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14 September 2009 **by Epass**

Mr. Robert A. Morin
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, ON K1A 0N2

Dear Mr. Morin:

Subject: Broadcasting Notice of Consultation CRTC 2009-411, *Policy proceeding on a group-based approach to the licensing of television services and on certain issues relating to conventional television* – Comments

Pursuant to paragraph 59 of Broadcasting Notice of Consultation CRTC 2009-411, *Policy proceeding on a group-based approach to the licensing of television services and on certain issues relating to conventional television*, 6 July 2009 (BNC 2009-411), as modified by BNC 2009-411-1, BNC 2009-411-2 and BNC 2009-411-3, MTS Allstream Inc. (MTS Allstream) submits the following comments.

In addition, pursuant to paragraph 58 of BNC 2009-411, MTS Allstream hereby requests to appear at the public hearing commencing on 16 November 2009. As a licensed broadcasting distribution undertaking (BDU), MTS Allstream will be significantly affected by any requirement that BDUs make any further payments to financially support the operations of over-the-air broadcasters. Consequently, MTS Allstream wishes to have the opportunity to provide greater insights into its proposals.

Yours truly,

for Teresa Griffin-Muir

c.c.: Pauline Jessome, MTS Allstream (613) 688-8791

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Before the Canadian Radio-television and Telecommunications Commission

Broadcasting Notice of Consultation CRTC 2009-411

Policy proceeding on a group-based approach to the licensing of television services and on certain issues relating to conventional television

Comments of

MTS allstream

14 September 2009

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INTRODUCTION

1. In BNC 2009-411, the Commission is undertaking an examination of how it should structure and conduct the upcoming group-based conventional and discretionary television licence renewals, taking into account systemic changes in the broadcasting industry, including the horizontal and vertical integration that has taken place. The Commission is also intent on establishing a flexible framework that can be adapted for other groups. As an appendix to BNC 2009-411, the Commission proposes a conceptual model for group-based licensing and solicits parties' comments on the feasibility of this framework.

2. As a licensed broadcasting distribution undertaking (BDU), MTS Allstream will be significantly affected by any requirement that BDUs make any further payments to financially support the operations of over-the-air broadcasters. Consequently, MTS Allstream wishes to appear at the public hearing commencing on 16 November 2009, in order to have the opportunity to provide greater insights into its proposals.

3. Broadcasters are trying to hold Canadians to ransom by forcing them to pay to receive television signals that are available free of charge over the airwaves, which belong to Canadians. While the industry may currently be experiencing some financial turmoil as a result of, among other things, the downturn in the economy over the past year, for the most part broadcasters are the architects of their own misfortunes. CTVglobemedia Inc. (CTVgm) and Canwest Global Communications Corp. (Canwest), who are the main proponents of a fee-for-carriage regime for their conventional television stations, are both carrying debts related to company acquisitions. In addition, broadcasters are over paying for U.S. programming and at the same time audiences are becoming fragmented by the increasing number of specialty channels, many of them under the same ownership groups as the conventional broadcasters. Between them, CTVgm and Canwest own nearly half of the specialty channels that are vying with their conventional stations for advertising dollars.

4. MTS Allstream fully supports the Commission's approach of looking at group-based licensing for conventional and discretionary television licence renewals. To consider the situation of conventional broadcasters without taking their other services into account is misleading. When viewed in conjunction with the specialty, pay television, pay-per-view (PPV) and video-on-demand (VOD) services under the same ownership, Canadian broadcasters are very robust and do not require additional support from BDUs and their customers. As already noted, CTVgm and Canwest own nearly half of all Canadian specialty channels – the same specialty channels they blame for fragmenting audiences and leading to a systemic, rather than temporary, reduction in advertising revenues for their conventional stations. Moreover, debt associated with the acquisition of these specialty channels has contributed, at least in part, to the financial woes that these companies claim are besetting conventional television. Canadians should not be required to further subsidize the management decisions of these companies.

Revenue Support for Conventional Broadcasters

5. In BNC 2009-411, the Commission notes that it envisions three different potential revenue streams to support conventional broadcasters. These are (i) BDU contributions to a local programming improvement fund (LPIF) to support local programming in small markets; (ii) continuation of current mechanisms, such as simultaneous substitution and priority carriage, along with the possible implementation of a requirement that would make BDUs' carriage of U.S. 4+1 signals (CBS, NBC, ABC, FOX and the non-commercial PBS network) contingent on the successful negotiation of a fee-for-carriage of Canadian signals; and (iii) a fee-for-carriage regime for Canadian over-the-air (OTA) signals.

6. With regards to the LPIF, MTS Allstream strongly disagrees with the Commission's decision to institute the LPIF, its subsequent arbitrary decision to increase LPIF contributions, however temporarily, by 50% and with its decision to drop the requirement for broadcasters to spend the funds on incremental local programming. There is currently very little "local" in the local television product offered by the large broadcasting groups. In Winnipeg, there are five local OTA stations operated by the large, multi-station broadcasters. These include two CBC/Radio-Canada stations, one in English

(CBWT), one in French (CBWFT), Canwest's Global Winnipeg (CKND-TV), RogersCommunications Inc.'s (Rogers') Citytv station (CHMI-TV) and CTVgm's CTV Winnipeg (CKY-TV). Other than daily newscasts, there is almost no programming produced by these local affiliates of the four national networks.

7. In spite of the dearth of local programming, each of these stations will be eligible to draw from the LPIF without committing to any additional local programming for the upcoming broadcast year. In fact, there was nothing in Broadcasting Regulatory Policy CRTC 2009-406, *Policy determinations resulting from the 27 April 2009 public hearing*, 6 July 2009 (BRP 2009-406) to prevent them from actually decreasing local programming expenditures while still drawing from the fund.

8. Much of Winnipeg's local television programming is produced by the two BDUs serving the city and the independent OTA station Joytv 11 (CIIT-TV). At the same time, effective 1 September 2009, both MTS Allstream and Shaw are required to subsidize the large, multi-station broadcasters by contributing an additional 1.5% of their gross annual revenues from broadcasting activities to the LPIF, on top of the 5% that is already contributed directly to Canadian programming. In return, their subscribers have no guarantee, and probably little likelihood, of seeing any additional programming being produced locally by or for these broadcasters. The LPIF as currently structured is simply taking money from BDUs and their customers to line broadcasters' pockets. In the absence of commitments to quality, incremental local programming, broadcasters should not be able to draw funding from the LPIF.

9. To the extent that local broadcasters require financial support as a result of audience fragmentation, those who are most responsible for this fragmentation should contribute to their support. Two factors are most responsible for the fragmentation of conventional television audiences. The first is the increase in specialty and pay television services. The second is the fact that many conventional broadcasters, and even some specialty service providers, make their programming available on their websites. While both of these factors result in additional consumer choice, this also means that Canadians have options other than viewing conventional television stations, potentially leading to fewer advertising dollars for those local stations.

10. Consequently, MTS Allstream recommends that if the Commission maintains the LPIF, not just BDUs, but specialty and pay television services, as well as broadcasters and specialty services that make their programming available on-line, should be required to support local broadcasters by contributing a percentage of their gross revenues to the LPIF. However, small, independent specialty programmers should be exempt from the requirement to contribute to the LPIF, since like conventional broadcasters they too are experiencing audience fragmentation. Contributions should only be required from those programming groups that have at least partial ownership in a minimum of five programming services.

11. Section 3(1)(e) of the Canadian *Broadcasting Act* (the Act) requires each element of the Canadian broadcasting system to contribute **in an appropriate manner** to the creation and presentation of Canadian programming. To this end, the Act requires BDUs to give priority to the carriage of Canadian programming services, especially local Canadian stations, and to provide efficient delivery of programming at affordable rates, using the most effective technologies available at reasonable cost. Therefore, one of the major contributions expected of BDUs under the Act is to deploy and maintain the network technologies necessary to provide a quality viewing experience for Canadians.

12. In addition, in 2008 BDUs contributed $207 million to the Canadian Television Fund (CTF) and independent production funds, along with $116 million to fund local expression.[1] As well, MTS Allstream estimates that BDUs collectively paid more than $200 million in wholesale fees in 2008, in respect of the programming services they are required to carry as part of their basic service offerings pursuant to section 9(1)(h) of the *Broadcasting Distribution Regulations*.[2]

13. BDUs and their subscribers already contribute significantly to the Canadian broadcasting system. In addition to their direct contributions to Canadian programming, estimated at more than $500 million annually without the LPIF, which will add approximately another $100 million in the 2009-2010 broadcast year, Canadian BDUs invest substantial amounts each year to maintain and upgrade their respective networks. Without this infrastructure, Canadian programming undertakings would have far smaller audiences.

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1 CRTC Communications Monitoring Report 2009, 5 August 2009, Figure 2.5.3, page 54.

By carrying local OTA stations, BDUs allow subscribers to enjoy a better quality of signal than they would otherwise receive and broaden the audience that those stations are able to attract, thus increasing their appeal to advertisers. However, BDUs do not charge subscribers for these OTA signals, which are available free of charge to anyone within the footprint of those signals who wants to get them over the air. Rather, the basic service fees charged by BDUs are intended to cover their distribution and network costs.

14. Canadians also contribute significantly to the Canadian broadcasting system through their tax dollars. The Federal Government supports the CBC/Radio-Canada to the tune of roughly one billion dollars annually. The lion's share of this goes to support the English- and French-language television services. In addition, Heritage Canada contributes roughly $120 million per year to the CTF, adding to the amount contributed by BDUs and their subscribers.

15. Local OTA broadcasters benefit from regulatory support in five key areas: (i) mandatory carriage as part of the basic package offered by cable and satellite companies; (ii) the ability to solicit and air local ads; (iii) no minimum Canadian programming expenditures; (iv) the ability to draw from a number of funds, such as the CTF, that support the creation of Canadian programming; and (v) simultaneous substitution. The Commission's proposal that BDUs and local broadcasters also negotiate a "compensation for the free market value of local conventional television signals" is incompatible with the regulatory benefits local OTA broadcasters already enjoy. Moreover, local signals are available free: their market value is zero.

16. Even if this were not the case, there is no "free market" in which to value these signals, since carriage of local OTA signals is mandatory. Requiring BDUs to negotiate fees for signals they must carry gives too much bargaining power to the broadcasters. In the U.S., where the concept originated, this inherent unfairness was recognized: broadcasters must choose between fee-for-carriage and mandatory carriage. They cannot opt for both. Nor should Canadian broadcasters be able to do so.

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[2] Estimate based on 9(1)(h) wholesale fees and number of BDU subscribers.

17. It is also inherently unfair to make a BDU's ability to carry U.S. 4+1 signals contingent on the BDU having negotiated agreements in place with each large, multi-station broadcaster. As with mandatory carriage of local OTA signals, such a requirement would add to the power imbalance between BDUs and broadcasters. It would probably also be very unpopular with consumers.

18. In the late 1960s, microwave technology made it technically practical for cable systems to deliver U.S. signals to subscribers living far from the U.S. border. However, on 3 December 1969 the Commission decided that cable companies could only distribute U.S. signals that were receivable at the cable head-ends, thus preserving the *status quo* – no U.S. signals for Calgary, Edmonton, Sudbury, etc. The Commission received a flood of letters from the public, with four negative reactions received for each expression of support. There were questions in the House and editorials in every major newspaper. The *Toronto Star* (whose readers were not affected) was the only major newspaper to support the Commission's decision. Four months later, on 10 April 1970, the Commission reversed itself.[3]

19. A similar case of consumer reaction occurred in the Ottawa viewing area recently, when Rogers Cable decided to begin carrying the Detroit PBS station in place of the Watertown station that it had been offering for years, citing signal quality issues as the reason behind the switch. Negative consumer reaction was swift and vociferous, with Rogers ultimately deciding to retain the Watertown signal.

20. Depriving consumers of U.S. 4+1 signals would likely prove even less popular than either of these previous situations. MTS Allstream submits that any requirement that a BDU have in place negotiated arrangements with local OTA stations prior in order to carry U.S. 4+1 signals should be dropped.

21. If, in spite of the fact that there is absolutely no possible justification for doing so, the Commission does decide to implement a fee-for-carriage regime for local OTA stations, then the fee to be paid by BDUs should be set by the Commission, so that the fee per subscriber for mandated services is the same for all BDUs. Leaving the fee open to

negotiation will put smaller BDUs at a distinct disadvantage in regard to not only broadcasters in those negotiations, but also to larger BDUs with whom they compete for customers, since it is almost certain that smaller BDUs will end up paying higher rates under a negotiated fee approach.

Digital Transition Models

22. The Commission's determinations in BRP 2009-406 will save broadcasters up to $280 million in digital transition costs[4] by eliminating the need, in most cases, for them to convert existing OTA analog transmitters serving fewer than 300,000 people to digital television transmitters (DTVs). MTS Allstream supports the FreeSat model proposed by Bell Canada (Bell) during the April public hearing and later endorsed by Shaw with a similar proposal. This satellite delivery model will ensure that OTA signals in smaller markets can continue to be received after the transition whether individuals choose to receive the signal from a BDU or via free satellite transmission.

23. MTS Allstream is also willing to consider the possibility of providing these signals free of charge to MTS Allstream local service customers who do not subscribe to TV service from a BDU. Consumers who chose to take advantage of such an option would continue to have access to local OTA stations. Existing OTA viewers with analog television sets would not need to purchase a digital TV in order to continue receiving these stations post-transition, since the set-top box[5] would perform the necessary conversion. This approach would eliminate the need for stations in Winnipeg to implement DTVs, thus resulting in additional savings for local broadcasters. In those areas outside of Winnipeg where MTS Allstream operates as a BDU, MTS Allstream would also be willing to consider a similar arrangement, where it would take the OTA signals from Bell's FreeSat offering or Shaw's equivalent, instead of from the broadcaster. In this way, consumers in these markets would not need to invest in a satellite receiver in order to receive the free OTA local signals.

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[3] Communications and Sovereignty: The Regulation of Cable Television in Canada 1968-1973, Norman Spector, 1977, UMI Dissertation Services.

[4] Estimate based on the Spectrum Expert *Reference for DTV Costs Analysis*, 31 March 2009, Study 1 digital transition costs for those markets for which digital transmitter conversion was not mandated.

[5] The MTS TV set-top box currently rents for $3.00 per month, which includes ongoing maintenance.

Contributions to Canadian Programming

24. In the appendix to BNC 2009-411, the Commission sets out a conceptual model identifying a group-based approach to contributions to Canadian programming. MTS Allstream is not in a position to comment on the feasibility of the specific proposed changes in regard to Canadian content and expenditure requirements as they relate to conventional television and discretionary services. The following constitutes MTS Allstream's response with regard to the Commission's proposals for VOD programming.

25. Calculation of a CPE obligation for linear programming services is a practical proposition, since these services generally pay a flat amount for programming rights. Therefore, their CPE per program is known when the rights for those programs are acquired. However, the same cannot be said in respect of VOD programming. Given the inherently transactional nature of VOD, complying with a CPE requirement for VOD undertakings is impractical, since VOD expenses are largely calculated as a percentage of revenue, which is generated only from specific transactions (‘buys’). A VOD service cannot control or predict its CPE, which depends on the number of 'buys' of Canadian programs which is, in turn, dependent on the popular appeal of each program.

26. Currently, VOD undertakings effectively contribute financially to Canadian programming in two ways. First, they pay 5% of their gross revenue to the CTF. In the case of a VOD undertaking that is a “related service” to a BDU, the VOD undertaking's share of the revenue for this calculation is assumed to equal 50% of that BDU’s gross revenue for the VOD programming viewed each month. Second, VOD licensees must remit 100% of their revenue from the showing of Canadian films to the films' rights holders. As MTS Allstream pointed out in its comments pursuant to Broadcasting Public Notice CRTC 2008-101, *Call for comments on a proposed regulatory framework for video-on-demand undertakings*, 30 October 2008 (BPN 2008-101), the Commission's language in VOD and PPV licences with regard to this second requirement is ambiguous stating "(t)he licensee shall remit to the rights holders of all Canadian films 100% of revenues earned from the exhibition of these films". While MTS Allstream believes that the Commission intends this to refer to 100% of the VOD undertaking's revenues, in the

case of related BDU and VOD services, rights holders have interpreted this to include the BDU's revenues from the VOD transaction as well. Consequently, for every dollar of revenue received by a BDU for the VOD exhibition of a Canadian film, Canadian rights holders expect the BDU to remit 100% of its full retail revenue received from that transaction. In addition to the fees paid to the Canadian rights holder and its CTF payment, the VOD undertaking/BDU also incurs licence and copyright fees, and the taxes associated with the transaction, as well as the operating costs associated with exhibiting the film. These include costs for encoding, marketing[6], traffic management and other technical operations.

27. In its BPN 2008-101 submission, MTS Allstream has already requested that the Commission clarify its language in regard to the payment that BDU-related VOD undertakings must make to a Canadian rights holder for the exhibition of a Canadian feature film, to make it clear that the Canadian rights holder is not entitled to the BDU's revenue as well as the VOD undertaking's. MTS Allstream reiterates its call for such clarification to the effect that the VOD undertaking's revenues should be calculated on the same basis as it is for the purposes of calculating the VOD undertaking's contribution to Canadian programming (i.e., that its revenue for a Canadian feature film is equal to 50% of the related BDU's gross revenue for that film).

A New Model is Needed for Canadian Programming

28. The Commission has frequently expressed concern about the relatively low *demand* for Canadian English-language priority programming[7] (especially drama), as measured by viewing shares. Its attempts to rectify this, however, have focussed on increasing the *supply*: programming undertakings have time and CPE requirements and BDUs must remit a share of their revenue to production funds. The largest multi-station ownership groups must offer an average of eight hours per week of Canadian priority programming during the 7 p.m. to 11 p.m. peak viewing period.

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6 The Commission sets marketing requirements for Canadian VOD content. For example, as a condition of licence, 25% of the titles on the MTS TV barker channel must be Canadian.

7 In the 1999 Television Policy, “under-represented” Canadian drama, music and dance, and variety programs were redefined as “priority programming” and expanded to include long-form documentaries, regionally produced programs, and entertainment magazine programs.

Supply

29. In 2007/08, production budgets for independently-produced English-language Canadian programming equalled $1.633 billion.[8] Although the available data is not broken out by language, in 2007/08 independent television productions in both languages included 599 television series, 243 television movies (including movies-of-the-week [MOWs] and feature-length television programs) and 34 mini-series.[9]

30. For the year ended 31 March 2008 (the most recent data available), the CTF paid out $258 million in programming commitments. During the same period, it recovered only $10 million on production investments–-less than 4% of programming expenditures.[10] As shown in Table 1 below, public funding for independently-produced television exceeded $800 million in each of the last two years.

Table 1
Public Funding of Canadian television productions[11] ($M)

	2003/04	2004/05	2005/06	2006/07	2007/08	TOTAL
Federal tax credit	174	193	188	235	216	1,006
Provincial tax credit	204	232	270	334	317	1,357
CTF	219	236	249	252	242	1,198
Independent production funds	30	42	31	36	43	182
Other public*	25	23	8	15	24	98
Total	652	726	746	872	842	3,838

Some totals may not add due to rounding.
Estimates based on data obtained from CAVCO.
These amounts do not include either public funding of Canadian theatrical films, which are also licensed to programming undertakings, or the costs of administering the various funding regimes.
* Other public includes financing from provincial governments, and other government departments and agencies.

Demand

31. Although the *supply* of Canadian priority programming is substantial, viewing shares indicate that the *demand* remains low.

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8 CFTPA/APFTQ, *09 Profile – An Economic Report on the Canadian Film and Television Production Industry* (09 Profile), February 2009, page 19, http://www.nordicity.com/reports/profile2009-en.pdf .

32. CTF statistics show that over half the programming that English Canadians watch each day is foreign (predominantly American) and that during the peak viewing period this jumps to roughly two-thirds.[12]

33. Canadian content accounted for 34.6% of the total weekly viewing hours for English-language private conventional stations during the 2007-2008 broadcast year.[13] A breakdown of viewing share by genre is shown in Table 1.

Table 2
Private English OTA Signals 2007-2008

	Viewing Share		
Genre	**Canadian**	**Non-Canadian**	**All**
News, analysis, interpretation	22.5%	0.70%	23.2%
Long-form documentary	1.1%	0.6%	1.6%
Sports	0.1%	1.7%	1.8%
Drama and comedy	4.4%	35.3%	39.7%
Music, dance and variety	0.5%	2. 6%	3.1%
Other	6.1%	24.5%	30.6%
Total	34.6%	65.4%	100.0%

34. On private, English OTA channels, news and analysis represented 23.2% of average weekly viewing hours, 97% of which was Canadian content (22.5% of all viewing). Drama and comedy accounted for the highest number of weekly viewing hours (39.7% of the total), although Canadian content accounted for only 11% of the content for this program category (4.4% of all viewing). Long-form documentary also had a substantial proportion of Canadian content (65.9%), but the entire category only represented 1.6% of average weekly viewing hours. The “Other” program category was also significant – 30.6% of all viewing, with Canadian content representing 24.5% of all viewing. There appears to be one or more significant categories of programming classified as “other”, which should perhaps be broken out in future reports. Canadian content made up less than 1% of the weekly viewing hours in each of the remaining categories–-sports (0.1%); and music, dance and variety (0.5%). These categories combined, including non-

9 09 Profile, page 37.
10 CTF Annual Report 2007-2008, Statement of Operations, page 73.
11 09 Profile, page 46.
12 CTF Annual Report 2007-2008, page 19, http://www.ctf-fct.ca/assets/AR0708/en/pdf/CTF_annual_report_2007-2008_EN.pdf.
13 2009 CMR, Table 4.3.7, page 131.

Canadian programming, accounted for 4.9% of average weekly viewing hours for English-language private conventional stations.

35. From 2003 through 2006, the Commission conducted a number of proceedings relating to viewing and expenditure incentives for English-language Canadian drama (Broadcasting Public Notices (BPNs) 2003-54, 2004-32, 2004-93, 2005-81 and 2006-11). Targets and incentives were announced in BPN 2005-81 and comments were reviewed in BPN 2006-11. The incentives were intended to: a) increase the expenditures on, and the production of, high quality, original, Canadian drama broadcast by English-language television licensees; and b) encourage increased viewing to such programming. Canadian drama expenditure targets were established for the period 2004/05 to 2008/09. The reward for reaching the targets was an increase in the number of allowable advertising minutes

36. In the 2007 OTA television policy, the Commission announced that as of 1 September 2009 there would be no restrictions on advertising time; the drama incentives became ineffective and irrelevant.

37. During the proceedings relating to incentives for Canadian drama, CTV proposed that the incentive program be enhanced to provide for additional advertising minutes for individual programs or series that achieve particularly high viewership. The Commission did not adopt this proposal, but noted that it might have merit and could be considered in future proceedings when the program was reviewed.

38. MTS Allstream recommends that the Commission revisit incentives for Canadian drama, in fact for all Canadian priority programming, so as to emphasize the importance of demand. More popular Canadian drama and other priority programming in peak viewing time is a common goal of the Commission, the broadcasters, the BDUs and consumers.

39. For example, a broadcaster who exceeded minimum viewing shares for priority programming in peak viewing time (relative to other programming in that time period on the same signals) could earn a relaxation of future supply quotas in peak viewing time, provided that the broadcaster’s CPE during the period when the viewing shares were

generated was maintained during the period when the time quota was relaxed. No other regulation of CPE amounts or ratios would be needed.

CONCLUSION

40. In summary, MTS Allstream submits that there is no sound rationale for the Commission to accede to the broadcasters' demands for fee-for-carriage of local OTA signals. These signals are freely available and have no market value. Nor should a BDUs carriage of U.S. 4+1 signals be contingent on the BDU having a negotiated settlement in place for the carriage of local OTA signals.

41. In relation to the LPIF, MTS Allstream submits that the parties that are most responsible for contributing to the fragmentation of audiences, and thus the shift in advertising revenues away from local OTA channels, should also bear a share of the responsibility for funding local production. Therefore, specialty and pay television services should be required to contribute to the LPIF, as should those broadcasters and specialty services that make their programming available online.

42. MTS Allstream supports the FreeSat model proposed by Bell and later endorsed by Shaw as a reasonable means of ensuring that consumers in smaller markets will continue to have access to OTA signals without requiring broadcasters to convert their analog transmitters to digital in all these locations. In this regard, MTS Allstream is willing to consider making these signals available free of charge to its local service customers who do not subscribe to TV service from a BDU.

43. Finally, MTS Allstream submits that the time has come to develop a new model for Canadian programming. The current model, while increasing the *supply* of Canadian programs, is doing little to address the *demand* side of the equation. The Canadian public is spending substantial dollar amounts each year to support Canadian programming, but is spending far more time actually viewing non-Canadian content.

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