



Canadian Association of Broadcasters
Association canadienne des radiodiffuseurs

February 18, 2009

Via Email: dupuis.marc@ic.gc.ca

Mr. Marc Dupuis
Director-General, Spectrum Engineering
Industry Canada
300 Slater St
Ottawa ON K1A 0C8

Dear Mr. Dupuis:

Re: Canada Gazette Notices SMBR-006-08, “*Publication of the Digital Television (DTV) Post-Transition Allotment Plan*” and SMBR-005-08, “*Interim Agreement Between Canada and the United States Concerning Digital Television (DTV)*”

1. The Canadian Association of Broadcasters (CAB) - the national voice of Canada’s private broadcasters, representing the vast majority of Canadian programming services, including private television and radio stations, networks and specialty, pay and pay-per-view television services - is pleased to submit the following comments in response to the above-noted Canada Gazette Notices.
2. As the comments below demonstrate, in this time of structural erosion and financial uncertainty, with ever-changing technologies and platforms emerging, private over the air (OTA) broadcasters need support and flexibility from both the federal government and the CRTC in order to continue with the digital television transition.
3. In reviewing our comments, it is important to recognize that the transition of Canada’s OTA industry to digital delivery is government-mandated. The principle to release radio spectrum for purposes other than broadcasting and to auction spectrum will directly generate revenue for the federal government. While some benefits may accrue to new users of this spectrum, the transition is not expected to produce extra revenues for affected OTA broadcasters. In fact, it will oblige private broadcasters to incur considerable new capital costs at a time when the decline in the national economy is critically affecting advertising revenues and therefore broadcasters’ abilities to meet their current license commitments.
4. In this regard we would note that on February 10, 2009 the Commission released the financial results for conventional television for 2008. These results demonstrate that profitability (PBIT) decreased from 5.2% (\$113M) in 2007 to 0.38% (\$8M) in 2008; total OTA revenues decreased by 1.5% in 2008 and have been basically flat since 2004 with a CAGR of only 0.9% over the past

five years and advertising revenues decreased by 1.9% in 2008 and have been basically flat since 2004 with a CAGR of only 0.8%. These dire economic results point to a period of significant structural change affecting the OTA sector.

5. It is also clear that government revenues resulting from any auction of the radio spectrum to affect the digital transition will not offset the costs to the Canadian public where it is predicted some viewers will be required to make modifications to their current viewing arrangements and/or receiving equipment, simply to preserve present services.
6. Considering these factors, private OTA broadcasters are asking Industry Canada to adopt an approach to DTV to ensure that:
 - (a) domestic digital television (DTV) technical licensing procedures and policies should accommodate an extension to the analog TV termination deadline that may be found necessary as a result of upcoming CRTC licence renewal hearings or other processes; and,
 - (b) with the possible exception of stations operating on channels above 746 MHz that may be required for Public Safety services, the Department should allow broadcasters to continue operating their existing analog TV transmitters at current parameters, at least until any extended analog termination date; and,
 - (c) DTV channel associations identified for each station in the Allotment Plan should be retained for at least 5 years following the transition and,
 - (d) policies affecting the broadcasters' abilities to select over-the-air (OTA) DTV channels other than those pre-selected for them by the Department in the DTV Allotment Plan should be applied in a flexible manner and applications for such changes will be handled expeditiously; and,
 - (e) provisions of the final Canada-US agreement should not preclude changes to domestic regulations or DTV implementation policies that may be found necessary as the transition proceeds, including the measures recommended in this submission; and,
 - (f) the costs to broadcasters for the required transmitter transitions should be offset from revenues that the federal government will earn as a result of the expropriation of spectrum above 698 MHz .
7. The CAB is cognizant of the fact that the CRTC declared in Public Notice 2007-53 (17 May 2007) that it does not intend to renew the broadcasting licence terms for existing analog OTA TV transmitters beyond 31 August 2011. However, for reasons detailed in the following sections of this submission, the CAB believes that this date should now be considered as a "target" only. Broadcasters that are able to do so, and can justify the costs on a business or competitive basis, should be free to convert to DTV on post-transition channels, as they see fit. However, the Department's regulations, policies and licensing actions with respect to spectrum

management and DTV from this point onward should anticipate the probability that analog TV operations in many parts of Canada may have to continue beyond 2011.

8. While a transition delay may temporarily postpone plans for the re-use of vacated TV spectrum above Channel 51 (698 MHz) by commercial services, the CAB considers such action is warranted by both the CRTC and Industry Canada for the following reasons:
 - In view of the depressed national economy, the large capital resources required by potential new users to acquire and exploit any released TV spectrum are unlikely to be available within the next several years in any event.
 - Notwithstanding many years of planning and the expenditure of more than \$1.34B in public funds to directly subsidize disadvantaged viewers through set-top converter grants, the US “national forced deadline” plan for DTV transition has failed to achieve its original analog termination target of February 17, 2009 and is now set at June 12, 2009.
9. The CAB notes the new DTV Plan provides each regular, protected, analog TV transmitter currently licensed in Canada with a channel allotment on which the licensee may elect to operate a single high-definition (HDTV) OTA service in the post-transition period. However, there are a number of factors that we believe will prevent private broadcasters from determining in the very near-term how many of these allotments will actually be occupied by OTA HDTV replacement transmitters and exactly when these might be implemented. Principal among these is the large capital expenditures required to implement DTV installations. Building transmitters that will serve the few remaining OTA TV viewers is difficult to justify in many markets, given the current economic circumstances facing the private television broadcasting sector, and indeed many Canadian industries.
10. Nevertheless, the CAB has been advised that many of its TV members do intend to apply for post-transition DTV transmitters in the coming years, especially in the larger TV markets. Since a majority of such stations would use their current analog channels for digital services, they would need to make “flash-cut” transitions that could take several months to plan and execute. Consequently, many of these conversions are likely to occur toward the latter part of the transition period. Therefore, the CAB suggests that the Department’s application processing personnel will need to accommodate, in their work-load planning, the expected volume of requests for such consideration.
11. We do not believe that this situation can be mitigated through the early implementation of temporary DTV facilities on transitional channels. At this late date, most stations implementing OTA DTV services will likely opt to do so on their permanent channels, given that converting transmitters from transitional to permanent channels would trigger even greater expenditures.
12. Considering the above, private broadcasters are diligently seeking ways to ensure that all viewers no matter where they may reside in Canada will have access by 2011 to high-quality domestic digital TV services, delivered through a variety of distribution methods. To this end, a number of technical alternatives to the conversion of a majority of the existing local analog OTA transmitters are being explored. Proposals in this regard may be brought forward shortly, in the

context of upcoming CRTC licence renewal hearings. However, implementation of alternatives could take considerable time, since related regulatory and policy changes may be required before they can be put in place.

13. Consequently, the CAB recommends that certain procedures referenced in SMBR-006-08 should be amended. Specifically, the Department should refrain from removing DTV channel “associations” that relate to current analog facilities until at least five years after the analog termination date. During this time, incumbent broadcasters should have the right of first refusal to use their associated DTV allotments. This is because one of the technical alternatives for the early provision of cost-effective OTA DTV could involve transmitter sharing. Under this scheme, several stations in a market would implement standard definition (SDTV) services by occupying a pre-determined portion of a single transmitter’s digital multiplex. If channel associations are removed from such stations prematurely, this could prevent the subsequent migration of each programming service to its own HDTV multiplex at a later date.
14. However, once channel associations are removed, the CAB believes that existing broadcasters that have implemented OTA DTV transmitters, or who may intend to do so, should be given the first opportunity to apply to use any allotments that may not have been taken up by others.
15. DTV conversion will position broadcasters for the future enhancement of TV services perhaps including those targeted specifically to mobile and portable receivers. In this regard, some research suggests that low power “distributed” transmitter networks may ultimately provide better coverage solutions than the single high-power transmitters envisaged in the present DTV Plan. Broadcasters looking to provide such services may find it prudent to initiate DTV with lower power transmitters, with the option to increase power or supplement coverage with multiple transmitters once the mobile TV opportunities achieve commercialization and are better understood. This approach may also have consequences for the manner in which reliable DTV service areas are predicted, using time and location probabilities. The CAB suggests that the Department may need to re-visit the basic technical assumptions that have gone into the development of the current Allotment Plan. So long as adequate protection is provided to technically-related services, Industry Canada should permit broadcasters a high degree of implementation flexibility as they deploy DTV services over the coming years.
16. Moreover, to ensure that the Canadian public can be well-served within a future mobile TV broadcasting environment, broadcasters implementing such services will require a wireless return path from viewers. The CAB suggests that an allocation of 1.5MHz will be required by each mobile TV licensee for such purpose. Providing for this within the Channel 52-69 block that will be released following the transition would provide an opportunity to bring future two-way mobile broadcast applications to the Canadian public.
17. We note that only about 8% of the DTV allotments identified for use by private protected stations are below Channel 7. Nevertheless, it appears that many of the existing low-band VHF analog channels currently in use will remain in the Plan as vacant allotments. The CAB recommends that, where existing users of low-band VHF channels have been allocated DTV allotments in core spectrum (Channels 7-51) and where these licensees are prepared to accept any DTV service area and noise limitations that may result, they should be permitted to remain

on their current channels. The principal reason for granting this flexibility would be to reduce the capital costs associated with DTV conversion, particularly where antennas and perhaps towers would need to be replaced to allow a channel change to occur. We would also urge that any proposals for such changes be handled expeditiously by the Department.

18. In this submission, the CAB is advocating certain changes in channel utilization policies that may have an impact on the final bilateral spectrum-sharing agreement that Canada intends to enter into with the USA. Consequently, we recommend that the Department ensure that the provisions of this agreement will not preclude changes to domestic regulations or DTV implementation policies that may be found necessary as the transition proceeds.
19. The CAB has also reviewed the Canada-US DTV Allotment Plan with respect to the specific channels set aside for both Canadian and US stations in border areas. We note that Industry Canada has accepted a number of US allotments near our largest TV markets that will enable these stations to extend their OTA coverage in Canada when they convert to DTV. In at least ten cases, these service extensions will exceed 10 km, which has the potential to further fragment the viewing of domestic stations. We suggest that this situation will need to be monitored to determine if adjustments to regulatory policies might offset any increased encroachment of US signals within our markets.
20. The DTV Allotment Plan does not contain any allotments above Channel 51. The stated purpose is to allow the released Channel 52-69 spectrum (698-806 MHz) to be allocated for other broadcasting and/or radiocommunication services. The capital costs associated with converting all of the affected regular and LPTV stations to DTV and re-locating them to other channels are substantial. Given the investment required, as well as the poor economic climate at present, the CAB believes it is not unreasonable that the costs that incumbents would incur, in making the changes that are necessary to release the spectrum that Industry Canada wants to re-allocate, should be offset in some manner.
21. One source of compensatory funding could be the revenues that the federal government will garner from commercial undertakings that acquire future rights to use any vacated TV spectrum above 698 MHz. This principle could apply regardless of whether new users buy the spectrum at auction or are licensed via conventional licensing processes and then pay annual licence fees. Such a practice would also be in keeping with the principle adopted in the US; specifically, that the federal government should forego a portion of the “digital conversion dividend” in the interests of achieving a smooth transition.
22. In conclusion, the CAB wishes to emphasize the recent changes that have negatively impacted the fundamental precepts that led the broadcasters, the regulators and the government to conclude that a relatively swift national transition to digital TV could be achieved in Canada. Most importantly, the world-wide recession has made it impossible for many broadcasters to finance the capital costs associated with a full-scale OTA HDTV transition and less expensive alternative digital delivery methodologies need to be explored carefully. As well, the difficulties encountered with the US DTV transition have vividly demonstrated the perils associated with making an overnight nation-wide technology transition that requires viewers themselves to take corrective actions. Plans are just starting to be developed to deal with this in Canada, and

broader action by both the federal government and the industry will be essential if the pitfalls experienced in the US are to be avoided.

23. Although private broadcasters remain committed to the eventual transition to digital television in Canada, the CAB believes that a more flexible implementation plan, revisions to the planned means of achieving this, as well as the timing of the conversion, must now be considered.
24. We would be pleased to meet with you and your staff to discuss any aspects of these comments and recommendations.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Pierre-Louis Smith', with a large, sweeping flourish extending to the left.

Pierre-Louis Smith
Vice-President, Policy and Chief Regulatory Officer

cc: Ms. Helen McDonald; Assistant Deputy Minister; Spectrum, Information Technologies and Telecommunications; Industry Canada
Mr. Ron Parker; Senior Assistant Deputy Minister; Strategic Policy Sector; Industry Canada
Mr. Jean-Pierre Blais; Assistant Deputy Minister, Cultural Affairs; Canadian Heritage
Mr. Konrad von Finckenstein; Chair, CRTC
Mr. Hubert Lacroix; President, CBC/Radio-Canada

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