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Via Email (ic.btlr-elmrt.ic@canada.ca)

The Broadcasting and Telecommunications
Legislative Review Panel
c/o Innovation, Science and Economic
Development Canada
235 Queen Street, 1st Floor
Ottawa, Ontario
K1A 0H5

Dear Legislative Review Panel Members:

Re: Review of the Canadian Communications Legislative Framework

1. This submission is filed by Accessible Media Inc. ("AMI") in response to the Terms of Reference for the Legislative Review Panel¹ and the Call for Comments entitled "Responding to the New Environment".²

(A) Introduction

2. AMI is a media company that entertains, informs and empowers Canadians who are blind and partially sighted. AMI's mandate is to establish and support a voice for Canadians with disabilities, representing their interests, concerns and values through accessible media, reflection and portrayal.
3. AMI is currently licensed by the CRTC to operate three television services: AMI-audio, AMI-tv and AMI-télé. AMI-audio is Canada's only English-language, television audio reading service. It offers a variety of compelling stories and engaging original content to Canadians who are blind, partially sighted or otherwise print-restricted. AMI-audio's mandate is to deliver a steady and timely flow of information that is essential to the decision-making needs of our audience. AMI-tv and its French-language counterpart, AMI-télé, are television services that provide blind, partially sighted, deaf and hard of hearing Canadians with access to

¹ Available at <https://www.ic.gc.ca/eic/site/110.nsf/eng/00001.html> ("Terms of Reference").

² Available at <https://www.ic.gc.ca/eic/site/110.nsf/eng/00003.html> ("Call for Comments").

open-format described video³ and closed captioned versions of popular programming, as well as original, first-run content, in a manner that is inclusive for all. With open-format described video, no special equipment or extra steps are required to access any of our television services, making them truly accessible 24 hours-a-day, 7 days-a-week.

4. All three services have been deemed by the CRTC to be of exceptional importance to obtaining the objective in section 3(1)(p) of the *Broadcasting Act*, which provides that "programming accessible by disabled persons should be provided within the Canadian broadcasting system as resources become available for the purpose". As a result, all three services have been granted mandatory carriage status as part of the basic television service by the CRTC pursuant to section 9(1)(h) of the *Broadcasting Act* (colloquially referred to as "9(1)(h) status").
5. Given AMI's mandate, we will focus our comments on accessibility issues that we believe should be addressed and improved as part of the Legislative Review of the *Broadcasting Act*. We will also touch briefly on supports required for the creation, production and discoverability of Canadian content.

(B) Reducing barriers to access by all Canadians

6. As set out in the Terms of Reference, "[t]he ability for Canadians with physical disabilities to be able to fully engage with modern communications services is critical to their social and economic wellbeing".⁴ Similarly, the Call for Comments notes that "[i]n order to create a truly inclusive digital society, and to bridge existing digital divides, it is particularly important to enable improved access for Canadians in rural and remote areas, Indigenous communities, and Canadians with disabilities."⁵ While these statements are made in the context of the review of the *Telecommunications Act* and the *Radiocommunication Act*, they are equally applicable to the review of the *Broadcasting Act*.
7. The Call for Comments also notes in the context of the *Broadcasting Act* review that "[i]n a world of almost limitless choice, with customized offerings and an exponential growth of user-generated content, the discoverability of Canadian content—including that produced by Indigenous communities, official language

³ "Described video" is a narrated description of a program's main visual elements, such as settings, costumes, and body language. The description is added during pauses in dialogue, and enables blind and partially sighted individuals to form a mental picture of what is happening in the program.

⁴ Terms of Reference, Page 5.

⁵ Call for Comments, Section A.

minority communities, diverse communities and Canadians with disabilities—is more difficult than in the past. New tools and supports may be needed to overcome this discoverability challenge.”⁶

8. In addition, the Canadian Radio-television and Telecommunications Commission (the “CRTC” or “Commission”) has long recognized that “[t]elevision has become an essential tool in the robust debate and free exchange of ideas that nourish a democratic society”⁷ and that “[i]t is important for people with visual impairments to be able to receive TV broadcasts in as complete a form as possible, so that we’re all included in this “everyday” medium”.⁸
9. Notwithstanding the above acknowledgements of the critical importance of television and other communications services to persons with disabilities, the provision of programming accessible by persons with disabilities is only included as a broadcasting policy objective in the *Broadcasting Act*, to the extent that “resources become available”. Subsection 3(1)(p) of the *Broadcasting Act* provides as follows:

3.(1) It is hereby declared as the broadcasting policy for Canada that

(p) programming accessible by disabled persons should be provided within the Canadian broadcasting system as resources become available for the purpose; [emphasis added]

10. The only other objectives under the *Broadcasting Act* that are made subject to the “as resources become available” qualifier are the objectives to extend a range of broadcasting services in English and in French to all Canadians;⁹ that programming provided by the CBC/SRC should be made available throughout Canada;¹⁰ and that programming that reflects the aboriginal cultures of Canada should be provided.¹¹

⁶ Call for Comments, Section B.

⁷ [Public Notice CRTC 1995-48: Introduction to Decisions Renewing the Licences of Privately-Owned English-Language Television Stations, 24 March 1995](#), Section IV.

⁸ CRTC Consumer Fact Sheet: [TV Access for People with Visual Impairments: Described Video and Audio Description](#)

⁹ *Broadcasting Act*, s. 3(1)(k)

¹⁰ *Ibid.*, s. 3(1)(m)(vii).

¹¹ *Ibid.*, s. 3(1)(o).

11. The commonality among these objectives is that they all deal with marginalized segments of society: official language minority communities, rural and remote communities, indigenous peoples and persons with disabilities. By relegating these segments of society to “second-tier” objectives under the *Broadcasting Act* that are only required “as resources become available”, Parliament has essentially created a “digital divide” by providing stakeholders with an “escape clause” to perpetually argue that resources are not available to provide programming to these groups.
12. Companies such as AMI and Vues & Voix, in the case of persons with disabilities, Aboriginal Peoples Television Network Incorporated, in the case of indigenous peoples, and TV5 Québec Canada (Unis tv), in the case of official language minority communities, have proven that resources are indeed available to make original, first-run programming that is reflective and inclusive of the communities they serve. The Commission has also furthered these objectives by granting 9(1)(h) status to such programming services, accompanied by a regulated wholesale rate. The continuance of such measures is vital to AMI’s ability to continue to provide original, first-run programming that is created specifically for, and is reflective of, Canadians who are blind and partially sighted. As set out in Part (C) of this submission, we believe there are additional supports that are required for the creation, production and discoverability of Canadian content.
13. However, once such content is created, it must be discoverable and accessible by its intended audience. Persons with disabilities still face a fundamental obstacle in being able to discover and access television programs using non-accessible technology provided by broadcasting distribution undertakings (“BDUs”), including non-accessible set-top boxes and remote controls. This technology is, in effect, the “last mile” in delivery of programming to these Canadians and acts as a significant barrier to service, creating a “digital divide” for many. It also prevents the discoverability of Canadian content, since blind and partially sighted Canadians are not being provided with the ‘tools and supports needed to overcome this discoverability challenge’ as described in the Call for Comments.¹²
14. AMI has consistently advocated to the CRTC on behalf of the blind and partially sighted community for more described video programming in prime time and for accessible set-top boxes and remote controls. We have even created an instructional video series to teach viewers how to enable access to described video content using their non-accessible remote controls.

¹² Call for Comments, Section B.

15. We are pleased that the CRTC has prioritized certain of these accessibility measures in its recent policy decisions. Among other things, the CRTC has implemented a tiered approach to ramp up the amount of described video programming being provided by television broadcasters, based on the size and resources of the broadcaster. Most recently, the CRTC has required certain BDUs to include in their annual returns certain information relating to:
- the availability of accessible set-top boxes and remote controls and their accessibility features;
 - the penetration of accessible set-top boxes and remote controls with the BDU's customer base; and
 - the number of accessibility-related queries received by the BDUs, and the number successfully resolved.
16. While these are important steps in the right direction, they do not require BDUs to make accessible technology available to persons with disabilities at affordable rates. For instance, voice-activated set-top boxes are a "game changer" for blind and partially sighted individuals, however these set-top boxes are not widely available and are cost-prohibitive.
17. A large segment of blind and partially sighted Canadians live with extremely limited means, with little or no disposable income and with many living well below the poverty line. Given the limited financial means of many blind and partially sighted individuals and the lifeline that televised media provides to those individuals, we believe the Government of Canada should provide the CRTC with the tools to ensure that accessible technology is made available for free, or at a substantially discounted rate, to blind and partially sighted individuals. Until such accessible technology becomes ubiquitous, there will continue to be a barrier to televised programming for blind and partially sighted Canadians.

Recommendations and Response to Specific Question

9.2 Should certain objectives of the Broadcasting Act be prioritized? If so, which ones? What should be added?

18. We recommend that the *Broadcasting Act* be amended as indicated by the bolded text below, in order to prioritize access to, and discoverability of, Canadian content by persons with disabilities:

Existing Provision	Recommended Amendment
<p>3.(1) It is hereby declared as the broadcasting policy for Canada that</p> <p>(p) programming accessible by disabled persons should be provided within the Canadian broadcasting system as resources become available for the purpose;</p>	<p>3.(1) It is hereby declared as the broadcasting policy for Canada that</p> <p>(p) programming accessible by disabled persons should be provided within the Canadian broadcasting system;</p>
<p>3.(1)(t) distribution undertakings</p> <p>(ii) should provide efficient delivery of programming at affordable rates, using the most effective technologies available at reasonable cost,</p>	<p>3.(1)(t) distribution undertakings</p> <p>(ii) should provide efficient delivery of programming at affordable rates, using the most effective and accessible technologies available at reasonable cost,</p>
<p>n/a</p>	<p>9 (1) Subject to this Part, the Commission may, in furtherance of its objects,</p> <p>(i) require any licensee who is authorized to carry on a distribution undertaking to make accessible technology available to persons with disabilities at rates that are commensurate with their financial means.</p>

(C) Supporting creation, production and discoverability of Canadian content

19. As set out in the Terms of Reference, “[t]he Government’s vision for a Creative Canada makes investing in Canadian stories, artists, and creators a priority.”¹³ The Call for Comments also notes that “[f]or Canadian content programming to succeed both domestically and in the international marketplace, there must be clear policies that support quality creation, production and discoverability.”¹⁴ Finally, the Terms of Reference ask “whether there are new ways that Canadian content creation, distribution, and discovery in both official languages can be supported in this new digital communications environment.”¹⁵

¹³ Terms of Reference, Page 10.

¹⁴ Call for Comments, Section B.

¹⁵ *Ibid.*

20. With the increasing popularity of over-the-top (“OTT”) broadcasting services, we are witnessing the growth of a global content rights market and the erosion of a separate Canadian program rights market. Moreover, in a borderless digital age with an abundance of content, viewers are looking for programs that reflect their individual circumstances and are of relevance to their lives. We believe that a vibrant domestic content creation market is one which addresses the needs of its audience and provides its audience with the content they are seeking. The same is true of blind and partially sighted Canadians.
21. A fundamental part of AMI’s mandate is to provide the positive on-air portrayal of blind and partially sighted individuals as hosts or subjects of programs. In order to do this, we must create or acquire content with themes and material of particular relevance to blind and partially sighted individuals. However, original first-run programming is expensive to produce or acquire, especially for a small, independent, not-for-profit broadcaster like AMI.
22. AMI believes that the primary support missing for the creation, production and discoverability of original Canadian content is access to a dedicated funding source for small, independent Canadian broadcasters. The existing sources of funding that have been established and maintained as a result of CRTC policies, including the Canada Media Fund (the “CMF”) and the Certified Independent Production Funds (“CIPFs”), generally provide funding for programs commissioned by all types of broadcasters – whether they are private or public, licensed or exempt, vertically integrated or independent broadcasters. As a result, programs commissioned by small, independent broadcasters must compete for scarce funding against those commissioned by broadcasters with access to greater resources, finances and staffing. Oftentimes, the lion’s share of funding is awarded to large broadcasters, with small pockets of funding awarded to small, independent broadcasters.
23. In our submission, the CRTC should be equipped with the tools to either provide a separate funding mechanism that is reserved for, or to ensure existing production funds are appropriately allocated to, small independent broadcasters who are creating or commissioning Canadian programs that are directly relevant to underserved audiences, including by ensuring that programming specifically produced for official language minority communities and persons with disabilities are proportionately represented in funding allocations.
24. Broadcasters must also be incentivized to create or acquire original Canadian content and have a vested interest in the successful distribution of that content, both domestically and abroad. In order for there to be a vibrant domestic content

and distribution market, we agree that broadcasters must be permitted “to hold and exploit intellectual property rights in regard to their productions”, as noted in the Call for Comments.¹⁶ While we recognize that this may be a matter that is more appropriately addressed under the *Copyright Act* or through commercial agreements among parties, we believe that this should be encouraged as an objective under the *Broadcasting Act* and any funding mechanisms developed or overseen by the CRTC should not hinder or restrict the ability of broadcasters to acquire such rights.

Recommendations

25. We recommend that the *Broadcasting Act* be amended as indicated by the bolded text below, in order to support the creation, production and discoverability of Canadian content:

Existing Provision	Recommended Amendment
Funding Mechanism for Small, Independent Broadcasters	
n/a	<p>9(1) Subject to this Part, the Commission may, in furtherance of its objects,</p> <p>(j) require any licensee who is authorized to carry on a distribution undertaking to contribute, subject to any conditions that the Commission may set, to a fund to support the creation, production and discoverability of Canadian content that is created or acquired by small, independent broadcasters.</p> <p>(i) The Commission must designate a person to administer the fund.</p> <p>(ii) The Commission may regulate</p> <p>(a) the manner in which the administrator administers the fund; and</p> <p>(b) the rates, whether by requiring pre-approval of the rates or otherwise, charged by</p>

¹⁶ *Ibid.*

Existing Provision	Recommended Amendment
	the administrator for administering the fund.
Intellectual Property Rights	
3.(1) It is hereby declared as the broadcasting policy for Canada that (e) each element of the Canadian broadcasting system shall contribute in an appropriate manner to the creation and presentation of Canadian programming;	3.(1) It is hereby declared as the broadcasting policy for Canada that (e) each element of the Canadian broadcasting system shall contribute in an appropriate manner to the creation and presentation of Canadian programming and shall be entitled to hold and exploit intellectual property rights in regard to their productions;

(D) Conclusion

- 26. We encourage the Canadian Government to prioritize accessibility and small, independent broadcasters in its review of the Canadian communications legislative framework, in order to facilitate a vibrant Canadian domestic market that is inclusive for all.
- 27. We appreciate the opportunity to take part in this important review and would be pleased to provide any further information that may be required.

Yours very truly,



David Errington
 President & CEO

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