distribute the service. When the CRTC was satisfied that all the pieces were in place, and that the proposed service would make a contribution to the overall Canadian broadcasting system, the licence would be granted. Once the licence was granted, the new service was launched.

With the possibility of launching a large number of digital services, the CRTC decided to change this process to encourage as diverse a set of services as possible. Unlike previous exercises, there was only a cursory review of the proposed business plan, and no requirement that the service have a BDU ready to distribute the service once the licence was obtained. The reason given for this approach was a laudable one.

Accordingly, the Commission has adopted an approach that provides a bridge between the traditional regulatory mechanisms – which have been highly supportive of emerging new Canadian services – and a more open-entry environment that allows for greater risk taking, provides for a greater number of services in the marketplace, and allows the success of services to be increasingly determined by customers.<sup>17</sup>

Thus, a large number of new services were “licensed.” However, since they did not have a distributor, and in some cases had not acquired programming rights, they have not been launched even three years after the original approval. At the same time, the CRTC reopened the process for adding new services to the eligible list for digital distribution.



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<sup>17</sup> Public Notice CRTC 2000-6, paragraph 14.

This approval of a large number of licences, it was observed, seemed to involve fundamental changes to the previous licensing process. With the addition of services to the eligible list, it led to confusion in the minds of non-Canadian, third-language services. Third-language, non-Canadian services may have felt that there now was a way to enter Canada without a partnership or having to make a contribution to the Canadian broadcasting system.

It was brought to our attention that this may have been counter-productive as it might have contributed to the breakdown of existing partnerships.



## 3.6 Conditions

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When licensing a Canadian service, the CRTC is able to impose conditions of licence (COL) such as the need to provide a certain level of Canadian content. These conditions have been a mainstay of the Canadian broadcasting system. The ability of the CRTC to impose conditions on a non-Canadian service is limited.

In the past, this has been done by requiring a service to be bundled with other services or, in the recent *Al Jazeera* approval, conditions placed on Canadian distributors.

This is a thorny issue that the panel considers in its recommendations.

## 3.7 Capacity and Technical Considerations

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The question of the capacity of the system was raised a number of times. On the one hand, the capacity of the system is not infinite. On the other hand, there is considerable flexibility within the system. This flexibility – and therefore the capacity of the system – consists of a complex interaction between technical issues (the underlying science and engineering) and various economic issues.

For example, the capacity of the existing system could be extended with investment in additional equipment or the development of new compression technologies. At the same time, the development of High Definition television, for instance, will bring new limitations on the capacity of distribution systems. An analysis of these issues was provided to the panel and is made available in Appendix III.

Questions of capacity need to be considered in any decisions related to the development of third-language services.



## 3.8 The Culture of the CRTC

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During discussions with the panel, a number of people expressed a concern that the culture of the CRTC – which deals with both telecommunication and broadcasting issues – has, over time, moved to a more formal regulatory climate that is not as suitable for broadcasting issues as it is for telecommunication issues. It was suggested that broadcasting required a more flexible approach that could deal with the rapidly changing world of broadcast programming.

People suggested that the CRTC needs a mechanism that would allow it to intervene – for example, in a dispute between partners, before the situation becomes impossible to rectify (either with regulations or intervention). It was also suggested that such a mechanism would help the CRTC resolve issues in a more timely manner.

It was pointed out that, in the past, a number of problems have been “resolved” with a combination of the “good office” of the CRTC and negotiations. People mentioned the digital music channels, Country Music Television, TSN and discussions with McLean Hunter, as well as other topics.

## 3.9 The Black and Grey Market

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The black and grey market is an important issue facing the Canadian broadcasting system. In its work, the panel heard suggestions that a more flexible policy on third-language services would help reduce the attractiveness of the black and grey market.

The problems posed by the black and grey market cannot be easily resolved. One part of the market is composed of people stealing signals (e.g., by the use of a hacked or stolen smart card). The other part of the black market (often described as the grey market) consists of people who pay for the services they use, but do so using some form of subterfuge (e.g., through the use of a U.S. postal address).<sup>18</sup>



While adding services would help reduce the attractiveness of the black market to some households, it would not address the problems of piracy (i.e., theft). Dealing with piracy will require enforcement, and stiffer fines which in turn will require changes to legislation.

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<sup>18</sup> A full discussion of these issues can be found in *Our Cultural Sovereignty: The Second Century of Canadian Broadcasting*, Standing Committee on Canadian Heritage, Ottawa, June 2003.

# 4.0 Approach and Conclusions

In its consideration of the issues presented by the Minister, the panel kept in mind a number of points.

- Canada is a diverse and multicultural country.
- Canada’s broadcasting system is to serve “the needs and interests of Canadian ... men, women and children ...”.<sup>19</sup>
- These needs and interests include “the multicultural and multiracial nature of Canadian society.”<sup>20</sup>
- Canada is playing a leading role in two different processes that support mechanisms and instruments to protect cultural diversity.
- Third-language programming should be encouraged but the Government of Canada should be mindful that the Canadian system, in both official languages, is fundamental to the integration of immigrants into Canadian society.
- Integration is an important part of the responsibility of Canadian third-language broadcasters.
- Third-language programming can make an important contribution to the cultural life of those who speak a third language and the thousands who may be studying a particular third language.
- The Canadian broadcasting system is described within the *Broadcasting Act* as a “single system”<sup>21</sup> and that Canadians should not readily accept that services, important to their cultural life, can only be obtained illegally (i.e., in the black market).



<sup>19</sup> *Broadcasting Act*, 3 (1) (d) (iii).

<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid.*, [Further declaration] (2).



By keeping these considerations in mind and examining the issues, the panel has come to the conclusion that:

- For the purposes of this report, the best way to define “public broadcaster” is “the principal, or a significant, broadcaster(s) in a foreign country that provides generalist programming culturally relevant to a particular language group in Canada.”
- A number of aspects of the approval of third-language services need to be reviewed and updated in light of the above realities.
- In some instances, the present process for considering third-language programming does not appropriately consider the cultural interests of third-language groups.
- The tests for competitiveness need to be more consistent and more thorough within the context of the definition of “public broadcaster” as defined by the panel.
- The apparent competitive conflict between service providers of generalist programming in the same third language needs to be reconsidered.
- This new approach should not grant a perpetual monopoly to existing third-language services.
- **At the same time, the new approach should not, for foreign third-language services, open a back door to Canada without a contribution to the Canadian broadcasting system.**
- This new approach should reduce the attractiveness of the black market.

In the panel’s view, third-language Canadian broadcasters need some assistance so that they can grow and become stronger. This will require an approach that is specific to third-language broadcasters. This assistance does not need to be the same as that for English, French and Aboriginal language programming. At the core of the panel’s recommendations, presented in the next chapter, is the understanding that third-language services need a specific policy and regulatory framework that recognizes their support and commitment to the cultural life of Canada.

# 5.0 Recommendations and Suggestions

The panel was asked by the Minister to “focus on the most appropriate way to increase access to third-language, non-Canadian public television services,” by paying particular attention to three issues:

1. The current availability to Canadians of third-language television services – including those that are licensed services and those that are listed by the CRTC as eligible non-Canadian services.
2. Analysis of the implications (for existing Canadian-licensed, third-language services) of increasing the number of non-Canadian, third-language public television services distributed on a digital basis.
3. Recommendations concerning the means by which the Government could give Canadians greater access to third-language services, while respecting Canadian values and the broadcasting policy objectives set out in the *Broadcasting Act*.



As the panel has pointed out in previous chapters of this report, the provision of third-language services has been a success, and Canada has one of the more diverse ranges of such services in the world. In a very short period of time (less than 20 years), third-language services have become an important component of Canada’s broadcasting system.

In spite of these successes, the third-language sector is fragile. The panel is convinced that there is a need for a clear framework within which the third-language services can flourish and continue to make their contribution to the cultural life of Canadians. In its recommendations, the panel proposes that there is a series of supports that will allow the third-language sector to grow at the same time that it allows for additional third-language services to be offered to Canadians.

The most important element in a process that will strengthen the third-language sector is a policy framework, specific to the sector.



## Recommendation 1

The panel recommends that the Government of Canada adopt a policy for third languages and that this policy include a regulatory framework for the broadcasting of third-language programs within Canada's broadcasting system.

The policy needs to be based on the cultural needs and aspirations of third-language communities and must be flexible enough to allow for the provision of a broad range of services within each language group.

## Recommendation 2

The regulatory policy should be based, in part, on the definition of “public broadcaster” that this panel has adopted in its work. “Public broadcasters” would be “the principal, or significant, broadcaster(s) in a foreign country that provides generalist programming culturally relevant to a particular language group in Canada.”

In the panel's view, third-language services should make a contribution to the Canadian broadcasting system. The main way in which this has been done in the past is to impose conditions of licence on Canadian services. Third-language services, such as Fairchild, ATN and Odyssey, have been able to prosper under these conditions. Noting these successes, the panel is of the view that this should be the preferred way that new services enter the Canadian system.

## Recommendation 3

The regulatory policy should give preference to non-Canadian services that enter into a partnership with Canadian broadcasters.

The panel realizes that partnerships and alliances can take many forms. For example, the alliance could involve a contractual arrangement by a foreign service to provide programming to a Canadian service. The relationships could, of course, be more involved and include equity participation up to the maximum currently allowed under Canadian law.

There will, however, be situations where alliances and partnerships are not feasible. In these situations, the panel agrees with a policy that allows services to be added to an eligibility list.



## Recommendation 4

The panel recommends that the third-language policy that is developed as a result of this report recognize that foreign broadcasters should make a contribution to Canada's broadcasting system. In situations where the CRTC becomes convinced, after using all the powers at its disposal, that alliances or partnerships are not feasible, foreign broadcasters of third-language programming could be added to the list of eligible services.

In developing this policy, consideration needs to be given to the different ways in which the Canadian broadcasting system can be strengthened. In the view of the panel, an important element of strengthening the system is to recognize that competition can make a positive contribution to the system.

The panel believes that competition should not be seen as necessarily negative. There needs to be a balanced consideration of a number of factors – the most important factor being the cultural needs of the third-language community. The fact that two services might compete (in the same third-language) because they both offer programming of a generalist nature, should not immediately result in the denial of service for a second service. If there is strong interest in the additional service, and the relevant community sees the service as a desirable one, then the presumption should be to allow the service – unless it is likely to cause some form of irreparable harm to an existing service.

In the panel's view, the claim of irreparable harm needs to rest on a thorough analysis of the relevant factors. Within the framework proposed by the panel, there may be ways (e.g., bundling) in which the allegedly negative competitive pressure can be offset.

## Recommendation 5

The regulatory policy should examine competitiveness issues in a comprehensive and equitable approach based in part on the cultural interests of the third-language community and the different mechanisms that are available within the broadcasting system to support a variety of services.

Third-language broadcasters added to the eligibility list would be expected to make a contribution to the Canadian broadcasting system. The panel is convinced that the policy framework for third-language broadcasting needs to be flexible. At the same time, it recognizes the need for all third-language broadcasters operating in Canada to make a contribution to Canada's broadcasting system.

Third-language broadcasters can make a contribution to the Canadian system in two ways. Category 2 licence holders will be subject to an appropriate level of Canadian content as determined by the CRTC for conditions of licence.

The panel feels that a similar level of support should be required from third-language broadcasters, that are added to the eligibility list. The most appropriate way that this can be done is in the form of a financial contribution to a production fund.

## Recommendation 6

The panel recommends that third-language broadcasters, added to the eligibility list, be required to make a contribution to a third-language programming fund. This contribution should not be less than 10% of the funds they would receive from the Canadian distributors. The proposed contribution would be in addition to existing contributions to the Canadian Television Fund.

In this arrangement, the third-language service would agree that the appropriate funds would be withheld by the Canadian distributors and turned over to the appropriate fund.

Since the panel is of the view that **all** third-language services should contribute to the Canadian broadcasting system, it makes the following recommendation.

## Recommendation 7

Third-language services currently on the eligibility list should be required to agree that, as a condition to remaining on the list, they will contribute not less than 10% of their revenues to the third-language program fund.

To bring this recommendation into effect, the Canadian system will need to create a third-language programming fund.

## Recommendation 8

The panel recommends the creation of a third-language programming fund. The fund will consist of contributions from third-language services (on the eligibility list) that broadcast in Canada. The Government of Canada should also consider matching funds contributed by third-language broadcasters.

The idea for a third-language program fund is not a new one. It is suggested in the CRTC's ethnic broadcasting policy, but has never been acted on.<sup>22</sup> There are a number of cogent reasons for the creation of such a fund. The third-language sector is fragile and needs support. While this sector needs support, it is not eligible for funds from the existing production funds [e.g., Telefilm and the Canadian Television Fund (CTF)]. Thus, the panel is convinced that such a fund should be created.

The panel is of the view that the fund can be managed in a way similar to that of existing funds in Canada and makes the following suggestions.

- The fund is to be independently administered. Administration of the fund has to be cost-effective. **An existing programming fund administrator** should be mandated to administer this program as a distinct component.
- A representative advisory committee should be established to guide the administration of the fund.

<sup>22</sup> See CRTC 1999-117, paragraph 32.

- The fund would be limited to production in a third language.
- Access would be limited to independent Canadian producers who have an agreement with a third-language Canadian broadcaster that the program will be aired within a reasonable period after it is completed.
- Any return on equity, invested by the fund in third-language productions, is to be reinvested in third-language productions.

The introduction of new third-language services will bring opportunities, change and challenges to existing third-language services. Obviously, the creation of a third-language production fund – available to Canadian-owned, third-language services – will bring an ability to deal with increased competition. However, the panel believes that other possibilities to strengthen existing services are available. In particular, there are opportunities in the way groups of programs are offered to the public (bundling).

### Recommendation 9

The regulatory framework that supports the policy should strongly favour and encourage the development of packaging options (in the same third language) that would strengthen third-language Canadian services and increase the cultural choices available to Canadians.

There are two important reasons for this recommendation. First, an appropriate approach to the packaging of services could strengthen existing Canadian services and reduce the possible negative impacts that might come about with the introduction of new services. Second, this would make the Canadian system more attractive to Canadians and help reduce the sense that desired programming choices are only available through the grey and black market.

The panel is of the view that an important component that should underlie the regulatory policy is for Canadian third-language broadcasters to have access to foreign programming.

### Recommendation 10

The rule prohibiting the holding of exclusive rights for the Canadian market should be maintained.



## 5.1 The CRTC as Facilitator and Catalyst

To facilitate the implementation of the above approach, the panel is convinced that the CRTC needs to exercise the powers it already has to work in a proactive way to enhance the capacities and development of Canada's broadcasting system.

The panel is of the view that regulations, in and of themselves, are not sufficient to further the development of the Canadian broadcasting system. Therefore, the panel believes that the CRTC should take advantage of the powers it has been given under the *Broadcasting Act*.

The panel notes, as did some experienced people we talked to, that the Act states that the "Canadian broadcasting system should be regulated and supervised in a flexible manner"<sup>23</sup> and that the CRTC may:

- issue guidelines and statements with respect to any matter within its jurisdiction under this Act<sup>24</sup>
- make regulations respecting the carriage of any foreign or other programming services by distribution undertakings<sup>25</sup>
- may make rules respecting the procedure for making applications for licences, or for the amendment, renewal or revocation thereof, and for making representations and complaints to the Commission;<sup>26</sup> and
- may make rules respecting the conduct of hearings and generally respecting the conduct of the Commission in relation to those hearings.<sup>27</sup>

As the panel has pointed out, alliances and partnerships are an important element of the third language sector and they should be facilitated and encouraged. Furthermore, conflicts arising between Canadian licensees and foreign service providers on access to programming may require some resolution mechanism. In our view the CRTC has a special role to play in facilitating and encouraging the creation of alliances and partnerships or in resolving conflicts between broadcasters.



<sup>23</sup> *Broadcasting Act* 1991, 5 (2).

<sup>24</sup> *Ibid.*, 6.

<sup>25</sup> *Ibid.*, 10(1) (g).

<sup>26</sup> *Ibid.*, 21(a).

<sup>27</sup> *Ibid.*, 21(b).

### Recommendation 11

The panel is of the view that the CRTC should review its regulations and rules of procedures so that it can play a more proactive role (i.e. as a facilitator/catalyst/mediator) in finding timely solutions to the provision of third-language services.

## 5.2 The Black and Grey Market

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The black and grey market represents a series of different challenges to Canada's broadcasting system. The recommendations outlined above should, if acted upon, help reduce the attractiveness of the black and grey market to those households who are interested in purchasing third-language services. The recommendations are not likely, however, to deter those who are stealing signals.

### Recommendation 12

The panel recommends that the Government of Canada introduce the necessary changes to legislation to increase the penalties for piracy of radio signals.

## Conclusions of the Panel

During the time available to us, we have carefully considered the three questions asked by the Minister. We began by refining the definition of the broadcasters of interest to this study. This is simply because “public broadcaster” is used in many different ways. If defined as it is usually understood in Canada, it would be too restrictive.

From this perspective, we reviewed a large amount of existing material, including the relevant CRTC policy documents and regulations. We also met with officials from the CRTC and a number of broadcasters, distributors and knowledgeable individuals. From this work, and our own reflection, we have developed a set of recommendations that address the central thrust of the Minister’s questions to us: Acknowledging and respecting what has been accomplished, how can one encourage the development of a strong third-language broadcasting sector in Canada?

Starting from some of the core tenets of the *Broadcasting Act*, we developed a suite of recommendations that respect the Act, and that also will support a strengthening of the third-language sector. One of the central tenets is that the new policy be based on the notion of the “cultural importance” of the third-language programs to the relevant language group in Canada. Approval of new services – either through the creation of Canadian services in alliance or partnership with non-Canadian services, or the addition of services to an eligibility list – should be based, in the main, on cultural considerations.

While the admission of new third-language services to Canada may pose challenges to existing services, our proposals contain measures to offset permanent negative consequences.

First, there is the creation of a third-language program fund financed by contributions from the third-language services that enter Canada as eligible services. Second, we recognize the fact that third-language services could be bundled together as a set of services where the subscription fees for the total set of services can be shared in such a way that negative consequences can be alleviated. Third, we recommend retention of the rule prohibiting the acquisition of exclusive rights.



We are convinced, however, that the most important conclusion we can make is that the CRTC should play a more proactive role in finding timely solutions to the provision of third-language services and that it currently has the power under the *Broadcasting Act* to do so.

We believe that these proposals, if acted upon, will do much to support and encourage a balanced and vigorous third-language broadcasting sector offering culturally relevant programming to hundreds of thousands of Canadians. As the third-language services grow and develop, there will be change and evolution. These signs of change and evolution will be proof that the third-language broadcasting sector has become less fragile, and a vibrant partner capable of contributing to the cultural life of Canada.



In making our recommendations, we also paid special attention to measures that will strengthen existing Canadian services and help to create new Canadian services offering programming in a third-language.

Our panel was reminded of the major contribution that these Canadian services make toward the cultural diversity and multicultural nature of Canada. We fully endorse this objective. We are mindful, however, that the core of the Canadian broadcasting system, operating in the two official languages, must remain the principal instrument for the integration of immigrants into our Canadian society.



# Appendix I: Terms of Reference

## for a Panel on Access to Third-Language Public Television Services

The Government recognizes the growing importance of the multicultural, multilingual and multiracial population of Canada. It wishes to create, on a priority basis, access to a wider range of third-language, public television services to be distributed on digital basis. The aim is that new services should ensure that the Canadian broadcasting system more adequately reflects the growing diversity and interests of Canadian society, while respecting broadcasting policy objectives set out in the *Broadcasting Act*, such as providing a wide range of programming that reflects Canadian attitudes, opinions, ideas and values.

On July 15, 2004, the Canadian Radio-television and Telecommunications Commission (CRTC), in Broadcasting Public Notice CRTC 2004-53, called for comments from the public by October 13, 2004 on various questions related to the CRTC's assessment of requests to add non-Canadian, third-language television services to the Commission's lists of eligible satellite services for distribution on a digital basis. The Government sees both processes as complementary. The panel will focus on a more specific issue within the wider scope of the CRTC's review.

The panel is asked to focus on the most appropriate way to increase access to third-language, non-Canadian public television services, by giving particular attention to the following issues:

1. The current availability to Canadians of third-language television services, both those that are Canadian licensed services and those that are listed by the CRTC as eligible non-Canadian services.
2. Analysis of the implications for existing Canadian-licensed, third-language services of increasing the number of non-Canadian, third-language public television services distributed on a digital basis.





3. Recommendations concerning the means by which the Government could give Canadians greater access to third-language, non-Canadian public television services while respecting Canadian values and the broadcasting policy objectives set out in the *Broadcasting Act*.

The panel is asked to complete its report to the Minister of Canadian Heritage by September 30, 2004. The panel will also file its report with the CRTC by October 13, 2004 to be considered by the Commission during its review process. Following the CRTC process, the Government will have the necessary information to ensure that the Canadian broadcasting system is more responsive to the needs and interests of all Canadians.

# Appendix II: Third-language Television Services

Approved by the CRTC

Canadian Television Stations	Licensee	Language
1* CJNT-TV	Canwest/Global	Multi-language
2* CHNM-TV	Multivan Broadcast Corp.	Multi-language
3* OMNI 1-TV	Rogers	Multi-language
4* OMNI 2-TV	Rogers	Multi-language
Canadian Specialty Services	Licensee	Language
1* Fairchild TV	Fairchild Television Ltd.	Cantonese
2* Odyssey I	Odyssey Television Network Inc.	Greek
3* SATV	South Asian Television Canada Limited	Hindi + 14 South Asian languages
4* Talentvision	Fairchild Television Ltd.	Mandarin, Vietnamese and Korean
5* Teletatino	Telatino Network Inc.	Italian, Hispanic/Spanish
Category 2 Digital	Licensee	Language
1* All TV Korean – Doragi Television Network	Jang Sung Lee	Korean
2* ATN Alpha Punjabi (Punjabi Channel)	South Asian Television International Ltd.	Punjabi
3* ATN B4U Hindi Movie Channel (pay)	South Asian Television International Ltd.	Hindi
4* ATN Tamil Channel	South Asian Television International Ltd.	Tamil
5* Festival Portuguese Television	1395047 Ontario Inc.	Portuguese
6* NTI Tamil Services (pay)	Network Television International	Tamil
7* Odyssey II	Odyssey Television Network Inc.	Greek
8* Salt & Light (Inner Peace)	Salt & Light Catholic Media Foundation	Italian, Spanish, Portuguese, Polish, Filipino
9* SSTV	Ravinder Singh Pannu	Punjabi
10* Tamil Channel	Tamil Vision Inc.	Tamil
11* Filipino TV	Ethnic Channels Group Limited	Filipino
12* Persian Vision	Persian Vision Inc.	Persian
13* Russian TV1	Ethnic Channels Group Limited	Russian
14* Ukrainian TV1	Ethnic Channels Group Limited	Ukrainian
15* Vietnamese TV	Ethnic Channels Group Limited	Vietnamese
16 Ana Canada	Ana Canada	Arabic
17 Arab TV Network	Asian Television Network	Arabic
18 ATN MultiCultural Channel	South Asian Television International Ltd.	Various cultures
19 Balkan Express	Xybermedia Inc.	Serbo-Croatian, Bosnian, Bulgarian, Romanian, Macedonian Slovenian, Albanian and Turkish
20 Caribbean & African Network	Television Network International Limited	Caribbean & African
21 Caribe Canada	Caribe Canada	Caribbean & African
22 Garvi Gujarat	I.T. Productions Ltd.	Gujarati
23 Gujarati Channel	South Asian Television International Ltd.	Gujarati
24 HTV Canada	HTV Canada	Spanish

25	International Film Festival Channel (IFFC)	CFMT, a division of Rogers Broadcasting Ltd.	20+ different groups
26	Luso! TV	Xybermedia Inc.	Portuguese
27	Network Italia	Network Italia	Italian
28	NRT Canada	NRT Canada	Russian
29	NTV International	The Eurasian Canadian Television Network	Russian
30	PSN Canada	PSN Canada	Spanish
31	RAI Canada	Corus Entertainment Inc.	Italian
32	Rang Punjabi	I.T. Productions Ltd.	Punjabi
33	Sitcom Canada	Sitcom Canada	Italian
34	Tele-Filipino	Global Television Network Inc.	Filipino
35	Telegu Channel	South Asian Television International Ltd.	Telegu
36	Telemundo Canada	Telemundo Canada	Hispanic
37	TELETOON MULTI	Teletoon Canada Inc.	Various
38	The Fairchild Body and Soul Channel	Fairchild Media Group	Mandarin, Cantonese, Japanese, Vietnamese, etc.
39	The Fairchild Children's Channel	Fairchild Media Group	Mandarin, Cantonese, Japanese, Vietnamese, etc.
40	The Fairchild Food Channel	Fairchild Media Group	Mandarin, Cantonese, Japanese, Vietnamese, etc.
41	The Fairchild Movie Channel	Fairchild Media Group	Mandarin, Cantonese, Japanese, Vietnamese, etc.
42	The Fairchild Music Channel	Fairchild Media Group	Mandarin, Cantonese, Japanese, Vietnamese, etc.
43	The Fairchild News Channel	Fairchild Media Group	Mandarin, Cantonese, Japanese, Vietnamese, etc.
44	The Fairchild Spiritual Channel	Fairchild Media Group	Mandarin, Cantonese, Japanese, Vietnamese, etc.
45	The Fairchild Technology Channel	Fairchild Media Group	Mandarin, Cantonese, Japanese, Vietnamese, etc.
46	TV Chile Canada	TV Chile Canada	Hispanic
47	TV Italy	TV Italy	Italian
48	Urdu Channel	South Asian Television International Ltd.	Urdu
49	Video Italia	Video Italia	Italian

#### Non-Canadian Services eligible for distribution

	Analog or Digital	Language
1*	ART America	Arabic
2*	Deutsche Welle	German
3*	TV Japan	Japanese
4*	TV Polonia	Polonia
5	The Filipino Channel	Filipino
6	WMNB-TV: Russian-American Broadcasting Company	Russian
	Digital Only	Language
1	Al Jazeera	Arabic
3	ART Movies	Arabic
3	BVN-TV	Dutch
4	Canal Sur	Spanish
5	CineLatino	Spanish
6	Eurochannel	Spanish and Portuguese
7	German TV	German
8	Grandes Documentales de TVE	Spanish
9	Muslim Television Ahmadiyah	Multilingual
10	Romanian Television Internatioma (RTVI)	Romanian
11	RTV Palma	Yugoslavian
12	The Scandinavian Channel	Denmark, Finland, Iceland, Norway and Sweden
13	Utilisima	Spanish

\* Services that are in operation.

# Appendix III: Distribution Capacity

There are a number of different issues to consider when discussing the “capacity of the system.” The following discussion examines a number of the factors that are involved.

## Direct-to-Home (DTH) Capacity

By way of example, the Anik F1 satellite is equipped with 32 transponders that are appropriate for Direct-to-Home service (StarChoice). Each transponder can carry about 25 Mbps, which, at typical compression ratios, can carry:

- 8–10 standard definition television channels, or
- 1 HDTV channel and 3 SDTV channels, or
- 2 HDTV channels—but with severe compression ratios.

There is no “set” compression ratio. In allocating capacity, distributors trade picture quality for more channels. StarChoice lists 296 SDTV channels and 6 HD channels in their current lineup. Thus, they are maximizing the number of channels available to subscribers (i.e., choice).



## DTH vs. Cable

DTH can expand the number of services only by compressing harder, and compromising quality. Launching more satellites is unlikely to be economic, even where orbital slots are available.

- Cable has greater capacity than DTH, but will be constrained by the need to carry services for analog-only subscribers for ten years or more.

Satellite and cable systems must cope with the arrival of new High-Definition television services. HDTV services typically occupy one-half to one-third of an analog channel. But, they occupy 4 to 5 times more space than a standard-definition digital channel does. Carrying HDTV is good business, since it can be sold as a premium package even when the services are over-the-air, and free. However, HDTV severely limits the number of SDTV services that can be carried – and third-language services are typically SDTV.

- Cable is better for third-language services since it can tailor services to communities, while DTH is national in reach.
- Cable also has more services competing for capacity: high-speed Internet, video-on-demand and local telephony are services that DTH satellites cannot easily offer.

## Cable Capacity

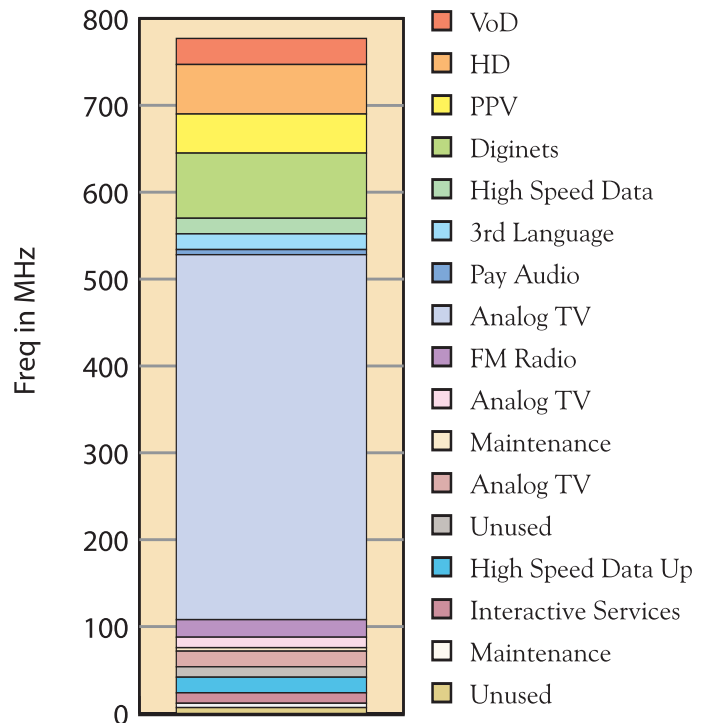
The following considerations are typical of a cable system.

For example, the chart at the right shows how a cable system with 336 SDTV channels (analog and digital), and 19 HDTV channels, divides its services.

All of the digital numbers are estimates, but they serve to illustrate the kinds of uses to which a cable system is put. They also illustrate that:

- a 750 MHz system is capable of providing a wide range of digital service
- increasing numbers of HDTV channels require systems with greater overall bandwidth
- local telephony will also require more bandwidth

Cable Capacity Usage (app.)



The huge amount of capacity occupied by the provision of analog service is also evident.

## Is there capacity for third-language services?

One year ago, the CCTA asked the CRTC to add a long list of US services to the eligible satellite services list. These include Home Box Office (HBO) and HBO multiplexes, (i.e., several services under one brand); Showtime and Showtime multiplexes; Starz and Starz multiplexes; Sundance; Cinemax; The Movie Channel; Lifetime Movies; Flix; Fox Regional Sports Net Channels; The NFL Channel; ESPN; ESPN2; Fox News; FamilyNet; Noggin; Nickelodeon Kids; and WAM!.

This would appear to be an indication that cable companies believe that capacity can still be found, at least on some systems, if the demand is high enough. But third-language services have limited appeal. Therefore, the approximately 50 channels on the list of un-launched Category 2 third-language services will have to compete with such services as HDTV, video-on-demand, pay-per-view movies, and telephony.



## Will fully digital cable solve the problem?

In Public Notice 2003-61, the Commission stated that once 85% of a BDU's subscribers can receive digital signals, the BDU could apply to remove analog services from its distribution system. Presumably, this means that subscribers have digital receivers, not simply that digital receivers are available to them.

Even then, the removal of analog service from the remaining 1/6<sup>th</sup> of cable subscribers will present a challenge. Consequently, industry estimates put this transition anywhere from 7–15 years away.

This still may not be the answer. Fully digital cable, with the capacity for several more channels, may continue to find that it has other uses for capacity that are more profitable than Category 2 third-language services. The capacity used by 66 analog channels could be completely used by 66 analog to HD conversions, plus 76 digital SDTV to HDTV conversions.

## Video-on-Demand (VoD) as an alternative

One alternative that would not use additional cable bandwidth is the use of video-on-demand services to deliver third-language programming.

In VOD, servers at the cable company “headend” store programming that can be called up by subscribers for a fee or monthly subscription. Some material is currently free.

Its unique property is that the amount of bandwidth required for VoD is not driven by supply—the number of channels. Rather, it is driven by demand—the number of users at any given moment. If the users remain constant, one can provide an unlimited amount of programming in an unlimited number of languages without compromising other services.

If the number of users increases, the cable system has a business case for allocating more capacity to VoD. On-demand service could be of benefit both to cable companies and to users, who would be able to access their favourite programming at any time.

The business model for this kind of service would need examination.

## An alternative: Internet provision

Finally, the improving quality of Internet video may provide an outlet for third-language programming. While the quality is not up to broadcast standards yet, it may be that news or other kinds of programming would attract a paying audience willing to subscribe to a third-language service provided in this way.

