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Chair

The Honourable Michael Chong

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• (1530)

[English]

The Chair (Hon. Michael Chong (Wellington—Halton Hills, CPC)): Welcome to the 30th meeting of the Standing Committee on Canadian Heritage this Thursday, November 18, 2010.

[Translation]

We are meeting today pursuant to Standing Order 108(2) to resume our study of the impacts of private television ownership changes and the move towards new viewing platforms.

[English]

In front of us today we have representatives from the Canadian Radio-television and Telecommunications Commission. We have Mr. von Finckenstein, the chairman; Madam Cugini, the acting vice-chair of broadcasting; and Mr. Hutton, the executive director of broadcasting.

Welcome to you. We'll begin with an opening statement.

Mr. Konrad W. von Finckenstein (Chairman, Canadian Radio-television and Telecommunications Commission): Thank you, Mr. Chairman.

In the short time we have, I'd like to address three subjects this committee is considering.

First I'll address the implications of vertical integration in broadcasting, and second, the maintenance of a diversity of voices. Third, my colleague, Rita Cugini, will address the role of small and independent broadcasters.

In all of our activity as the broadcasting regulator, we are following a very clear principle: we interfere as little as possible in the marketplace. We establish regulations or guidelines only if they are shown to be necessary to serve the interests of the Canadian broadcasting system or fulfill the objectives of the Broadcasting Act.

With that in mind, I'd like to begin with vertical integration. The broadcasting industry is changing very quickly through the consolidation of ownership and the widespread adoption of new media platforms. Major transactions have produced vertical integration, that is, the ownership by one entity of both programming and distribution properties, or of both production and programming properties, or of all three—production, programming, and distribution properties together.

Does this present a risk of anti-competitive behaviour? The commission already has rules in place to discourage particular types of anti-competitive behaviour. For example, broadcasters have to

acquire 75% of their prime-time programming from unaffiliated producers.

There is also the possibility that the distribution arm of an integrated company may give undue preference to services offered by its programming service arm, to the disadvantage of outside providers. We have established procedures to serve as a check against such undue preference in both traditional broadcasting and the new media. In the event that a preference has been demonstrated, a reverse onus is placed on the distributor to show that it is not an undue preference.

However, concerns have been raised that an integrated company could adopt other types of anti-competitive behaviour. Given the increasing consolidation of ownership and the rapid adoption of new platforms, we have announced a public proceeding to determine whether our existing safeguards are sufficient or not. A hearing will begin on May 9, 2011, on that very subject.

Through that hearing, we will examine the different situations under which undue preference and reverse onus provisions may be needed. We will also aim to develop norms that provide all players with a fair opportunity to negotiate for programming rights and carriage. This furthers competition and enhances consumer choice.

We do not intend to intrude into the commercial environment unless absolutely necessary to achieve the purposes of the Broadcasting Act. Intervenors in this proceeding must make a compelling case that any regulatory measures they propose are necessary in order to serve the best interests of the Canadian broadcasting system.

[Translation]

Let us move on to diversity of voices. Let me now turn to the second subject: how can we ensure a diversity of voices in a changing media landscape?

In January of 2008, following a wave of consolidation among broadcasters, we announced a policy to maintain a diversity of voices within the private element of the broadcasting system. This policy sets limits on the ownership of media outlets.

In a large market, an entity may control a maximum of two AM and two FM radio stations in the same language. In smaller markets, an entity may control as many as three radio stations operating in the same language, with a maximum of two stations in either frequency band.

For conventional television stations, the limit is one station per language in a given market.

We will not permit an entity to control all three main sources of local news serving the same market: a radio station, a television station and a newspaper. At most, an entity would only be able to control two out of the three.

We will generally not allow a single entity to have effective control of all TV distribution in a market.

Finally, the policy provides a limit to the share of the national audience that a single broadcasting entity may control as a result of a transaction. Any transaction that would result in an entity controlling more than 45% of the national audience will not be approved. Transactions that would result in an entity controlling between 35% and 45% of the national audience will be carefully scrutinized. They will only be allowed if the Commission is convinced that they do not diminish the diversity of voices. And transactions that would result in an entity controlling less than 35% of the national audience will be approved expeditiously if there are no other concerns.

Ownership consolidation is a fact of life, for both economic and technological reasons. Our media companies must be able to compete in the digital environment, where content can come from anywhere.

But in spite of all the consolidation, Canadians still enjoy a rich variety of broadcast programming from public, private and community sources. Our 2008 policy, which was built on previous policies to maintain diversity, has worked well. When we applied it to the Shaw/Canwest transaction that we approved last month, for example, we found that the consolidated company would lay claim to a national audience share of less than 35%.

But we cannot stand still. The rules for common ownership of radio stations are defined in terms of both FM and AM. But as you know, AM is losing market share, and it has been a long time since we had a single application for a new AM licence. The question arises: should we still be regulating the AM market? Is there a case to be made for letting it go by way of exemption?

• (1535)

[English]

Ms. Rita Cugini (Acting Vice-Chair, Broadcasting, Canadian Radio-television and Telecommunications Commission): Thank you, Konrad.

I'd now like to turn to the small and independent television broadcasters. We are well aware of the challenges they face and we've taken a number of steps to deal with those issues.

We have just concluded a hearing on our direct-to-home satellite distribution policy. Among other things, we have been looking at the appropriate number of local stations they must offer to their subscribers. We've heard different views on these issues and we're taking them all into consideration.

In 2008, we established the local programming improvement fund, which supports local programming, especially news, in smaller markets. During the 2009-10 broadcast year, the fund distributed approximately \$100 million to 78 local stations across the country.

The undue preference rules, which the chair discussed earlier, provide independent broadcasters with the means of defending

themselves against discriminatory treatment in the distribution marketplace.

All broadcasters can use additional sources of revenue. Earlier this year, we outlined a possible regime of negotiation for the value of a local broadcaster's signal when it is carried by a distributor. As you know, speciality channels receive a fee from the cable and satellite companies that distribute their programming, but over-the-air broadcasters do not. We have submitted a reference to the Federal Court of Appeal to establish whether we have the legal right to institute such a regime. The court held a hearing in September. We expect its decision by the end of this year. If our proposed regime is instituted, it will benefit all broadcasters, including the small ones.

Before we conclude, I'd like to raise a practical point with the committee, which the CRTC has raised before. To deal with this fast-moving digital environment, we need to be able to address non-compliance in a timely, efficient, and effective way. At the moment, any significant violation of the rules can be penalized only by a very cumbersome, costly, and often ineffective method, and that is the shortening of a licence term. Unfortunately, our current tools for enforcing compliance are, to put it mildly, suboptimal.

In a recent decision, for example, we had to deal with non-compliance by two licensees with the broadcasting distribution regulations and other regulatory requirements. These violations were significant. They involved issues that included accessibility and funding obligations, but the only significant penalty we could impose was a shortening of the licence term when it came up for renewal.

We have found that this kind of discipline does not necessarily result in better behaviour. It is applied at a time when the offending conduct may have occurred years in the past. In the case of a licensee not complying with the accessibility criteria, a subscriber with a disability may not have access to closed-captioning or specialized programming until years in the future. This kind of action is costly, time consuming, and process laden.

We need the authority to impose administrative monetary penalties, otherwise known as AMPs. This would allow us to make the punishment fit the crime. It would provide a timely corrective deterrent for all players to see. We could acquire this power through an amendment to the Canadian Radio-television and Telecommunications Commission Act. We certainly hope that this committee can urge Parliament to act on this.

• (1540)

Mr. Konrad W. von Finckenstein: In conclusion, Mr. Chairman, our challenge as regulator is a fascinating one. We aim to interfere as little as possible in the marketplace. At the same time, we're challenged with a very important mandate: fostering the cultural and social objectives of the Broadcasting Act.

In a world that could hardly have been imagined the last time the act was amended nearly 20 years ago, the new digital world, of which broadcasting is only one part, is a world driven by the consumer. In such a world, the old top-down models are increasingly outdated. That includes the old models of regulation. To regulate by controlling access to the airwaves is yesterday's concept. Tomorrow's concept has yet to emerge.

Thank you for giving us the opportunity to express our views. We'd be pleased to answer any questions.

The Chair: Thank you, Mr. von Finckenstein.

Mr. Rodriguez.

[*Translation*]

Mr. Pablo Rodriguez (Honoré-Mercier, Lib.): Thank you very much, Mr. Chairman.

Ladies and gentlemen, good afternoon and welcome.

The people who represent small independent broadcasters, and whom we will be hearing from after you, are telling us that they are going through very difficult times, in particular because of vertical integration and also because of CRTC policies. They find the current regulatory and legislative environment to be a difficult one, as far as they are concerned.

Do you think they are wrong about that?

Mr. Konrad W. von Finckenstein: Of course, it is difficult to be a small independent entity when there are giants operating in a market. As we pointed out, we have rules in place to protect these small entities and ensure that the giants don't take advantage of policies and programs to the detriment of small companies. In order to survive, they obviously have to be original and set themselves apart from the others. They have to convince the distributor to accept their programming and broadcast it over their airwaves. That was the problem, and it is probably even more of a problem now, with more market concentration.

Mr. Pablo Rodriguez: If they're having trouble surviving, in other words, it's because they are not original and creative enough, and not because of the current rules or integration. They say the ball is in your court but your response is to place the burden on their shoulders, saying that if they are creative and innovative, the current environment will be a favourable one for them and they will survive. Is that what you're saying?

Mr. Konrad W. von Finckenstein: No, I'm saying that it has always been that way. In order for small programmers to be competitive, they must set themselves apart from the others through their effectiveness and originality. Nowadays there are large fully integrated companies. Naturally, a small programmer wants to secure as much broadcast time as possible for his product. The competition is tougher now, but that is perfectly normal; it is just the way the competitive environment is evolving.

• (1545)

Mr. Pablo Rodriguez: So, you see no need to change the regulations.

Mr. Konrad W. von Finckenstein: Based on what I can see, no. But we are not absolutely certain of that. We want to see what the consequences of this consolidation are. For that reason, we have decided that we will be holding hearings in May on that very subject, to ensure that we have all the tools we need to combat anti-competitive behaviour, if need be.

Mr. Pablo Rodriguez: There is reason to be concerned. I understand the reasons behind the Canwest, Bell and CTV transactions. They may be good business, but there is nevertheless reason to be concerned, because there is less and less diversity and

more and more integration. There are more and more giants out there. There seems to be no end in sight. Ultimately, I guess the end will come when there is no one left. A lot of people see that as a threat.

Do you feel reassured? You are asking a lot of questions to which the answers will only come with time. Don't you think there is reason to be concerned about this vertical integration? I'm not so sure that it really gives the consumer that much choice.

Mr. Konrad W. von Finckenstein: The integration that we are seeing reflects the logical development of this industry, according to the players. The platforms clearly demonstrate that programming is moving. In order to secure more power and not be left behind, companies are trying to acquire all different kinds of platforms and programming.

These companies are facing a challenge because we are talking about a creative industry. How do you go about maintaining the creativity of your programming? How do you create programs that appeal to the public? As a general rule, any large company wants to sponsor things—activities of all kinds. But that can act as a counter to creativity. They have a major challenge ahead and we'll see how they deal with it.

We want to be sure that they don't abuse their power.

Mr. Pablo Rodriguez: And if they do—

Mr. Konrad W. von Finckenstein: They had an opportunity to abuse that power. That's why we weren't sure.

The Chair: Thank you, Mr. Rodriguez and Mr. von Finckenstein.

Ms. Lavallée, please.

Mrs. Carole Lavallée (Saint-Bruno—Saint-Hubert, BQ): Thank you very much.

Good afternoon. I am very pleased to welcome you to the Standing Committee on Canadian Heritage.

There have been a number of recent agreements and ownership changes. Some of these were identified in our documentation. Bell acquired CTV in September of 2010. Shaw bought Canwest and acquired control of the Global Television Network. All of that happened in 2010. Another example would be Quebecor, which bought Vidéotron in 2001. I have the feeling that vertical integration or convergence is playing out differently in Canada and Quebec. Am I wrong about that?

Mr. Konrad W. von Finckenstein: No, I believe Quebec is further advanced. There you have one large company that is practically integrated—Quebecor—and which has been operating for a number of years already. In the English-speaking world, convergence and vertical integration began last year. It is a new phenomenon, whereas in Quebec, it has been around for several years now.

Mrs. Carole Lavallée: In that case, is the Quebec example a good model? Given the challenges or issues facing Canadian broadcasters, should they be looking at what has been done in Quebec? It isn't a perfect model—quite the contrary. I know there are a lot of problems, but at the same time, there is a certain balance that has been achieved. I'm thinking of the consumer. Things are not perfect, and I'm well aware of that.

•(1550)

Mr. Konrad W. von Finckenstein: We'll see; that may be the case or it may not. As I said earlier, we are exercising caution. We will be holding our hearings in June. Everyone will have an opportunity to make a presentation so that we can really flesh out the issues.

This is the type of concentration we are seeing now. In Quebec, for example, Quebecor will be moving into the wireless phone market—the toughest market. What does that mean? Will that send a negative signal from the perspective of the Broadcasting Act? We don't know, but we are exercising caution for that very reason. So far we have not observed any negative impact, but that does not mean that there isn't any or that there never will be. For that reason, we will be looking at this before a major issue arises.

Mrs. Carole Lavallée: So I guess we invited you to appear too early.

Voices: Ha, ha!

Mr. Konrad W. von Finckenstein: Yes, I guess so.

Mrs. Carole Lavallée: In order to get answers to our questions, we will have to wait until you have completed your study. We will have to be monitoring the situation at the same time as you are.

Mr. Konrad W. von Finckenstein: I'd like to take this opportunity to thank you for participating in our hearing on broadcasters and satellites. Your contribution was very much appreciated.

Mrs. Carole Lavallée: As members of the Bloc Québécois, we are always very pleased to have a chance to defend the interests of Quebecers and people in the regions experiencing television reception problems. We can discuss them at another time.

So, we jumped the gun by inviting you to come today. You don't have answers to the questions we may want to ask. I can't even ask you whether, in your opinion, vertical integration in Quebec has benefited broadcasters and consumers. But it was a good question.

Mr. Scott Hutton (Executive Director, Broadcasting, Canadian Radio-television and Telecommunications Commission): We have seen a number of developments in Quebec. The market is a little different from the English-language market, although—

Mrs. Carole Lavallée: I'd like to hear you say “very” different.

Mr. Scott Hutton: It may be very different, or it may be only somewhat different. The English-language market monitors what is occurring in Quebec. The largest integrated company is Quebecor. I guess you could say that other distributors are falling into step to a certain extent and doing business in Quebec. There are benefits. For example, the company itself is doing very well. Also there is a star system in place that has been very successful under its direction. There are new services—

Mrs. Carole Lavallée: The Quebec star system is a success—not only Quebecor's system. I really like Quebecor, but still—

Mr. Scott Hutton: Yes, but that company has created its own star system, I believe, through vertical integration. This is a company that is very successful and has been pushing its stars, for its own benefit. Is this affecting others—in other words, people who are not part of that big team? That is the question. That may be the negative side of it.

The Chair: Thank you, Mr. Hutton and Ms. Lavallée.

Mr. Angus, please.

[English]

Mr. Charlie Angus (Timmins—James Bay, NDP): Thank you for coming today. It's always a pleasure to have the CRTC before our committee.

As I listened to your talk this afternoon, I must admit that I was starting to get very nostalgic for the 20th century. I had a great time in the 20th century. There were a lot of great shows, there was a lot of great music, and my hair was a little darker then.

Voices: Oh, oh!

Mr. Charlie Angus: And in the 20th century, we did worry about two television stations and one market being controlled, so we needed to have a third one. We were worried that we couldn't have three radio stations being controlled. We were worried about the future of AM radio.

Here we are in 2010 and we have had this massive tectonic shift. My kids don't care how many stations there are in the Toronto market, because they have their phones. I think the question we need to talk about today is that under your watch we have seen vertical integration and consolidation to the point that the people who run the phone companies are now running the broadcasts. So what are you going to do about it?

Because I'm not really worried about the situation with AM radio. I'm worried about ensuring diversity of voice when two or three players control the entire market.

Mr. Konrad W. von Finckenstein: You proceed from the assumption that there's a problem and we have to worry about it. As you yourself said, we've seen a tectonic shift, to use your words, and you have a huge number of sources of information right now, something we hadn't... Yes, we have a great concentration of ownership, but does that reflect itself in a homogeneity of voices? That's a big question.

As you well know, your kids, as you say, much prefer their iPhones, and their iPhones may be from Rogers or Bell or one of the three big companies, but the content they get, the access over that iPhone, comes from all over the world, from all over Canada, etc.

So yes, the means of access are owned by three companies or four, however many you want to consider, but it doesn't necessarily mean the content is the same and that you therefore have problems and not a diversity of voices.

•(1555)

Mr. Charlie Angus: This is the fundamental question. You say I assume there's a problem. You tell us your prime directive is to assume there's not a problem and—

Mr. Konrad W. von Finckenstein: I didn't say—

Mr. Charlie Angus: —that the CRTC's "prime directive", as we said in the old *Star Trek* days, because I'm going back to the 20th century here, is to interfere in the market as little as possible. You say that again and again, and then you say that of course you want to ensure diversity of voice. I would have assumed that the main role of the CRTC—why we have it—is to ensure the public interest is defended. It's not the job of industry to represent the public interest. It's not the job of industry to do the diversity of voice.

We're in a situation here where Bell can offer their phone viewers exclusive highlights of the Grey Cup if they sign on at \$3.99 a month or \$5.99 a month. That would make perfect sense from a business model. A small start-up company that's competing with Bell would like to get access to content. As you say, certainly content comes from all over the world, but we're interested in content that's coming from Canada, that's being created now by this exclusive group.

What steps are in place? Or have you even addressed the fact that the guys who are selling me my phone package every month are the same guys who are controlling the content? And they might not want that content going to their competitors, because hey, you're going to get a better deal in their little walled garden. That's the issue we need to look at.

Mr. Konrad W. von Finckenstein: Let's start with.... You made a huge number of assumptions here, most of them which I would disagree—

Mr. Charlie Angus: A huge number of questions.

Mr. Konrad W. von Finckenstein: Okay, fine. Call them questions, call them assumptions.... You said, for instance, that you have to protect the public interest. That's absolutely right, but the public interest is not only diversity of voices. We also want to make sure we have a thriving industry that employs people and is productive and innovative.

Mr. Charlie Angus: But that's not in your mandate. That's what you've decided. I don't see your job as protecting the industry, as the role of the CRTC.

Mr. Konrad W. von Finckenstein: Oh, absolutely, it's in my mandate. Read the objectives of the Broadcasting Act. It—

Mr. Charlie Angus: To allow industry to succeed?

Mr. Konrad W. von Finckenstein: No. It presupposes that you make sure you have a healthy broadcasting communications industry. You don't have that if you're over-regimented and throw regulatory roadblocks in the way.

Mr. Charlie Angus: But we're at the point now—

Mr. Konrad W. von Finckenstein: So our job is—

Mr. Charlie Angus: —where you have two guys running the market.

Mr. Konrad W. von Finckenstein: You have to let me finish. You asked the question. Let me finish the answer.

The Chair: Okay. Mr. Angus—

Mr. Konrad W. von Finckenstein: You are trying to bring a balance between having healthy innovation in the industry and at the same time protecting the public and trying to make sure the industry players do not abuse their economic position. But both of those are okay—not just one but both.

Here, you've mentioned the vertical integration, and what you're talking about is contract exclusivity. Is that a likely threat? Is it really...? That's a big gamble to take.

For example, let's take what you're saying. You mentioned hockey, I believe, and then you said you can only watch hockey if you have a Bell phone. That means (a) Bell has to pay for the hockey rights, and (b) it does not resell them to anybody else but keeps them to itself for a guaranteed income in the hope that people will leave their carrier in order to come to them to watch hockey. That's a big gamble. If their case is wrong, they lose a lot of money, so it's a strategy that few people pursue.

Secondly, one of the reasons we called the hearing is exactly for that reason: to look at these issues to see if they are real. Are they likely to occur? Are the tools we have sufficient to deal with them or do we need to establish different rules? That's precisely why we have called the hearing.

The Chair: Thank you very much, Mr. Angus and Mr. von Finckenstein.

Mr. Del Mastro.

Mr. Dean Del Mastro (Peterborough, CPC): Thank you very much, Mr. Chair.

Welcome to the committee, Chair von Finckenstein, Mr. Hutton, and Ms. Cugini.

I'm actually very encouraged by your comments, Mr. Chairman. I think there's a recognition on your part that Canada is not an island and that we can't simply pretend that the global change that's occurring with respect to broadcasting.... You've correctly identified that this device I have here might pull up Canadian content, but it could also pull up content from anywhere in the world. That's the world we live in now. Broadcast is not limited to how far we can push an FM or AM signal, or indeed a television signal, from a tower. It's global.

I actually look at vertical integration as an opportunity. I think what's happening is very interesting. It's obviously happening very quickly. We've seen the purchase of Canwest by Shaw. Obviously, some time ago, Rogers bought the assets of Citytv. We see that Bell is purchasing the CTV assets. But this isn't just a Canadian phenomenon; this is occurring around the globe.

I actually see an opportunity here, because if we have these large, very powerful stages that will allow Canadian content to extend beyond simply our borders, then rather than broadcasting something five miles past Buffalo, we're actually broadcasting to the world.

Can you indicate to the committee the Canadian content rules we currently have in place? It is your intention that these Canadian content rules, regardless of vertical integration, will be steadfastly supported by the CRTC. Is that correct?

• (1600)

Mr. Konrad W. von Finckenstein: Yes, of course, but they do apply to broadcasting. You have to remember that. What you're talking about—that little phone you have in your hand—is not broadcasting. We actually went to court with a reference and said, “Please tell us to what extent we can apply those rules to the Internet.” It's not that we intend to and so on; it's just so we know whether we have the capacity to do it or not. The court quite specifically said, “Under the present Broadcasting Act, no, you cannot deal with those issues”, etc.

Now, most of the content that's seen nowadays on those phones and so on is still produced for broadcasting in the first place, and then repurposed for it. To that extent, if it's the main source of production, that being broadcasting, then yes, we apply those Canadian content rules, and we'll continue to apply them.

Mr. Dean Del Mastro: Thank you.

The new Canada media fund, which was established just over a year ago, has been well received. The government is making a significant contribution toward that, as are the BDUs. I believe the total fund was about \$340 million this year, give or take, for the creation of Canadian content.

I am concerned, however, that it could be eaten away at over time. Specifically, there are two significant changes that have occurred recently in Canada: the recent introductions into Canada of Netflix and Apple TV. Did the CRTC consider those introductions into Canada and whether they, along with BDUs, should be contributing in kind toward the creation of Canadian content?

Mr. Konrad W. von Finckenstein: No, we did not. They do not amount to broadcasting, as I've just said.

What is Netflix? In effect, Netflix is a way of renting videos over the wire rather than from a store. That's all it is. It's a Blockbuster in the sky, if you want. Apple TV is a means of buying a product from Apple on your computer and then sending it to the TV screen in front of you. That's totally out of the realm of the things we regulate. Nobody asked us to consider it and we didn't consider it because it just doesn't fall within our jurisdiction.

Mr. Dean Del Mastro: Okay. But I would suggest, though, that over time.... For example, I've been to a local company, Ericsson, which is working on incredible technology to broadcast wirelessly over the Internet. They can actually broadcast video images, which I had no idea would even be possible at this point.

It's quite likely that in the future people won't need to be hard-wired through cable to get programming. They certainly won't need to be hard-wired to watch movies or do otherwise. My concern is that when you have a system in which BDUs are contributing to the creation of Canadian content, but Internet broadcasters aren't, that system isn't sustainable over time.

Mr. Konrad W. von Finckenstein: Yes. You know, if you want to do something about it, undoubtedly you can, but it has to be done through legislation. It can't be done through the CRTC.

Mr. Dean Del Mastro: Okay.

Thank you very much.

The Chair: Thank you very much, Mr. Del Mastro.

Madam Dhalla.

Ms. Ruby Dhalla (Brampton—Springdale, Lib.): Thank you very much. It's a pleasure to be here, filling in for my colleague Ms. Bonnie Crombie, and it's a pleasure to see you again, Mr. Chair.

As you know, I come from the riding of Brampton—Springdale, which has probably one of the largest multicultural and multilingual communities in the country. From working with many of these constituencies and community organizations, we've had a chance to see that many of these community groups, and ethnic communities in particular, are not necessarily watching the mainstream channels. They are watching their own television programs in the evenings and on weekends, listening to their own radio programs, and reading newspapers in their own languages, to find out what's happening both within Canada and in their particular homelands.

When you talk about diversity of voices and ensuring that the CRTC is there to reflect that changing media landscape, what types of opportunities, outreach strategies, or initiatives has the CRTC undertaken to reach out to some of these groups? Do you have a lot of these media outlets approaching you to get licensed?

• (1605)

Mr. Konrad W. von Finckenstein: First I'll say that the diversity of voices is meant to make sure there are no restrictions...you're looking at the other end now, in terms of fostering, and that doesn't really fall under diversity of voices. But we do have a multilingual policy to foster broadcasting in certain languages, which is what you're talking about, primarily.

Maybe my colleague Ms. Cugini can walk you through it.

Ms. Rita Cugini: As you know, especially in the Toronto area, we have two over-the-air multilingual, multicultural broadcasters that are available to everyone, under the name of OMNI. As well, on the specialty side, we created 10 years ago the category B licence, which is free market entry with a maximum of 35% Canadian content. That particularly addresses the needs of the multicultural, multi-ethnic community, because a lot of the programming can come from places outside of Canada. With the 35% Canadian content, they can produce programming, in a language or in English, that is relevant to that community.

I don't know what the exact number is, but we have an incredible number of them, and not only category B licences, but category Bs that have launched and are carried by the major cable companies.

Ms. Ruby Dhalla: Are there a number of people who apply for category B licences who are also refused by the CRTC for various reasons?

Ms. Rita Cugini: If they are refused, it's because it's an incomplete application, or because it is deemed to be competitive with something that currently exists under what we call category 1, which is a higher benchmark or something that is currently available on analog. But we could receive as many applications as come in, for example, in a third language, and all of those under category B could be licensed if they don't compete with anything that currently exists.

I would also like to say that not only is diversity well reflected in what the commission does with the licensing of third-language programming, but we also have regulations and policies in place that ensure the mainstream broadcasters also reflect the multicultural reality of the markets they serve through their mainstream programming.

Ms. Ruby Dhalla: You have requirements for Canadian content regardless of the category of licence and you also have requirements, as you said, for some of the mainstream channels to highlight some of the diversity of the country. What types of penalties are in place for any type of infringements? Also, what types of safeguards do you have in place?

Ms. Rita Cugini: All the broadcasters, by condition of licence, are obligated to comply with the Canadian Association of Broadcasters code of ethics, which deals not only with issues of stereotyping but sex role stereotyping as well. As I said, these are enshrined in their conditions of licence.

It also raises the issue of what I talked about earlier, and that is administrative monetary penalties. Currently when a broadcaster is in violation of one of those codes they are investigated by the Canadian Broadcast Standards Council. If they're found to be in violation, they have to say so on the air...I think it's four times.

The CRTC, at the time of licence renewal, may give them a shorter licence renewal period. If it's particularly egregious, we could also choose not to renew, but that could take up to seven years. If they violate any one of these codes in their first year of operation, it will take us seven years to be able to do something, because we can only do something during the time of renewal.

• (1610)

The Chair: Thank you, Madam Cugini.

Monsieur Pomerleau.

[*Translation*]

Mr. Roger Pomerleau (Drummond, BQ): Thank you, Mr. Chairman.

I would like to thank all three of you for being with us again today.

Mr. von Finckenstein, you alluded to vertical integration. In your brief, you say, and I quote:

There is also the possibility that the distribution arm of an integrated company may give undue preference to services offered by its programming service arm, to the disadvantage of outside providers. [...] In the event that a preference has been demonstrated, a reverse onus is placed on the distributor to show that it is not an undue preference.

I am a neophyte in this area: I have never even attended a CRTC hearing. How can a distributor demonstrate that it wasn't undue?

Mr. Scott Hutton: We ask that question of a distributor because the distributor is the one who deals with all the other services. He has the information that can help us. He can let us know whether he has given a preference to someone in that context. For example, if people working for one service say the rate is clearly prohibitive, we can ask them and they will tell us what rate is being paid by everyone and whether it's similar for this type of service. That is a simple example.

Mr. Roger Pomerleau: Thank you.

You are planning to hold hearings on May 9. I have another neophyte question. Can you tell me what form these hearings take? Is it a little like what happens here, where industry representatives and the public appear and present briefs?

Mr. Konrad W. von Finckenstein: Hearings are public. We had a hearing in Gatineau yesterday, and your colleague, Ms. Lavallée, was in attendance. There was a theme. A notice was published indicating that we would be talking about vertical integration and its potential effects, with a view to determining whether the CRTC's current tools for resolving issues are adequate. We invite everyone to attend. People send in written briefs and let us know whether they wish to make an oral presentation. We listen to what they have to say, we ask questions, and so on. At the end, based on the information received, we decide whether or not there is a problem. It is possible that some tools need to be clarified or changed. If it's something that we have no control over, we will then ask the government to give us the legislative powers we need to tackle the issues.

Mr. Roger Pomerleau: You want to arrive at a much better defined policy which will really tackle the issues.

Mr. Konrad W. von Finckenstein: We did the same thing four years ago, when CTV bought Shaw and, after that, when Canwest bought Alliance Atlantis. We saw that there were broadcaster mergers occurring. What were the implications of that for the diversity of voices? Did we have rules in place? Were they adequate? Was there something we should do? Our fear was that everyone would be controlled by two or three persons. After holding consultations, we devised the rules I referred to at the beginning of my presentation. The mechanisms were new. For example, we considered the idea that a key broadcaster does not control everything; one company should not own all the daily newspapers, the radio station and the television station at the same time, in a single market. We said no. At least we have the right to two types of opinion media. That also applies to the small cities and towns.

Mr. Roger Pomerleau: You have talked about a diversity of voices. Are you basing yourself solely on the ownership question to determine that, or do you also consider programming?

Mr. Konrad W. von Finckenstein: No, we want there to be different types of programming, but we want to avoid there being a single voice because there is a single owner. Generally, we hope that journalists will be independent and express their views and opinions, and so on. But they can be invited as guests or there can be restrictions on joint ownership.

• (1615)

Mr. Roger Pomerleau: Media ownership is not the only issue if you want to ensure that there are multiple sources of information available. You can also look at the actual programming on occasion.

Mr. Konrad W. von Finckenstein: Yes—

Mr. Roger Pomerleau: The reason I ask that is that my wife, who watches three or four television stations, tells me that it's always the same thing. And yet they are all different owners.

Mr. Konrad W. von Finckenstein: Our job is not to regulate content. Programmers decide on content.

Mr. Roger Pomerleau: Thank you.

The Chair: Thank you, Mr. Pomerleau.

Mr. Armstrong, please.

[English]

Mr. Scott Armstrong (Cumberland—Colchester—Musquodoboit Valley, CPC): Thank you very much for your submission. I'm new on this committee, so I have not met you before. Welcome.

I've been very interested in hearing what you've had to say. As a new member, I just need you to clear up a couple of things for me.

You talked a bit about your mandate and your jurisdiction. You talked about how you have your hands on television and your hands on radio, but there was a bit of a grey area for me with respect to your jurisdiction when you refer to content being delivered or broadcast through the Internet.

How far-reaching is your organization when it comes to content delivered on the Internet?

Mr. Konrad W. von Finckenstein: The Internet service provider, the ISP, falls under our jurisdiction. Therefore, we can have a role as an intervenor in terms of what they do. For instance, Internet service A is a common carrier. They have to carry everything and can't discriminate based on content.

For instance, last year we made a rule on net neutrality. We appreciate that as a network owner, you want to make sure that your network doesn't crash. You may take certain measures, but when you take those measures to restrict, you have to do it on a fair basis. You can't discriminate against someone under the guise of saying that you want to protect the integrity of your network and then discriminate against particular content or one particular competitor or something like this. They fall under us there.

They call themselves “dumb pipe”. They carry content. On the content they carry, we have absolutely no jurisdiction over it. The court has said very clearly to us that we don't. Therefore, what goes out over the Internet, we don't control in any which way.

Mr. Scott Armstrong: What we have right now is a regulatory body that controls and protects Canadian content in two areas through which content is primarily delivered. However, there is now a third area. For example, the children in my household don't watch TV, and they rarely listen to the radio. They watch their computers.

I get content over the computer. With this change in paradigm, right now you're basically the gatekeeper when it comes to protecting Canadian content, but there's a hole in your gate that you have no jurisdiction over. Is that accurate?

Mr. Konrad W. von Finckenstein: You're absolutely right. It's not only us. The whole world is that way. Traditionally, you regulated through access. You wouldn't give somebody a licence to broadcast or a licence to distribute or whatever. Through that gatekeeping, you could control what actually goes into the pipe, what gets shown, and so on. That more or less is being eroded. There's no question about that.

What is left, to some extent—and Mr. Del Mastro talked about the Canada new media fund—is to try to go through the subsidies fund. We will help to subsidize. We realize that you have a small market and so on. But the subsidy is subject to certain strings, you know. You have content rules.

Mr. Scott Armstrong: As a regulator, do you believe that we're heading in the right direction by supporting the development of the best content we can? Is that the answer? Or is the answer more regulation and trying to screen things that come from outside the country into our country? Where do you think we should put our emphasis? Or should we have both?

Mr. Konrad W. von Finckenstein: I don't think you can do that. You know, this is not China, and even China doesn't manage to screen incoming content. This is a free society. The content will come in and out. We can't.... Your kids would get very upset if they found out that they can watch this thing over the iPad but not that. I don't think it's desirable, and it's not feasible, either.

Mr. Scott Armstrong: I'll blame Charlie.

Voices: Oh, oh!

Mr. Scott Armstrong: So really, the only way we're going to be able to deal with this and support Canadian content is to really support having the best content.

Mr. Konrad W. von Finckenstein: Also, up to now most of the content actually started with either film or broadcasting and then was repurposed for the Internet. To the extent that happens, you have control at the production phase. But if it's a production that's purely geared to the Internet, funding or incentives of some sort are about the only way you can influence it.

• (1620)

Mr. Scott Armstrong: Do you think you'll hear that at your hearing? Do you think this is going to be one of the big pushes you'll hear at your hearing in May?

Mr. Konrad W. von Finckenstein: I don't know what I'm going to hear. What I've clearly observed is that the platforms are moving. Nobody knows which is going to be the dominant platform—or maybe we will have a lot of them, etc. Right now, you make a lot of money in broadcasting. Making money in the new platforms is very difficult—or “monetizing”, as the industry calls it. Very few people have been able to do it successfully. Google has been able to find a way and eBay has. Most of the others have a lot of i-vaults, but they can't turn them into money, and until that happens....

On top of that, you have the question of rights and who pays for them. How do you pay for people if it's being distributed over the Internet? All our rights are based on geographic locations and, of course, the Internet has no boundaries.

So people will put all of these things on our plate and point them out and draw conclusions from them. That's part of the beauty of these hearings: you hear all sorts of points of view. Eventually, as a result of that, you hopefully can see some light at the end of the tunnel and say, “Here, this is what we you should be doing”.

The Chair: Thank you very much.

Mr. Rodriguez.

[Translation]

Mr. Pablo Rodriguez: Thank you, Mr. Chairman.

I would like to continue along the same lines as Mr. Armstrong, but I have a specific question.

You decided to exclude Internet service providers from the broadcaster category, even though more and more content is being produced for the Internet. Why did you do that exactly?

Mr. Konrad W. von Finckenstein: What do you mean?

Mr. Pablo Rodriguez: Why were Internet service providers excluded from the broadcaster category?

Mr. Konrad W. von Finckenstein: Because they are “carriers”. They do not create content. Content is created by the companies with websites. We’re not talking about Rogers or Quebecor.

Mr. Pablo Rodriguez: That’s the argument made by Internet service providers who claim to be only a “tube” and therefore have no responsibility.

[English]

And you’re buying that...?

[Translation]

Mr. Konrad W. von Finckenstein: The courts have accepted that.

Mr. Pablo Rodriguez: As far as I know, these people do a lot of advertising stressing the fact that their “tube” can be used for very quick downloads, watching films, listening to more songs, and so.

It seems to me there is a fairly direct connection.

Mr. Konrad W. von Finckenstein: If you change the Broadcast Act, we may be able to do something. However, under the Broadcast Act as it currently exists, the courts have explicitly stated that we cannot do that.

Mr. Pablo Rodriguez: Is that what you’re recommending? Should the Act be amended?

Mr. Konrad W. von Finckenstein: If the Act were amended, I’m not sure what we would do to influence Internet service providers.

In France, for example, they wanted them to pay a tax. The purpose of the tax was to fund national broadcasting. There are no ads on national radio, but there is an Internet bit tax. I don’t know how much it amounts to, but all the money collected that way is used to fund national broadcasters. That is one way of contributing to the system, without trying to control Internet content.

Mr. Pablo Rodriguez: If we were to propose something like that here, I imagine our Internet service providers would not be very happy about it. Once again, they would say they have no role to play in this area. But a lot of people believe the opposite.

My feeling is that you don’t really have any power. In fact, you said so yourself. You play a critical role. You may roar like a lion but you bite like a kitten.

I see that you have made specific proposals with a view to securing greater powers and a greater ability to enforce the regulations, so that people think twice before trying to circumvent a regulation, but do you have any others?

Mr. Konrad W. von Finckenstein: Well, talk to me next fall!

I am concerned. I have announced hearings. We want to understand the current phenomenon. We want to know where all of this is leading. After that and after holding consultations, we will have a clear idea, and at that point we will be making suggestions as

to what can be done. That is exactly the reason why we are holding these hearings. This is a phenomenon that no one really understands.

The CRTC does not claim to understand what is happening or what the solution is. I doubt that there is a single solution. We will probably have to try a lot of different things.

• (1625)

Mr. Pablo Rodriguez: We have been talking about vertical integration and certain sectors of the industry taking control of others. Can you give me your views on the idea of changing the regulations to allow foreigners to buy telecommunications companies?

Because there is this integration, do you think it’s possible that it won’t have any direct impact on the broadcasting industry, because it is integrated and one branch of the industry often belongs to the other?

Mr. Konrad W. von Finckenstein: When I appeared before you about a year ago, I expressed a view on that. In fact, I said that you cannot separate telecommunications from broadcasting. If you liberalize one, you have to liberalize the other. In my opinion, it is very tricky, because we’re talking about a creative industry that reflects Canada. That is why I believe we should retain national control. We can allow foreigners to have 49% ownership, but no more.

Mr. Pablo Rodriguez: You said that last year and I wanted you to repeat it.

Mr. Konrad W. von Finckenstein: I have not changed my mind.

[English]

The Chair: *Merci.*

Mr. Del Mastro.

Mr. Dean Del Mastro: Thank you very much, Mr. Chairman.

I have one very quick question and then I’m going to pass it over to Mr. Hiebert.

We’ve discussed some of the changes that are happening in the Canadian broadcasting industry. We heard before this committee—and I know that you heard before your committee as well at the CRTC in your hearings—from companies like Shaw, Bell, Rogers, Corus, and City, essentially all of the broadcasters and broadcast owners moving forward, and they are not supportive of fee-for-carriage.

I’m curious as to why the CRTC would still proceed with a court hearing when there are no broadcasters in Canada that still support that position, especially in light of the redistribution and retransmission rights war that is going on in the United States right now.

Mr. Konrad W. von Finckenstein: First of all, it’s not fee-for-carriage; it’s value-for-signal. As you know, we have said that the broadcasters and distributors should negotiate what is the value of the signal that’s being distributed. We don’t see why.... The distributors pay for the specialty signal and they don’t pay for the over-the-air signal. We’ve made a reference to the court, saying, “Here is the scheme that we would implement” and asking them to tell us if it legal or not.

Because many people appearing before us have said no, this is copyright, and you're interfering with copyright. They have said that this not broadcasting. That argument was debated before the court. Part of industry said it was copyright; part of it said it was not. We await the outcome.

If they say, "Yes, CRTC, you have the power, and you can do it", all we would do then is establish the fee. It's up to them to decide whether to negotiate it or not, etc. Now that in the interim we have this vertical integration where most of the major broadcasters are owned by the distributors, those negotiations may take a totally different form from what you see in the U.S.

I have no idea what they will do. It's up to them to decide. All I do is set the fee if the court says we have the power to do so.

Mr. Dean Del Mastro: Okay.

Well, I'm just concerned about things getting passed off to consumers, first of all, such as extra charges. But also, secondly, with respect to companies, it would actually be a redistribution of incomes from one BDU to another, potentially, and that I have some concerns about.

Mr. Hiebert, go ahead.

Mr. Russ Hiebert (South Surrey—White Rock—Cloverdale, CPC): Thank you.

I have a couple of questions. The first one is quite brief, I think.

In your submission, you make the statement that you have different regulations for applications where a broadcaster would control more than 35% to 40% or less than 35% of the national audience. I presume you're talking about the number of viewers in the country—

Mr. Konrad W. von Finckenstein: I was, yes.

Mr. Russ Hiebert: —as opposed to the percentage of the population. With the numbers of viewers declining as significantly as they are, and certainly you've talked about young people migrating from television to the Internet...I hear from broadcasters that they believe 16-year-olds to 24-year-olds don't watch television at all anymore.

With that happening, as they migrate from TV to the Internet, and as the television audience is reduced and diminished, is the value of a TV licence therefore also diminished, because you have many fewer members of the audience looking at the commercials by which the TV stations use to monetize their audience?

• (1630)

The Chair: Thank you, Mr. Hiebert.

Mr. von Finckenstein, go ahead and answer that question, and we'll finish there.

Mr. Konrad W. von Finckenstein: First of all, I don't believe that audiences are decreasing. The audience share of TV is relatively stable, if not increasing.

But let's assume, for argument's sake, that it actually happens. It's also a question of whether this is a temporary trend or a permanent trend, and there are several people in the industry who also believe this is a question of age. As you get older and have other

responsibilities, you go more and more to television to be entertained. You don't want to interact, you don't want to choose, etc., you just want to click and say, "Please entertain me". But when you are young and full of energy, etc., you love the interaction and you want it. I don't know whether it's true or not. We will see. Only time can tell.

Secondly, the market so far has not given any signal that television licences are less valuable than before. On the contrary, they have risen steadily. The latest transactions—for example, when you see what was paid by Bell for the CTV network—show a healthy increase. So we haven't seen that phenomenon yet.

The Chair: Thank you very much, Mr. Hiebert.

Thank you to our witnesses, Mr. von Finckenstein, Mr. Hutton, and Madam Cugini, for your appearance.

We'll suspend for a couple of minutes as we wait for our next panel to appear.

• _____ (Pause) _____

•

• (1635)

The Chair: Welcome back, members of the committee, to the continuation of our 30th meeting of the Standing Committee on Canadian Heritage.

We have in front of us for the second panel representatives from three different groups. From Newcap Inc., we have Mr. Keller, vice-president; from Stornoway Communications, we have Madam Fusca, the president; and thirdly, from the Independent Broadcasters Group, we have Mr. Fortune, Mr. Roberts, Madame Lafontaine, and Madame Gouin.

Welcome to all of you.

We'll begin with a combined opening statement, I understand, from the Independent Broadcasters Group and Stornoway Communications.

You may begin.

[Translation]

Ms. Suzanne Gouin (President and Chief Executive Officer, TV5 Québec Canada, Independent Broadcasters Group): Mr. Chairman, members of the Committee, good afternoon.

First of all, we would like to thank you for your invitation to appear today.

[English]

We are here today as members of Le groupe de diffuseurs indépendants, le GDI, an association of independent Canadian broadcasters.

Let me introduce you to the member representatives who are here today.

[Translation]

My name is Suzanne Gouin and I am the President of TV5 Québec Canada.

[English]

I'm joined by Martha Fusca, president of Stornoway Communications. From ZoomerMedia television, I'm joined by Bill Roberts, president, and Monique Lafontaine, the vice-president of regulatory affairs. As well, I'm joined by IBG's legal counsel, Joel Fortune.

[Translation]

For efficiency's sake, we have joined forces and combined our presentation, although Stornoway is a separate company.

We would like to begin by saying a few words about independent broadcasting, and then move on to the substantive question you are examining.

Canada has a rich linguistic and cultural heritage, and that heritage is reflected by independent broadcasters, including IBG's members. Members of the Independent Broadcasters Group offer programming for Canadians from all conceivable backgrounds, in English, French, Aboriginal and many other languages, including Cantonese, Mandarin, Russian, Hindi and Punjabi, to name only a few, and for every age group and interest.

Independent broadcasters often have the mandate to provide programming that isn't found on mainstream commercial services. Independents provide content and editorial diversity and contribute directly to the free expression that we expect to find in their media and that makes our democracy function.

We also create and support jobs in the cultural industries in every region of Canada and, as small and medium enterprises, spur innovation—what Mr. von Fickenstein was referring to earlier—growth in the economy.

Before going any further, let me explain what we mean by “independent” broadcasters. An “independent” broadcaster is a broadcaster that is not owned by a corporate group that also owns a cable, satellite or telephone network. Why is this distinction important? It is important because the cable, satellite and telephone companies are the gatekeepers to Canada's broadband networks that all broadcasters need to access in order to reach Canadian audiences.

Subject to only a few rules set by the CRTC, these carriers decide what channels Canadians get to watch on television and new media screens. Just as importantly, these carriers largely control the marketing of programming services—for example, how they are packaged, the retail price, channel placement and how aggressively they are marketed. Last, even while they have all this power, these carriers compete directly with independent broadcasters for viewers and programming, since they also operate a large number of their own TV services.

So, ownership of the distribution networks is critically important. If you own one of the large distribution networks, then the services you own get access, and they are marketed so that they reach a large number of Canadians and prosper. If you don't own the networks, if you are an independent broadcaster, then you are in a much different position.

● (1640)

[English]

Ms. Martha Fusca (President, Stornoway Communications):

Our message today is direct. Increased ownership concentration and cross-ownership between programming services and cable, satellite, and telephone companies will do great harm to independent broadcasters. Swift and proactive regulatory action is needed to mitigate this harm.

Canada is reaching a level of ownership concentration that has not been seen before. If BCE's acquisition of CTV is completed, then the owners of Canada's four largest cable companies and two largest telecom companies, Bell and Telus, will control the following: at least 90% of all Canadian cable and satellite subscribers; 97% of mobile phone customers; all four national conventional television networks, including TVA, distributed nationally under a CRTC requirement; 66% of Canada's analog and category 1 specialty channels, the channels that have benefited most from direct CRTC support and regulation; 83% of the total revenue generated by TV in Canada, including both distribution and broadcasting activities; and in excess of 90% of all residential Internet customers in their markets.

We know this committee is examining the move toward new viewing platforms together with changes in ownership in the TV industry. It is fair to say that probably all independent broadcasters are looking at viewing platforms to grow their businesses and to reach Canadians in all technologies, but television broadcasting remains by far the most important viewing platform, and it is also the generator of the same content that Canadians want to watch online.

Also, as you can see from the overlapping ownership of broadcasting networks, in emerging viewing platforms like mobile and the Internet, concentration of ownership is just as significant an issue for accessing the new networks as it is for accessing broadcast distribution. This concentration of ownership represents an enormous challenge to independent broadcasters, both for broadcasting and for new modes of distribution.

This is why adequate regulatory checks and balances need to be built into the system. But the CRTC has moved in the other direction. The commission has removed a number of important roles that were specifically intended to ensure that Canadians' specialty and pay television services get fair access to distribution networks.

The result of this deregulation is that BDUs will have the ability and every incentive to give pride of place to their own broadcasting services and to non-Canadian services. Independent broadcasters look at these coming challenges and are concerned about their ability to maintain a meaningful presence, or even to survive, within the system.

One way to ensure that Canadians continue to have access to important and diverse Canadian TV services is for the CRTC to use paragraph 9(1)(h) of the Broadcasting Act. Paragraph 9(1)(h) permits the CRTC to require cable and satellite BDUs to distribute certain services on basic or other terms and conditions. Some independent broadcasters have applied to the CRTC to become paragraph 9(1)(h) services as a response to concentration of ownership and deregulation. Paragraph 9(1)(h) services reach a large number of Canadian homes through Canada's largest BDUs. Consequently, they have to meet high Canadian content and other stringent obligations.

Regrettably, the CRTC announced at the end of this past summer that it was going to impose a moratorium on paragraph 9(1)(h) applications until after June 2012 at the earliest. It is important for the committee to appreciate that some paragraph 9(1)(h) applications were filed two and a half years ago, including those of the broadcasters on this panel. This means that it will be four and a half years from filing when they are finally heard by the CRTC.

Mr. Bill Roberts (President and Chief Executive Officer, ZoomerMedia Limited, Television Division, Independent Broadcasters Group): This decision came as a complete shock and was directly contrary to what the CRTC had stated was its plan. IBG members and others have filed—or had planned to file—applications based on the understanding that they would be heard shortly after filing, but certainly before September of 2011, which is the digital transition date for the industry, and the date when the new regulated or deregulated regime will come into effect. Indeed, we have quite an extensive library of correspondence with the CRTC on this matter.

The moratorium is deeply unfair and potentially harmful to diversity of voices and ownership in the broadcasting system, which is CRTC policy.

First, we question how a moratorium can be in the public interest and consistent with the Canadian Broadcasting Act. To be approved, by definition, a 9(1)(h) service has made an exceptional contribution to the Canadian broadcasting system and has met strict criteria.

Second, the moratorium comes at a critical time and it is exactly the opposite of what is needed. We have already explained how the CRTC decided to remove many of the rules used to ensure diversity of ownership and voices in the system and how concentration of ownership has intensified across broadcasters and networks.

Indeed, Canada may now have the most concentrated media environment in the entire western world at exactly the time that the CRTC should use all of the tools available to rebalance, including the paragraph 9(1)(h) orders for exceptional services, and to counterbalance deregulation in certain areas and the negative public policy effects of industry consolidation.

Third, the moratorium is especially harmful to small niche and independent broadcasters who want to make excellent Canadian content. If independents are going to make meaningful contributions to Canadian broadcasting and diversity, they require regulated carriage terms to reach a wide enough audience.

Fourth, the moratorium requires us to put our business plans on hold, even while the CRTC continues to add new non-Canadian services for distribution in Canada and permits the cable and satellite

companies to bring forward applications for more foreign channels and their own digital specialty pay and video-on-demand channels.

Fifth and last, more than anyone, small and independent broadcasters rely for survival on transparent, understandable, relevant, and timely regulation. This change of direction by the CRTC has been anything but and has left us and our business partners questioning the CRTC's priorities.

Even more troubling, when most 9(1)(h) applicants were being held back by the CRTC for the past two and a half to three years, the CRTC has moved some to the head of the line, given them a public hearing, and granted 9(1)(h) orders. Similarly, the CRTC decided to hear Quebecor's application for special distribution status for its cable news channel this past fall, even though it had already told the industry that applications similar to Quebecor's wouldn't be considered until 2011 at the earliest.

Finally, the CRTC has just announced another application it will consider, in which the applicant requests an extension of a 9(1)(h) order that, under its current term, isn't even set to end until 2015. The effect of this fast-tracking of some applicants and dismissal of others is that the CRTC is making decisions about what programming to license and not to license without holding public hearings. These are troubling precedents for a declared public policy goal of diversity of ownership and diversity of voices.

As members of Parliament, you are aware that the CRTC intends to look at some key issues related to vertical integration at the commission hearings scheduled for May, as Konrad announced. The outcome of these important hearings will be of utmost significance to the small and independent broadcasting sector. The IBG and others will encourage the CRTC to put in place relevant and proactive regulatory measures to offset the unprecedented power of huge, vertically integrated companies.

It is early days yet, but the CRTC seems to be most focused on refining its generic "undue preference" rule. In practical terms, what this means is that independent and small broadcasters will have to complain to the CRTC on a case-by-case basis and plead for fair and equitable treatment by giant cable and satellite networks every time the independents face discrimination.

As federal politicians, you wisely understand leverage and can appreciate why this approach will not work. It is very difficult for a small player to complain about a very large player in an industry where the small player fully depends on the larger player for its very existence.

● (1645)

What the industry needs instead is a clear and relevant set of rules, understood in advance, that will ensure independent broadcasters get fair and reasonable access and distribution by their large, vertically integrated competitors.

There are three things that we would like to ask this important committee to kindly consider. First, we request political and regulatory recognition that small and independent Canadian television broadcasters make a valued and unique contribution to the Canadian broadcasting system, especially as regards diversity of voices and ownership; second, that independent and small broadcasters with pending 9(1)(h) applications be heard before the August or September 2011 digital switchover, and that status quo carriage continue until those CRTC decisions are rendered; and lastly, that this committee explore and recommend how the Canada media fund can better service small, niche, and independent television licensees.

• (1650)

[*Translation*]

Ms. Suzanne Gouin: Mr. Chairman and Committee members, we have presented to you some of the realities facing independent broadcasters today and we have tried to be as direct as possible.

Unless regulatory action is taken, the increasing concentration of ownership among television broadcasters and the networks that carry their content will do great harm to independent broadcasters and to the diversity these broadcasters bring to Canadians.

The Chair: Thank you, Ms. Gouin.

[*English*]

Now we'll have an opening statement from Mr. Keller from Newcap Inc.

Mr. Mike Keller (Vice-President, Industry Affairs, Newcap Broadcasting (Jim Pattison Group), Newcap Inc.): Good afternoon, Mr. Chair and members of the committee.

My name is Mike Keller. I am vice-president of industry affairs for Newfoundland Capital Corporation, or Newcap, as we're commonly known.

Thank you for this opportunity to speak to you today about the challenges facing small-market and independently owned television stations in Canada in this constantly changing communications environment.

While Newcap is probably best known as one of Canada's leading radio broadcasters, given that we operate some 80 radio stations across Canada, we're also a small-market television broadcaster. We own and operate two stations in Lloydminster, on the border of Alberta and Saskatchewan, where we provide the only local TV voice in that community.

One of our stations is a CBC affiliate, while the other is a CTV affiliate. They're known as a twin-stick operation because we operate both of them out of the same facilities and share the same transmitters and the same staff. Twin-stick and even triple-stick operations are quite common in smaller markets in Canada that can't support more than one TV operator.

I'm proud to say that our CBC affiliate, CKSA-TV, just celebrated 50 years on air. It is the only small-market TV station on the prairies to reach that important milestone. Its much younger sister station, CITL-TV, which is a CTV affiliate, is only 35. Still, that's pretty impressive, because unfortunately there are not many small-market and independently owned TV stations left in this country. It is for that reason that we often work together on policy and regulatory

issues. That way, we can offer a unified voice that hopefully won't get lost when decision-makers consider the future of Canadian broadcasting.

Our stations make an important contribution to providing a diversity of ownership and programming in the system, and we want to continue to do that for a long time, so again, thank you for inviting me here as part of your study.

While I speak today on behalf of Newcap, I think it's fair to say that many of our issues, concerns, and hopes are shared by my colleagues operating small TV stations in parts of B.C., in places such as Thunder Bay and Peterborough here in Ontario, and in Val d'Or and Carleton in Quebec.

There has been much debate in the last few years about the future of conventional over-the-air television in this country. Indeed, this committee has been a leader in exploring that very issue. In fact, one of my small-market colleagues from Pattison Broadcasting in B.C. spoke to this committee last year when you were studying the evolution of the TV industry in Canada.

Much has changed in the Canadian broadcasting landscape even since then; hence these hearings now. But for small-market TV stations, much has also remained the same.

Competition for viewers in our communities still comes from everywhere: from big market stations available on cable; from time-shifted stations imported by satellite distributors; from foreign stations; and from the Internet.

As operators of small-market TV stations, we have been the canaries in the broadcasting coal mine. Because we are so close to our local audiences, we were the first to sense the trouble coming from new technologies and the changing economics. We were also the first to recognize that the key to our survival was to become intensely local. We recognized that we had to provide our viewers with more local news and information, public affairs, and public service programming than anyone else. We had to provide them with the programming they wanted and could not get from anywhere else.

That is exactly what we have done. We have focused on broadcasting from our communities, to our communities, and about our communities. We connect with our local audiences through our local programming and by building and nurturing our relationship with them. We reach out to our local viewers and we listen to them. We help them, too, through, for example, the many local charitable activities we initiate and support.

It is critical for us and for our viewers that we be the local TV voice in our small markets. But it is not cheap. It is very costly to staff and operate a local newsroom, to have reporters on the street, and to have talent and producers and crew in the studio, particularly when in our communities we have a limited commercial base from which to draw advertising revenues. That is why funding mechanisms like the CRTC's local programming improvement fund, the LPIF, are so important to us. Frankly, the LPIF has saved local television, at least for the time being.

Of course small-market stations have other challenges too. For example, we must be carried by satellite DTH distributors. In our own case, in Lloydminster, almost two-thirds of viewers get their TV service from a DTH provider. That means if we're not carried by DTH, we lose two-thirds of our potential audience. That would be the end of us.

It's pretty much the same for the other small-market, independently owned TV stations in this country. Fortunately, the CRTC has put rules in place that should ensure we have and maintain the DTH carriage we absolutely need.

• (1655)

Ensuring that we have the funds to produce local programming and that we have the DTH carriage have long been issues for small-market TV stations like ours. A much more recent concern for a number of us is whether we'll continue to have enough programming to fill our schedules.

As small broadcasters, we do not have the clout or the resources to negotiate with Canadian producers to license the top Canadian shows, or to go down to Hollywood each year to buy the popular U. S. programs. This is why we contract with the big Canadian networks to operate as their affiliates. So they act as our program suppliers, and we make their shows and brands available in our markets. But with increased consolidation and the vertical integration, we are worried that at some point our traditional program suppliers may decide they no longer want to maintain that role.

It is not an understatement to say that the large networks have the power of life or death over affiliate stations. This is especially true in smaller twin-stick or triple-stick markets, because if a network decides that it will not renew our affiliation agreement, we have no alternative source of programming. Of course, no programming means no local station. No local station means no local news or locally produced public affairs programming or locally focused public service announcements.

Bringing television to smaller communities was and still is a risky business. It is the small independent operators who took on those risks when the larger networks weren't willing to do so. That being said, the larger networks have since benefited from the exposure we have provided for their brands and their programming.

At the outset, I proudly told you that our station, CKSA, just celebrated 50 years in the TV business in Lloydminster. We have been a CBC affiliate throughout that entire time, meaning we have been the local source of CBC programming in our community and region for the last half-century. We are currently negotiating with CBC to continue that affiliation relationship, and we are hopeful that we can work something out, going forward.

Other small-market stations are also in the process of negotiating the renewal of their program deals. We will all continue to try to resolve our program supply issues through business negotiations. However, at some point we may need the CRTC to step in and help to ensure we actually have a program schedule to offer on our small-market stations.

To end on a positive note, however, I wanted to let committee members know that our small-market TV stations in Lloydminster are currently on track to meet next year's deadline for the digital transition. A year ago, we were somewhat overwhelmed by the costs we were facing to make that transition. Fortunately, though, many of those costs have come down substantially since then. As a result, and subject to resolving our programming supply issues, we are now confident that we, alongside other Canadian broadcasters, will be turning on the digital switch next August. I think the other small-market broadcasters mandated to make the switch can say the same.

Mr. Chair, committee members, thank you for this opportunity to appear before you. I would be pleased to respond to your questions.

The Chair: Thank you, Mr. Keller.

We'll have about 30 minutes of questions and comments from members, beginning with Mr. Rodriguez.

• (1700)

[*Translation*]

Mr. Pablo Rodriguez: Thank you, Mr. Chairman.

Good afternoon to you all and thank you for being with us today.

I have a general question which is addressed to anyone who wishes to answer. Earlier, as you heard, I mentioned to CRTC officials that your industry is facing a number of challenges. They told me that, all things considered, broadcasters have everything they need to succeed here, provided that they are creative and are prepared to take bold action, whether they are independent or not, large or small. They told me there was not necessarily any need to make changes.

Is that your view?

Mr. Bill Roberts: I would like to answer in my own language.

[*English*]

There are probably more *Gémeaux* and Gemini awards sitting at this panel than exist at CTV or Canwest Global. So when it comes to program excellence, that's not the issue. The issue is that our business is all about distribution. When you're a small and independent broadcaster, and you don't have access to that distribution because it's controlled by your competitor, that's a problem.

We heard earlier that there are a lot of category 2 licences out there. Well, there may be—there are almost 400 of them—but we didn't ask why only about 90 have ever been lodged. Since the year 2000, the CRTC has not voluntarily stepped forward and asked for more 9(1)(h) or foundation or basic-tier Canadian licences—none, zero, never. Since 2004, that same CRTC has authorized close to 400 foreign services into this country. Why do we have a U.S. college sports channel and not have a Canadian Olympic channel? That's one of those 9(1)(h) applications that's been twisting in the wind for about three years. I'll stop there.

The Chair: Thank you.

Ms. Martha Fusca: I wanted to say as well that it is really an issue of access. When Suzanne was speaking she told you that it's not only about access, it's about price, it's about packaging, it's about marketing. You could be the best business person in the world and you can have the most innovative concept in the world, but if you don't have access you don't have anything at all.

I wanted to make a comment. Earlier the chair was saying that an increase in vertical integration is just a natural progression. I hate to disagree with our chair, but I vehemently disagree with our chair. What's happened in Canada is that the current winners of the industry have actually constructed that market. There's never been a free market. There isn't a free market. It's been constructed. I just want to make sure you all understand that.

[Translation]

Mr. Pablo Rodriguez: Quickly, if you don't mind, because I have other questions. I guess all of you would like to respond?

Ms. Monique Lafontaine (Vice-President, Regulatory Affairs, ZoomerMedia Limited, Independent Broadcasters Group): I will be as quick as I can.

[English]

Your question is whether the regulatory landscape is satisfactory for us to exist. From our perspective, it's absolutely not. The CRTC deregulated the carriage of our specialty services in fall 2008 and we're going to see that in August of next year and how that's going to translate for all of us.

Right now our flagship station is Vision TV and we're carried in close to 10 million homes because the CRTC had mandated that for 20 years. Come next year that will no longer be the case. Yes, BTUs will have to carry us, but they could put us anywhere on the dial with any package so we could basically have five subscribers. There's the distribution. The LPIF that we've been hearing about we do not have access to. The value for signal that the CRTC was going on about as something for small broadcasters, again, that's something we're going to have access to. We don't have access to carriage by DTH operators. So all of these wonderful things that they've been talking about we do not have access to to help us in this environment.

The Chair: Mr. Rodriguez.

[Translation]

Mr. Pablo Rodriguez: Do you have any examples of small independent broadcasting companies being blocked or unfairly treated by some of the major players, or do you see this as a challenge, especially in theory?

Ms. Suzanne Gouin: There is nothing theoretical about this. The fact is that when you have so many licence applications and so few Category 2 channels are being launched, it's clear that the reason is that a very powerful gatekeeper is preventing these channels from being distributed. I can tell you that in Quebec, it is impossible to have a winning business plan if you don't have Vidéotron as a distributor.

•(1705)

The Chair: Thank you, Mr. Rodriguez.

Ms. Lavallée, please.

Mrs. Carole Lavallée: Thank you, Mr. Chairman.

A little earlier, with CRTC officials, we were talking about the Quebec example—I don't want to say “model” because we know the difference between the two—where convergence has been underway for longer than elsewhere in Canada. Indeed, I've heard a great deal about the problems with speciality channels. Do you only represent specialty channels, or are there general-content independent channels in Quebec?

I will ask all my questions and then give you an opportunity to respond.

I've heard a great deal about the problems for specialty channels wanting to operate in Quebec if they didn't have the blessing of one of the major broadcast distribution undertakings—BDUs—that shall remain nameless. I've heard all kinds of examples in that regard.

But I don't want to get into that. I prefer to let you tell your own stories to my colleagues here and recommend your own solutions, particularly for Quebec.

Ms. Suzanne Gouin: Particularly for Quebec?

Mrs. Carole Lavallée: We'll start with that, and then you can solve the problem in Canada.

A voice: And after that, the one in North America.

Voices: Ha, ha!

Ms. Suzanne Gouin: Of the independent channels operating in Quebec, we have V which is the only private national channel operating completely independently of a cable company. As for the other independent channels, they are primarily specialty channels, like Astral, TV5 Québec Canada, Serdy Vidéo and MétéoMédia. Those are basically the independent channels in Quebec.

Mrs. Carole Lavallée: Aren't there channels like Évasion?

Ms. Suzanne Gouin: That's Serdy Vidéo. Évasion and Zeste are part of Serdy Vidéo.

Mrs. Carole Lavallée: I see. But Zeste is new.

Ms. Suzanne Gouin: Yes, that correct. The thing is that they were given a licence a long time ago. At some point, maybe they should be asked why it took them so long.

Mrs. Carole Lavallée: I know the answer, but go ahead and tell us.

Ms. Suzanne Gouin: If you know the answer, I will let you give it.

Mrs. Carole Lavallée: Yes, but tell my colleagues.

Ms. Suzanne Gouin: No, go ahead.

You were asking us earlier what the solution was. I don't want to take up my colleagues' speaking time, because I think it's very important that they be able to present some cases. So, I will come back to this with reference to a point I made in my presentation.

We are trying to negotiate with the cable operators, which carry tremendous weight and have the power of life or death over our business plan. It is obvious that as independent players, we carry far less weight than the players in these large corporate groups. The fact is that if there is no regulated rate, if you have to negotiate the royalty you will be receiving with the cable TV company, and if you have to negotiate the package your channel will be included in, you are constantly at the mercy of the cable company, because your channel is not one of that company's channels. There is a very important distinction to be made between independent channels and cable company channels.

Mrs. Carole Lavallée: Would you go so far as to say that BDUs should not be offering specialty channels?

Ms. Suzanne Gouin: The CRTC has allowed that rule to become the *modus operandi* in our industry. But at the same time, I think it would be unrealistic to try to go backwards. I think we should be moving forward, by imposing rules that promote diversified content and a diversity of choices with respect to programming—something this gentleman referred to earlier.

I believe it is very important for the rules to be clear and for all the players to feel as though they are on an equal footing. Even though that is not really possible, all should be more or less on an equal footing with the players that are controlled by the cable companies.

Mrs. Carole Lavallée: You don't need to do that; it will be done for you. We are not at the CRTC here. You don't have to press the button.

Mr. Bill Roberts: Once again, I will be answering in my own language.

[English]

I think a basic or a foundation service should reflect what Canada and Quebec really are *ensemble*. And we have as one of our members APTN, the Aboriginal Peoples Television Network. This is a service like these services here that's not going to come from anywhere but Canada. That service isn't coming from Raleigh, North Carolina. It just isn't. That service has 9(1)(h), and when I alluded to our having a stack of correspondence from the CRTC saying we would be heard under 9(1)(h) and we'd get a fair hearing, APTN has a stack like this of being bounced from one channel to another, their viewers not being able to find them, getting no notice of where they are—they're on 260; they're on 580; there on.... You know.

So I was alluding to my colleague that I couldn't read some of my own writing in the main presentation. But the part I was trying to get at is that I think that horse has left the barn in terms of separating specialties from having BD ownership. But at least we still have some tools like 9(1)(h), which can rebalance fairly and with some business predictability to assure diversity.

• (1710)

The Chair: Thank you very much, Mr. Roberts.

Mr. Angus.

Mr. Charlie Angus: Thank you.

I found your presentation very interesting and very different from that of our previous witness. Mr. von Finckenstein said we shouldn't assume there's a problem. Maybe I had my facts wrong, but it seemed to me somewhere over the years the mandate of the CRTC changed, because now the market handles itself. Ms. Fusca said the market was a construction, and it was constructed with section 19.1 of the Income Tax Act, which created a specific incentive for the broadcasters. It was used with the CRTC. I can't set up my own TV or radio network. It's an exclusive club. They shut down competition.

When the cable giants were afraid of competition, they were allowed to jack up their prices, and then when they jacked up their prices too much, rather than give the money back we created a media fund. Now they're the guys who control the media fund and now they're the same people who get to take the money out for another broadcast. So there is a market construct. There's nothing wrong with a constructed market, but we won't have access to that market.

Mr. von Finckenstein told us the pipes are dumb. But you're telling me the pipes are the gatekeepers, that the cable and satellite and telephone companies decide what people get to see and you have to negotiate with them, and now you have to negotiate with them when they're competing with you. So what are the steps we need in place so you get fair access to this market that's been constructed for the benefit of Canadians?

Ms. Martha Fusca: Thank you for the excellent question.

The difference between what we do and what Mr. von Finckenstein does is that while he's deregulating and regulating, we're actually having to live with it. That's a place to start. As to where we go to, the step they're taking vis-à-vis the hearing in May is actually very important.

Just to be clear about 9(1)(h), we're not expecting 9(1)(h) licences. We're just expecting a fair and timely hearing, something that we've been promised for several years now. That's all we're asking.

For those folks who are more market-driven, you can appreciate that the market does not like unpredictability. If you're asking for tens or maybe hundreds of millions of dollars to launch a new service, the market likes timeliness and predictability. So the step the commission is taking is an excellent one.

But what the system needs is a rebalancing. That's what we need, and we won't succeed otherwise.

Mr. Charlie Angus: This is a question that's always important with markets—making sure it's not anti-competitive when you really don't have much competition.

All the independent broadcasters aren't going to get 9(1)(h) service even if it was brought in. So I want to go back to the question of negotiating a place on the cable networks. The pipes aren't dumb, and neither are the people who make money off them. Why the heck would they give you guys channels 2, 3, and 4 when they can put their own channels on? That's what people are going to watch.

So how do you get on that dial at a fair price, when you don't have much leverage?

Mr. Bill Roberts: I'm going to need a stopwatch soon.

The pipes are not dumb. Eighty-three percent of the gross revenue in the broadcasting sector is controlled by four or five major companies. Ninety percent of our Internet access is controlled by those same companies. And 97% of our mobile industry is controlled by those very same companies. So they're not dumb; they're actually pretty smart.

We have made three requests. First, recognize small and truly independent broadcasters as unique and valued within the system; second, give us a fair hearing and give us our day in court on 9(1)(h) and carriage; and third, lend us your assistance so that we can find ways of using the tools we have, like the Canada Media Fund, to support and sustain this diversity of voices in ownership.

• (1715)

Mr. Charlie Angus: But how does that get you carriage, fair terms, when you're competing? I didn't hear that fourth element, and I think that fourth element—

Ms. Martha Fusca: Mr. Angus, we really need to rebalance the system. If we really care about small and medium-sized businesses in Canada, and if we really care about nurturing innovation, which typically comes from small and medium-sized businesses, then you have to redress the balance.

Mr. Charlie Angus: But Mr. von Finckenstein says “non-interference”. So are there are specific steps? That's what I want to hear.

Ms. Monique Lafontaine: He is saying “non-interference”, but what he often says as well is that in some instances they will regulate when they need to. And it is our view that this is an instance when regulation is necessary. And the form of regulation is these 9(1)(h) orders to ensure that smaller stations have a place on the dial, so that we can continue to provide our programming, and so that Canadians have access to our programming and our stories.

Without those orders, we are left to negotiate with these monolithic organizations for our place on the dial, for the amount of money they're going to pay us for our subscribers. Because the balance of power is so uneven, they'll be able to keep more of the revenue for themselves, which means less money for us to support Canadian programming. So it's this heavy market imbalance that we're urging you to take a look at and to correct, so that we can have access to Canadians and Canadians can have access to us.

The Chair: Thank you, Madame Lafontaine.

Mr. Del Mastro.

Mr. Dean Del Mastro: Thank you, Mr. Chairman.

Thank you, witnesses, for appearing today. It's a very interesting debate.

The issue of 9(1)(h) licences is relevant to me. But in the medium to longer term, I'm concerned about how viable that's going to be, if that's what your business model is constructed around. I can guarantee you, in five years' time, I won't have a cable subscription or a satellite subscription. I've seen where the technology is going, and the technology is going Internet-based. It's faster and better. The

level of broadcast quality is five times better than the human eye can even detect. In fact, I think that's where the big companies are going. That's why they're investing so heavily in wireless, and it's why they're converging platforms.

If your business model is based on the hope that we can get 9(1)(h) licences, what happens if we start to move towards a more wireless-based platform? What if broadcasters are not broadcasting through something you plug into the wall?

[*Translation*]

Ms. Suzanne Guoin: I would just like to make one very important point. At the present time, all the available content on the new platforms is from television. In that sense, yes, you may have different platforms on which you can watch content, but television will always be a choice vehicle.

[*English*]

Mr. Dean Del Mastro: I disagree with that entirely. I think people will want to watch broadcasts, but if I can take my BlackBerry PlayBook—when it becomes available in the new year, because I refuse to buy an iPad—and watch my beloved Toronto Maple Leafs anywhere in the world, including while sitting at home if I want, why am I going to plug into the wall?

Ms. Suzanne Guoin: It's not how you're going to plug in; it's where you're going to plug in.

Mr. Dean Del Mastro: But we just heard the CRTC indicate an hour ago that they are not going to regulate. They said about Netflix and Apple TV—whoop-de-do, it doesn't matter.

Ms. Suzanne Guoin: But then it should be a real concern for this committee in terms of Canadian content.

Martha.

Ms. Martha Fusca: I think you asked a really good question. You're absolutely right, the issue is that we don't know about the technology, the hardware that people are going to use. We know what the technology is today, but we haven't got a clue what the technology will be five years from today.

The point, however, is that it will be professionally produced content. All of the studies, even the ones the commission has commissioned, indicate that it will come from broadcasting.

The other thing the chair mentioned to you is that with very few exceptions, no one in the world has been able to come up with a model yet that generates revenue. The guys in the U.S. aren't having some of the same battles we're having here, because they can pull it off.

• (1720)

Mr. Dean Del Mastro: I have the method by which you can monetize it. If you own the pipes you're broadcasting over—if you're the wireless transmitter or the BDU—that's how you monetize it. That's why vertical integration is so important.

As I said, I'm really concerned. I agree with the CRTC looking at a pick-and-pay system. I think consumers should have the opportunity to choose what they want to watch. That's what they've indicated.

Ms. Martha Fusca: That's what they've indicated, but that's not what's going to happen.

Mr. Dean Del Mastro: I am deeply concerned that what we're hearing today is a suggestion that if we can just get this through, it will fix our business model. I think the model is changing so quickly that the idea that a paragraph 9(1)(h) licence will rebalance things.... It's an extremely temporary fix. Frankly, fee-for-carriage is dead, because nobody wants it.

On the issue around the Canada Media Fund, I'm deeply concerned about the BDU contribution to that. As we see new entrants coming into the market and eating away at BDU penetration, the fund itself will drop.

So I think there are a number of concerns here, and I really encourage you to take a look at that, because building a business model around paragraph 9(1)(h) is problematic.

Ms. Martha Fusca: We only mentioned that as part of our thing, by the way.

The interesting thing is that they own access to all of those platforms anyway, so if you're losing market share on one, they're already covered on the whole—

Mr. Dean Del Mastro: I agree.

The Chair: Thank you very much, Madam Fusca.

Mr. Roberts is next, before we go to Ms. Dhalla.

Mr. Bill Roberts: We have this smart Canadian guy named Marshall McLuhan. He said they all kind of morph and survive somehow and find their place. So radio didn't disappear, film didn't disappear, and television's not going to disappear.

That's one response, Dean. The second part is that regulation got us into this. It was a constructed thing. We have some tools that we can still use today as bridging tools and adjustment tools. We can buy some time. We can figure things out.

The Chair: Thank you, Mr. Roberts.

Madam Dhalla.

Ms. Ruby Dhalla: Thank you very much.

Just touching on what Dean Del Mastro was speaking about in not having cable in five years, there are a lot of communities I know of in rural parts of Canada that don't even have access to the Internet yet. In five years they hope they will get access to the Internet and they're still going to be utilizing their cable.

Going back to ethnic communities, I know many of the people who have come, perhaps seniors in recent years, and my parents' generation as well—I mean, we're still trying to teach my mom how to figure out the whole concept of e-mail. They're watching their programs on television, so I think those licences and that programming are essential.

Bill, you have to be congratulated for your work with Vision TV. It's done a great deal of great work in bringing issues forward for ethnic communities across the country. For anyone who hasn't seen it

on any Saturday, from morning to night, Vision is doing great programming. Congratulations.

I want to touch upon a topic you mentioned. I had asked the chairman previously in the panel with regard to the licences for some of the ethnic media programming. They spoke glowingly about the category B licences. You're telling me the question that wasn't asked was in regard to the launch. You said that in an approximation of about 400 licences issued, only about 90 had been launched. Can you please describe why some of these other 310 licences that perhaps have been granted haven't been launched? Perhaps the committee can learn from the reasons behind that to give proper recommendations moving forward to ensure there aren't those sorts of pending licences waiting. That's quite a high number.

Mr. Bill Roberts: Do I get that one?

A voice: Yes.

The Chair: Go ahead, Mr. Roberts.

Mr. Bill Roberts: Well, I think Dean answered the question. If you own the pipes, you own the means to distribution and you can launch them.

One of our members of the IBG, the Independent Broadcast Group, is ethnic media channels. SLAV11, which I think is in tomorrow's "Report on Business"—a little plug for a colleague—has been fighting exactly that fight, to get properly licensed and to get launched, and basically he's being told no by BDUs.

There's another thing I want to correct in terms of numbers. Konrad was absolutely right that television viewing is going up. What's interesting about where it's going up is that it's in the 45-plus demographic. Why is that important? It's important because 80% of this country's wealth is controlled by the 45-plus demographic; 70% of the people who voted for you are 45-plus; 70% of the electorate is 45-plus. They love television. They want to see diversity of voices and ownership on their television screens. I think that's important.

• (1725)

The Chair: Mr. Keller, did you have anything to add to this? You've not said much, but we're interested in your piece.

Mr. Mike Keller: We're all broadcasters, but we're in different ends of the spectrum here. As a conventional broadcaster with a strong affiliate relationship with both CBC and CTV and on the verge of spending a couple of million dollars on digital transmitters, I feel like a bit of a dinosaur.

Some hon. members: Oh, oh!

An. hon. member: Once you have the transmitters, you're going to be ahead of the rest of them.

Mr. Mike Keller: I really have no more to add to this. Thank you.

The Chair: Mr. Simms, did you have anything?

Mr. Scott Simms (Bonavista—Gander—Grand Falls—Windsor, Lib.): No, I'm good.

The Chair: Okay.

Monsieur Pomerleau.

[*Translation*]

Mr. Roger Pomerleau: I have a brief question, Mr. Chairman.

On page 10 of your brief, you say, and I quote:

In 2009, in *Public Notice CRTC 2009-732*, the CRTC stated as follows (at paragraph 16): "Once the Commission has adopted new criteria to assess applications for mandatory distribution pursuant to section 9(1)(h) of the Act, it intends to provide programming services with an opportunity to file applications for 9(1)(h) status and to amend or resubmit applications already filed. The Commission may then proceed with a public hearing to consider these applications."

As you say, it announced in late summer that it was putting that project on ice. There was a moratorium. We won't get into that again.

What reasons were given for doing that? That was the most significant about-face we saw all year.

[*English*]

Mr. Joel Fortune (Barrister and Solicitor, Joel R Fortune Professional Corporation, Independent Broadcasters Group): I think what they said was that for technological, economic, and regulatory reasons due to the changes occurring in the broadcasting system they felt it wouldn't be prudent to hold a hearing to examine the applications they had received. That's almost literal...not quite, but pretty close.

[*Translation*]

Mr. Roger Pomerleau: Is that all? That is almost Kafkaesque.

Ms. Suzanne Gouin: At the same time, it's important to state that a number of channels are currently seeking licence renewals. That clearly means that the business model one is associated with could imply a different distribution. People around this table may not know this, but for your information, a channel like TV5, which has 2.4 million subscribers in Quebec, actually has 4.4 million subscribers outside Quebec. So, this is a channel that is distributed in the majority of your ridings. It is important for Francophones who are a minority in their community, and because distributors might not be as concerned about a diversity of voices or the need to present French content, there is a danger that it will no longer be offered with basic cable if deregulation occurs.

The Chair: Please be brief, Ms. Lavallée.

Mrs. Carole Lavallée: I can't be brief and ask a question in less than 30 seconds. I would be lying if I said I could. I have an important question, but I prefer to pass in that case.

[*English*]

The Chair: We don't have any more time.

I want to thank Madame Lavallée, Monsieur Pomerleau, and all of our witnesses for appearing today. We value your testimony. It's been helpful. Thank you very much.

Without further ado, this meeting is adjourned.

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