



Canadian Association of Broadcasters
Association canadienne des radiodiffuseurs

January 12, 2009

Via Epass

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

Dear Mr. Morin:

**Re: Broadcasting Notice of Public Hearing/Telecom Public Notice CRTC 2008-8:
Unresolved issues related to the accessibility of telecommunications and
broadcasting services to persons with disabilities
Reply**

1. The following are the Reply comments of the Canadian Association of Broadcasters (CAB) with respect to the above-noted proceeding.
2. These Reply comments address the following matters which, per the Commission's October 6, 2008 letter respecting the organization and conduct of the public consultation for PN 2008-8, were the focus of the panel's questions and the parties' presentations respecting broadcasting matters during the November 17 – 26, 2008 public hearing: described video (DV); closed captioning quality (re monitoring and quality control); customer service and support; and emergency services.
3. As agreed to by the Commission¹, these Reply comments also include the CAB's response, on behalf of our member, to the Commission's undertaking with respect to the RAAQ's proposal for increases in the DV requirements for broadcasters.
4. The CAB submits that other broadcasting-related accessibility matters raised in the PN or in parties' earlier written submissions, such as the representation and portrayal of persons with disabilities, were fully addressed in our July 24 and October 6, 2008 written submissions; accordingly, we do not provide any further comment on those matters in this submission.

¹ CRTC Letter to the CAB dated December 4, 2008, <http://www.crtc.gc.ca/eng/archive/2008/lt081204b.htm>.

Executive Summary

5. In determining whether to require a broadcasting licensee to introduce or expand upon a measure or service designed to accommodate persons with disabilities, the Commission is bound by s. 3(1)(p) of the *Broadcasting Act* (the Act) which provides that “programming accessible by disabled persons should be provided *within the Canadian broadcasting system as resources become available for the purpose*” (emphasis added). The Commission is not to apply any different test, such as an “undue hardship” test established in different legislation.
6. Described Video: In considering the provision of DV “within the system”, the Commission must take into account that the licensing and launch of The Accessible Channel will result in a 200-fold increase in the amount of DV available to Canadians. In considering whether resources are available for the purpose of increasing current DV obligations for broadcasters, the Commission must also have regard to whether or not broadcasters will have the necessary resources to meet their many other regulatory and policy obligations, particularly in these difficult economic times. The only appropriate venue for undertaking this necessary balancing exercise is the upcoming licence renewal proceedings.
7. The RAAQ DV proposal is untenable. There are a number of reasons why the Commission must proceed very cautiously when contemplating *any* increase to the current described video obligation for TV broadcasters, let alone the increases proposed by the RAAQ. The current system is incapable of bearing such a dramatic increase, and related costs would more likely rise than fall as a result. Moreover, even if the resources could be found for broadcasters to undertake more DV, the number of programs that could be described, or need description, is actually quite limited. Foreign programming rarely comes described and there is generally insufficient time to add description between receipt of foreign programs and their broadcast. Live programs cannot be described. By their nature, most Canadian programs (e.g., news, sports, talk, variety, entertainment and game shows) are already reasonably accessible to Canadians who are blind or visually-disabled because the information is conveyed primarily through the program’s audio track. The Commission must be careful to avoid becoming a *de facto* programmer by imposing DV obligations which broadcasters could only meet by altering their program selections and schedules. For these reasons, the only appropriate venue for the Commission to fully appreciate the extent to which a particular broadcaster’s programming schedule does or does not provide opportunities for more described programs is, again, the upcoming licence renewal proceedings.
8. The CAB reiterates our offer to work with other stakeholders to develop a plan to better promote available described programming.
9. Closed Captioning: We will address any related issues in our February 3, 2009 filing.
10. Customer Service and Support: Broadcasters are already moving to make their web sites more accessible so any CRTC intervention in this area, even if possible, is unnecessary.

11. Emergency Services: The work currently underway for emergency alerting envisages that such alerts will be accessible to disabled persons.

I. Providing programming for persons with disabilities within the Canadian broadcasting system, as resources become available

12. Paragraph 3(1)(p) of the *Broadcasting Act* (the Act) provides that “programming accessible by disabled persons should be provided within the Canadian broadcasting system as resources become available for the purpose.”
13. The CAB notes that some parties have suggested that, in determining whether to require a broadcasting licensee to introduce or expand upon a measure or service designed to accommodate persons with disabilities, the Commission is to apply the “undue hardship” test from human rights legislation which has been applied in transportation cases². The CAB submits, however, that the Commission, in exercising its statutory mandate to regulate and supervise the Canadian broadcasting system with a view to implementing the broadcasting policy set out in subsection 3(1) of the Act, is bound in these circumstances by the words of s. 3(1)(p): namely, the Commission is to have regard to what relevant accessible programming is already being provided *within the system at large*, and to *whether resources are available* to impose increased programming obligations in that respect. The Commission is not to apply any different test, including an “undue hardship” test which is not found anywhere in the Commission’s governing legislation.
14. The CAB notes that our position on the applicable test in these circumstances is consistent with the legal opinion filed by Bell Canada *et al* in a response to a CRTC undertaking in this process.³ We have reviewed that legal opinion and agree with its conclusions.

a) Programming Within the System

15. In the current circumstances, the CAB submits that the Commission, in considering what accessible programming is provided within the system, must have regard to the recent launch of The Accessible Channel. The Commission specifically licensed this new service in order to increase the amount of described programming within the broadcasting system, and took the rarely-exercised regulatory step of granting it mandatory basic carriage status with a regulated wholesale rate to ensure it would have otherwise unavailable resources to undertake this task.
16. As representatives from The Accessible Channel described at the hearing, a number of Canadian broadcasters have been working with them for some time in good faith efforts to contribute to making the service a success, including acting as program suppliers.⁴ Indeed, the service was effusive in its praise of its broadcasting “partners” at its December 3, 2008 official launch.

² See, e.g., *Council of Canadians with Disabilities v. VIA Rail Canada Inc.*, 2007 SCC 15, [2007] 1 S.C.R. 650.

³ Bell Canada(CRTC)26Nov08-20 PN 2008-8.

⁴ Transcripts, November 21, line 9092 ff.

17. Within the course of its licence term, The Accessible Channel will expand its offerings so as to provide a full 168-hour schedule of primarily English-language described programming - representing a *greater than 200% increase*⁵ in the amount of English-language described programming to be broadcast to all Canadians subscribing to the services of a broadcasting distribution undertaking (BDU). In this way, the Commission has already undertaken to ensure described programming is available within the system in a substantial way.

b) As Resources Become Available

18. The CAB submits that, in considering the “available resources” question as required by s. 3(1)(p), the Commission is to have regard not only to the financial, technical and human resources available to provide programming accessible to persons with disabilities, but also to the availability of those same types of resources to achieve the numerous other broadcasting policy objectives set out in s. 3(1) of the Act. Thus, the CAB submits that the Act precludes the Commission from considering any particular proposed programming accommodation for persons with disabilities in a vacuum; instead, the Commission must balance any accessibility-related obligations against broadcasters’ various other regulatory obligations in determining where finite resources are best allocated to meet *all* the Act’s policy objectives.

19. The Commission is well aware of the current economic conditions as well as the fundamental structural issues facing broadcasters. While Canada’s economy was until recently considered to be stronger than that of the US, TD Economics notes in its most recent quarterly economic report that Canada will suffer “collateral” damage from shocks to the US economy, damage that will be exacerbated by tumbling commodity prices. TD predicts a contraction in nominal GDP of 3.2% for 2009.⁶ Ad spend very closely tracks nominal GDP; consequently, TD’s forecast 3.2% decline in nominal GDP translates into a 3.2% decline in ad spend in Canada.

20. Other analysts paint an even bleaker picture. For example, in early January 2009, Scotia Capital forecast a drop of 7.7% in conventional television ad revenues and 5% in radio, and an overall decline of 4.6% in ad revenues for all Canadian media. Even for specialty television, which has historically been less vulnerable to declines in ad spend, Scotia Capital forecasts no ad revenue growth in 2009.⁷ These observations are borne out in recent data on air time sales. In terms of television, ad sales are pacing as much as 23% lower for the coming six months compared to 2007.

21. As a result, the resources available to broadcasters to undertake broadcasting policy initiatives - of any sort - have rarely, if ever, been lower.

⁵ Based on the current 54-hour/week total identified in the report, *Described Video in Canadian Private Television*, submitted by the CAB, page14.

⁶ TD Economics: *TD Quarterly Economic Forecast*, December 10, 2008.

⁷ Scotia Capital: *Equity Research Daily Edge*, “Challenging Ad Environment Looms in 2009”, January 7, 2009.

22. The major over-the-air (OTA) broadcasters are scheduled to file their licence renewal applications the same day as this Reply submission is due. The subsequent OTA licence renewal hearing is then only four (4) months away; thus, it is likely to be concluded before any decisions are considered or rendered in respect of this current proceeding. The CBC/SRC renewal proceeding will follow in the fall. Specialty services will file their licence renewal applications sometime this year, in advance of their renewal hearings scheduled for early 2010. The timing of these renewal proceedings is such that the Commission is faced with the perfect circumstances in which to balance its consideration of whether resources are available for possible new programming accommodation measures for persons with disabilities with its assessment of whether these broadcasters have the necessary resources simply to maintain, let alone supplement, their various other existing regulatory obligations.
23. Accordingly, the CAB submits that it is incumbent upon the Commission to consider whether resources are available to implement any new or expanded programming accommodations in the context of the upcoming licence renewal proceedings, where it will have all the relevant financial and other information before it. To do otherwise and unnecessarily make decisions in an information vacuum would do a disservice to the broadcasting system and to all its stakeholders. In fact, it could put in peril the achievement of many other critical *Broadcasting Act* objectives.

II. Described Video

24. Various appearing parties representing persons who are blind or visually-impaired called on the Commission to require broadcasters to offer increased hours of described programming. As a result, the CAB has been requested to respond to the following undertaking on behalf of our members:

The RAAQ has proposed that all English and French over-the-air broadcasters be required, by the end of their licence term, to provide 28 hours per week of DV, starting with 14 hours per week in year one of the licence term. For each broadcast licensee participating in this hearing, please comment on the financial impact of this proposal at the corporate group level. Specifically, please identify the estimated costs in years 1 and 7 that this proposal would represent. Where applicable, please provide details on relevant production, post-production and distribution costs. Please also comment on the impact of these costs on your overall operations.

25. Before responding to this undertaking, the CAB wishes to point out that no party seeking an increase to the hours of described programming, including the RAAQ, provided full justification for their proposal - including a detailed description or detailed suggestions as to the appropriate compensation mechanism, with supporting rationale - which the Commission's October 6 hearing conduct letter clearly and specifically required of all parties proposing an accommodation measure or service. The CAB also notes that RAAQ amended the above-referenced proposal during its appearance at the hearing by increasing the proposed hours of described programming, again without the required justification or

details. The RAAQ's survey of a small number of its members, which it submitted as a post-hearing undertaking⁸, did not add anything in this respect.

26. Despite these procedural and evidentiary deficiencies in the cases we now must meet, the CAB hereby provides our response to the Commission's undertaking on behalf of our members as well as our additional arguments on the matter, with the requisite details and supporting rationale.

a) Costs

27. As part of our October 6 submission, the CAB attached an independently-produced and ground-breaking report entitled Described Video in Canadian Private Television (the Described Video Report). We note that no appearing party took issue with any of the figures contained in that report, including the average costs of producing an hour of described programming in English (\$1600) and in French (\$1750).

28. Thus, on a simple calculation, the annual average cost for a broadcaster to have 14 hours of programming described per week would be \$1.2 million for English programs and \$1.3 million for French programs. These annual average costs would double, to roughly \$2.3 million and \$2.5 million respectively, for 28 hours of described programming.

29. What these simple calculations don't reflect, however, are the various "below the line" costs beyond what a broadcaster pays the DV production house to version a program, as identified in the Described Video Report. These include the costs associated with related salaries, feeds, the creation and distribution of digital copies, the remixing of sound, etc.⁹ The CAB's members estimate that these costs add a further \$625/hour or more to the cost of describing a program, broken down as follows:

Cost to digitize the master copy: \$125

Cost to remix the sound to the HD version: \$250

Cost to digitize and add to the SAP channel: \$250

30. These additional costs increase the real cost of describing an English program to \$2225/hour, and a French program to \$2375/hour. For 14 hours per week, the real cost becomes \$1.6 million/year and \$1.7 million/year, respectively; for 28 hours, the figures again double to roughly \$3.2 million and \$3.5 million.

31. While some parties suggested that increased demand could lead to reductions in some of these costs, we note that experts from The Accessible Channel confirmed that this would not be the case, since the bulk of the costs would still be incurred to compensate "the creative people who are doing the description and doing the narration."¹⁰

⁸ Submitted November 28, 2008.

⁹ They could also include additional costs to secure the necessary rights to describe a program; as this is negotiated in each case, we have not attempted to provide an estimate.

¹⁰ Transcripts, November 21, line 9057. See also lines 9062-9064.

32. In fact, increased demand through increased DV obligations would more likely lead to increased costs. Based on the current 4 hour/week obligation, the RAAQ's proposal for 14 hours in the first year of a licence term would represent, at a minimum¹¹, a 250% increase in the hours that must be described - effectively overnight. The CAB submits that resources to handle this dramatically expanded workload do not currently exist, nor will they suddenly materialize coincident with the introduction of brand new rules. The existing DV production houses, acknowledged by The Accessible Channel as a "cottage industry"¹², will already be taxed with the launch of that service. Thus, given the number of potentially affected broadcasters, even some lesser increase to current DV obligations will tax the system beyond its current capacity for at least some time. Regardless of the size of any potential increase, additional funds would be required to handle the new workload, including for hiring and training new personnel and for overtime (particularly if broadcasters were to find it necessary to move description work in-house to meet expanded obligations).
33. Moreover, as outlined below, increased DV obligations would likely mean broadcasters would face the difficult (if not impossible) task of trying to describe more "last-minute" programs. This would mean even greater costs since, as suggested in the Described Video Report¹³ and confirmed at the hearing by representatives of The Accessible Channel¹⁴, a premium is payable in cases where a quick turnaround is required.
34. Lastly, the Commission must recognize that broadcasters have little, if any, opportunity to recover the costs of DV. For example, as explained by the CAB panel at the hearing¹⁵, the type of sponsorship opportunities that once existed for closed captioning no longer exist for closed captioning let alone for DV. Also, while representatives from The Accessible Channel suggested that broadcasters could generate revenues to recover their DV costs through the broadcast and resale of their described programs in new markets, this concept is highly speculative with respect to the availability of "new markets" for described programs¹⁶ and any net revenue potential (e.g., after taking into consideration the added costs of licensing the right to resell), and may often in fact be precluded because of rights issues. Thus any funds required to describe additional programs would have to come from a broadcaster's bottom line, and be diverted from funds currently allocated to meeting other broadcasting policy objectives.

b) Cost Impact Cannot be Assessed in a Vacuum

35. As submitted above, it would be inappropriate and misleading to attempt to assess the potential impact of this single potential cost item on a broadcaster's overall operations, whether for an individual licensee or on a corporate level, without taking into consideration

¹¹ The percentage increase would be even higher for those programming services currently describing fewer than 4 hours/week.

¹² Transcripts, November 21, line 9058.

¹³ See page 8 of the Described Video Report.

¹⁴ Transcripts, November 21, line 9078.

¹⁵ Transcripts, November 17, lines 1497-1509.

¹⁶ Since no other country other than the UK (re the BBC) has substantial DV obligations for its broadcasters, other "new markets" for broadcasters' described programs are very limited if not non-existent.

the impact of other costs that may necessarily be incurred to achieve other broadcasting policy objectives as well as the broadcaster's size and the market(s) it serves. Broadcasters fully expect to discuss the impact of the costs associated with *all* their regulatory obligations at their upcoming licence renewals. Again, the CAB submits it would be of little practical value to the Commission or to interested parties to require broadcasters to attempt to assess the impact of a potential significant increase in their DV costs in a vacuum. Accordingly, the CAB submits that the impact question can only be answered properly when the Commission actually examines each broadcaster's overall operations at licence renewal.¹⁷

c) The Special Case of Specialty and Pay TV Services

36. The CAB submits that the RAAQ proposal - and any others seeking blanket increases to the current described video obligations – are inapplicable to specialty and pay TV services because they have been framed with conventional television broadcasters' generally similar programming and schedules in mind, and not with any consideration given to the wide range of circumstances applicable to each specialty and pay television service.
37. As summarized in Appendix B of the Described Video Report, the Commission's current DV rules for specialty and pay TV services vary according to the nature of the service in terms of the regulatory vehicle employed (condition of licence, encouragement, expectation where "appropriate") and the hours required. Given the different genres of programming offered by specialty services, as well as their different schedules and different Canadian content levels, this is and will continue to be the most appropriate approach for the Commission to take for these services respecting described video.
38. This is therefore another reason why, for specialty and pay TV services, the possibility of any increases to their current levels of described video and of any changes to the regulatory method by which their levels are established or contemplated must be addressed with each individual licensee in the context of its upcoming licence renewal. The Commission has rightly recognized that, to date, a blanket or one-size-fits-all approach for specialty and pay TV services makes neither regulatory nor broadcasting policy sense. There is no evidence or justification on the public record of this proceeding that would suggest this approach is no longer the right one.
39. Nevertheless, where appropriate, the arguments in the following section also apply to specialty and pay TV services.

¹⁷ The Commission will also need to address the special circumstances of each smaller broadcaster at the time their respective licences are up for renewal.

d) Practical Program Limitations

i) Non-Canadian Programs

40. As acknowledged by others at the hearing¹⁸, DV obligation can only be practically applied to Canadian programming. Put another way, it would be impractical to attempt to apply any DV obligations to non-Canadian programs since Canadian broadcasters have no control over how those programs are produced or their delivery schedule, or what associated rights are available.
41. While comments at the hearing confirmed the CAB's perception that Canadians who are blind or visually-impaired have a strong interest in accessing described versions of popular prime time US programs, the volume of such programs is severely limited since US broadcasters are currently under no described video obligations. Although it has been suggested that certain parties in the US are seeking legislation to impose some form of obligations in this respect, there is no certainty that such legislation will ever become law; there is more certainty in fact that, based on past experience, any legislation of this nature, if ultimately passed, would be subject to judicial challenge and thus be tied up in the US courts for some time.
42. It is also not practical to expect (let alone require) Canadian broadcasters to insert description into the US programs they acquire. The Described Video Report identified the significant lead time required to turn around a described program.¹⁹ Canadian broadcasters, however, typically receive their US programs just before their scheduled airing, leaving no time to have the programs described, even if the broadcaster had been able to secure the necessary program rights to do so.²⁰
43. While not specified by the RAAQ, it is readily apparent that their original long-term target of 28 hours/week of described programs was meant to cover the 4-hour per evening peak viewing period (7pm-11pm), and the amended long-term target of 42 hours is meant to cover the 6-hour daily evening broadcast period (6pm-midnight). In both cases, the RAAQ's targeted hours therefore include many non-Canadian (primarily US) programs. For the reasons set out above, however, it would be entirely impractical and unreasonable to require that non-Canadian programs be described. Accordingly, the CAB submits that the RAAQ's proposals – and any other proposals which would contemplate imposing description obligations on non-Canadian programs - must be rejected on this basis alone.
44. In addressing this point, the CAB fully acknowledges that Canadians who are blind or visually-disabled clearly wish to access popular non-Canadian programs. Accordingly, while it would be impractical and unreasonable to *require* broadcasters to provide described versions of such programs, the CAB submits it would be in the interest of these viewers for

¹⁸ Transcripts, November 17, line 596 (Rothschild & Co. Ltd); November 21, line 8971 (The Accessible Channel).

¹⁹ Page 7: Three to five days are required to turn around a DV version for English-language programs, and as long as two weeks for French-language programs.

²⁰ The CAB has been advised that inserting description into a program absent the necessary rights would amount to copyright infringement, including an infringement of the rights holder's moral rights in the program.

the Commission to create a regulatory incentive for broadcasters to provide such versions *where possible*. To this end, the CAB submits that the Commission should establish a 150% time credit against the required hours of described programming for each non-Canadian program broadcast with described video.

ii) Canadian Programs

45. The CAB further submits that very real practical limitations would also arise if description obligations were increased for Canadian programs.
46. First of all, from a financial standpoint, the cost of describing a Canadian program would often exceed, and therefore cancel out, any revenue/advertising potential gained from the program, particularly when aired in certain timeslots such as weekday mornings.
47. Secondly, from a programming standpoint, the following paragraphs outline how most Canadian programs, by their nature, either do not lend themselves to being described or are already reasonably accessible to Canadians who are blind or visually-impaired.
48. On average, a conventional TV broadcaster airs 21 hours/week of Canadian programming during the evening broadcast period and 55 hours during the rest of the day (6am-6pm), for a total of 76 hours of Canadian programming each week.²¹
49. Typically, local, regional or national newscasts fill the 6pm-7pm and 11pm–midnight timeslots, representing 14 hours of Canadian news programming in the evening broadcast period. That leaves, on average, 7 hours of Canadian programming each week during the 7pm-11pm period, which can include: more news and information; drama and comedy; long-form documentaries; informal education/recreation and leisure; sports; music and dance; variety; game shows; entertainment magazine shows; award shows; and general entertainment and human interest. Currently, 4 of these 7 hours²², made up of drama or long-form documentaries, must be described.²³
50. While the CAB continues to support our recommendation that the Commission create more programming flexibility by removing its current described video genre restrictions, we nevertheless agree with the observation at the hearing that sports programming, news and information, talk shows, morning shows and music videos do not, by their nature, lend themselves to being described.²⁴ We also submit that the same assessment applies with

²¹ There are 126 hours of programming in the broadcast week (6am – midnight each day) for conventional TV stations. By regulation, 60% of these hours (an average of 76 hours) must be Canadian. Of the 42 hours of programming each week in the evening broadcast period (6 pm – midnight), 50% (an average of 21 hours) must be Canadian. This means that, during the rest of the broadcast week, an average of 55 hours of programming between 6am and 6pm (76-21), or about 8 hours each day, must be Canadian. Note that these are averages, since the Canadian content obligations established in s. 4 of the *Television Broadcasting Regulations, 1987* are measured on the basis of the broadcast year.

²² Equating to 57% of the hours.

²³ Assuming the current 25% exception for children's programs is not applied.

²⁴ "There is no need to describe play by play sports or newscasts or talk shows like **The Hour** or **CityLine**, or morning shows like **Canada AM**, or music videos. They are already quite accessible." Transcripts, November 17, line 547 (Rothschild & Co. Ltd).

respect to other categories of programming where the information is conveyed live, or primarily through the program's audio track - such as music, variety, entertainment and game shows - or where specialized, technical expertise would be required to either describe or appreciate the video component – such as with dance. In many of these cases, the programs audio track would already make the program reasonably accessible to Canadians who are blind or visually-impaired.

51. For example:

- The weekday Canadian schedule for CJOH-TV (CTV) Ottawa includes at least 4 ½ hours of programming that is not “describable” or already reasonably accessible: 3 hours of *Canada AM*, noon-hour news and the topical entertainment magazine show, *etalk*. Evening network programming includes *etalk* and often similarly non-describable programs such as *So You Think You Can Dance Canada* and other music/variety shows. Weekend Canadian programming includes live religious programming and *Question Period*.
- Canwest's Global Ontario's weekday Canadian schedule includes morning and noon news, as well as talk shows (e.g. *100 Huntley Street*) and timesale/paid programming (e.g. *WorldVision*). Its evening Canadian programming includes evening news as well as the topical entertainment magazine show, *Entertainment Tonight Canada*, while weekend programming includes a number of sports, talk and magazine shows. Similarly, CHCH Hamilton's E! program schedule tends to include programming that is more dialogue and reporting focused including morning and noon news, and talk shows like *The Mom Show*. Evenings include the local talk show *Live @ 5:30* and news, as well as some entertainment magazines like *E! News Weekend*, while the weekend programming also includes news, current affairs programming, sports and instructional programs.
- Rogers' CITY-TV (Toronto) weekday Canadian schedule includes *Breakfast TV*, *CityOnLine* and *CityLine*. Its evening Canadian programming includes *CityNews* at 5, 6 and 11, while its weekend Canadian programming includes *CityLine* and various third-language programs.

52. In addition to these numerous Canadian programs which are generally accepted as already reasonably accessible or not appropriate for described video, there are other acquired Canadian programs which may lend themselves to description but which conventional broadcasters may receive only on the day of their scheduled airing - or otherwise with insufficient lead time to be described. For the reasons set out above, the CAB submits that it would be impractical and unduly burdensome to oblige broadcasters to achieve a level of described programming based on the false assumption that they could include these “last-minute” programs to meet their required hours.

53. In light of these real limitations on the availability of Canadian programs which lend themselves to being described, and the reality that other Canadian programs are already reasonably accessible or may be impractical to describe, the CAB submits that the Commission has a very limited practical scope to increase the DV obligations for broadcasters. Accordingly, the Commission must proceed very cautiously when contemplating *any* increase to the current 4-hour described video obligation, and certainly

not without taking into consideration a licensee's individual circumstances, including its own particular programming schedule.

iii) CRTC Must Avoid Becoming a *De Facto* Programmer

54. In addition to, and because of, the practical issues outlined above, the CAB is also concerned that, should the Commission increase the current DV obligations, it could take on the role of a *de facto* programmer for individual broadcasters. This would be the result if a broadcaster found itself unable to meet the new increased level of described programming given the genres, format or acquisition lead time for the Canadian programming it currently offers. In such circumstances, the broadcaster would find it necessary to alter its Canadian programming and schedule by producing or acquiring shows solely on the basis that they can be described. This would in effect take programming decisions out of the hands of the broadcaster and put them into the hands of the Commission. The CAB submits that the Commission should make every effort to avoid this outcome.

e) Building Awareness

55. In the CAB's view, the hearing confirmed that a need exists to build awareness of what programs are described and when they are scheduled.²⁵ Accordingly, the CAB reiterates our offer, as expressed in our opening remarks at the hearing²⁶, to pro-actively undertake the formation of a multi-stakeholder working group with a 12-month mandate to come up with a plan with specific recommendations to better promote available described programming.

III. Closed Captioning

56. As per the process established by the Commission for this proceeding, the CAB will respond on February 3, 2009 to comments received on January 12, 2009 regarding the report of the English and French-language Closed Captioning Working Groups and accompanying proposed Closed Captioning standards and protocol manuals for both English- and French-language television, which the CAB submitted December 2, 2008. The CAB notes that the report addresses, amongst other things, closed captioning monitoring and quality control. Accordingly, we will address comments received on those matters on February 3 as well.

IV. Customer Service and Support

57. The Commission and interested parties addressed the issue of broadcasters' customer service and support in the context of web site accessibility.
58. In the course of this proceeding, the Commission has explored the matter of web site accessibility with reference to "W3C compliance". While reference was made at one point to the Treasury Board accessibility guidelines, the CAB notes that these are internal

²⁵ This need was initially identified in the Described Video Report, page 20.

²⁶ Transcripts, November 17, lines 1243-1245.

Government of Canada guidelines applicable to Government departments and agencies; they have no application to businesses operating within the private sector, whether or not they are federally-regulated.

59. As observed by the group of international web developers in the letter submitted to the Commission on December 11, 2008 by Mr. Joe Clark²⁷, two versions of the W3C “standards” currently exist: version 1.0 and the just-released version 2.0. In fact, as noted in the letter, these documents do not establish actual standards but constitute recommendations under the title of “Web Content Accessibility *Guidelines*” (emphasis added). Both versions of the guidelines are operational simultaneously and, between them, offer six different possible conformance levels (three each). As the authors of the letter observe, it is thus not a simple matter for parties to attempt to comment generally on compliance with the guidelines. They also acknowledge that retrofitting existing sites for accessibility would be costly and, for larger sites, could be impossible.
60. As pointed out by the CAB at the hearing, and not disputed by other parties, the W3C accessibility guidelines address, almost in their entirety, matters relating to the textual components of web sites. As alphanumeric text is specifically excluded from the definition of “broadcasting” in the Act, these components of web sites therefore fall outside the Commission’s jurisdiction over broadcasting. Accordingly, the Commission has no power under its broadcasting mandate to require web sites to comply with the vast majority of the W3C guidelines. Moreover, to the extent the guidelines apply to those audio-visual aspects of a web site which may constitute broadcasting, the CAB notes that such aspects are exempt from all CRTC broadcasting regulation pursuant to the Commission’s New Media Exemption Order (NMEO).
61. The CAB is aware that the Commission is currently conducting a review of its approach to new media²⁸. Indeed, we have joined a large number of other interested parties in that proceeding in supporting maintenance of the NMEO and strongly opposing any suggestions the Commission should attempt to regulate new media content in any manner and for any purpose. Nevertheless, should the Commission, despite these numerous objections, contemplate amending the NMEO in an attempt to impose accessibility-related regulatory obligations on web sites engaged in broadcasting, the CAB wishes to point out that such obligations would necessarily have to extend to *all* such web sites, not just those operated by licensed broadcasting undertakings. The CAB submits that it would be as difficult and impractical for the Commission to attempt to enforce accessibility rules on all Canadian web sites engaged in broadcasting as it would be to attempt to impose Canadian content obligations on such sites.

²⁷ <http://outsideadvice.wordpress.com/>

²⁸ Broadcasting Notice of Public Hearing CRTC 2008-11.

62. Moreover, as described by the CAB panel at the hearing²⁹, it is also currently impractical and cost prohibitive for web sites to adopt broadcasting-related accessibility obligations, i.e. closed captioning and video description. No other party at the hearing provided any evidence to support a contrary conclusion.
63. In any event, as demonstrated by their answer to the CRTC's pre-hearing questions, Canada's broadcasters are taking steps, on their own initiative, to make their web sites more accessible to Canadians with disabilities in order to better serve their audiences. Thus, even if the Commission had jurisdiction to intervene in this area, the CAB submits it would be unnecessary. This is an evolutionary process and broadcasters are moving in the right direction for all the right reasons.

V. Emergency Services

64. As the Commission is aware, the CAB is currently working with other stakeholders, including the federal Department of Public Safety, regarding emergency alerts. For television, the Department has indicated that the alerts would need to be delivered in both text and audio. The CAB Emergency Alerting Task Force, the multi-stakeholder Broadcaster Technical Working Group and the BDUs are working towards this.

All of which is respectfully submitted.

Original signed by:

Jay Thomson
Vice-President, Regulatory and Policy

*** End of Document ***

²⁹ Transcripts, November 17, lines 1572-1580.