28 February 2011

Manager,
Mobile Technology and Services, DGEPS,
Industry Canada,
300 Slater Street,
Ottawa, Ontario K1A 0C8


Media Access Canada (MAC), on behalf of the Access 2020 Coalition, is pleased to submit the attached proposal in response to the request for comments noted above.

If you have any questions, please do not hesitate to contact the undersigned.

Sincerely yours,

Beverley Milligan
Executive Director

The Access 2020 Coalition
A bridge to the future:

How auctioning the 700 MHz Band enables Canada’s telecommunications and broadcasting system to become 100% accessible to all Canadians by 2020

Comments of Media Access Canada (MAC) on behalf of the Access 2020 Coalition

Regarding


28 February 2011
2. The purpose of this Act is to extend the laws in Canada to give effect, within the purview of matters coming within the legislative authority of Parliament, to the principle that all individuals should have an opportunity equal with other individuals to make for themselves the lives that they are able and wish to have and to have their needs accommodated, consistent with their duties and obligations as members of society, without being hindered in or prevented from doing so by discriminatory practices based on ... disability ....
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Executive summary

1. Media Access Canada, MAC, is a not-for-profit organization with a mandate to increase the quantity and quality of accessible content in Canadian communications by organizing and participating in national and international standards development working groups, by making presentations to regulatory and Parliamentary bodies and by disseminating information about accessibility in the electronic media.

2. MAC is leading the Access 2020 Coalition, whose goal is a broadcast day that is completely accessible to all Canadians – including those who are blind, visually-impaired, deaf, deafened and hard of hearing and mobility impaired – within the coming decade. Participants in the Access 2020 Coalition include, but is not limited to:

   • Alliance for Equality of Blind Canadians
   • Bob Rumball Centre for the Deaf, Bob Rumball Associations for the Deaf, Bob Rumball Home for the Deaf, and Bob Rumball Camp for the Deaf
   • Canadian Council of the Blind
   • Canadian Hard of Hearing Association
   • Canadian Hearing Society
   • Canadian National Institute for the Blind
   • Canadian Association for Accessible Travel Training Tourism Services
   • Professor Deborah Fells, B.A.Sc., M.H.Sc., PhD., P.Eng. at the Ted Rogers School of Information Technology Management, Ryerson University
   • Inclusive Design Resource Centre of the Ontario College of Arts and Design
   • Jake Knoppers, Chair, CAC ISO/IEC JTC1/SC36 Information Technology for Learning, Education, and Training (ITLET)
   • Christine Karcza Consulting I can do this!
   • Professor Charles Laszlo, CM, OBC, Ph.D., P.Eng. and Professor Emeritus of the University of British Columbia
   • Mary Frances Laughton (former Director, Assistive Devices Industry Office, Industry Canada)
   • March of Dimes
   • Media Access Canada
   • Neil Squire Foundation
   • Keith Parsonage (former Managing Director, Ontario Centre of Excellence for Communications and Information Technology)
   • Sir Arthur Pearson War Blinded
   • Jim Sanders (C.M. Past President and Special Advisor, CNIB)
   • Katika Stark (past Chair, NBRS); President, Stark Communications, and
Our proposal begins by setting out the broad parameters of Canadian and international human rights legislation. This legislation establishes that the Industry Canada bears a duty to ensure that its decisions accord with the laws that prohibit discrimination towards people with disabilities.

We then present evidence establishing that Canada’s communications system remains by and large inaccessible to persons with disabilities.

We then review our Accessibility Initiative Fund proposal, pointing to precedent for this new and innovative way to fund accessibility in the Canada’s communications system.

Media Access Canada on behalf of the Access 2020 Coalition’s position is that not only should any licensee ensure accessibility in its use of the spectrum, but that Industry Canada ensure a benefit from the auction be 100% accessibility by 2020.

We respectfully submit that Industry Canada must play a leadership role in ensuring accessibility is the result of licensing spectrum for commercial purposes – especially if it seeks to demonstrate its commitment to Parliament’s broadcasting and telecommunications policy.

We have four recommendations, which address Question 7. In the consultation “Promoting Competition” and one recommendation, which address that, which was not mentioned in the Consultation Paper, Accessibility.

**Recommendation 1: Policy and technical decisions must at all times consider accessibility as a foundation check in advance of implementation.**

Industry Canada, recognizes the emerging shift from traditional, regulated distribution undertaking spectrum usage to CRTC un-regulated uses of spectrum.

… the popularity of accessing the Internet by wireless devices at broadband speeds continues to grow. Computer laptops, notebooks and net books can access mobile Internet service by means of a USB wireless modem, wireless module, or data card. Mobile handsets, especially the new generation of smart phones, are the predominant devices, using mobile broadband data services.10 Referencing Strategy Analytics February 2010 as its source, the CRTC reported that a record 54 million smart phones (of a global total of
337 million mobile phones) were sold worldwide in the fourth quarter of 2009, representing a growth of 32% over the same period in 2008 (compared to 15% growth in the overall number of mobile handsets shipped worldwide in 2009).\(^1\)

11 We also note in the document mentioned above, no reference to accessibility. This could indicate a lack on interest or commitment to accessibility on Industry Canada’s part, but we do not think so. It is most likely an accessibility oversight – very common and usually corrected by costly retrofit or more often than not, never corrected, leaving Canadians with disabilities no access to their communications system.

12 Because accessibility is commonly an after-thought, it is critical in establishing decisions on a Policy and Technical Framework for the 700 MHz Band and Aspects Related to Commercial Mobile Spectrum, that accessibility be a front and centre consideration – a foundation check - in every decision made. Therefore, we strongly urge Industry Canada to

13 **Recommendation 2: Create a buyers’ premium on successful bids that would benefit the entire communications industry.**

14 In Section 7 of Industry Canada’s Policy and Technology Consultation paper, it states:

> “7.1 Possible Need to Promote Competition
As described in Section 4.1, until recently, the Canadian wireless market was comprised primarily of three large service providers, Bell, Rogers and TELUS, as well as a number of regional providers, e.g. SaskTel Mobility and of several mobile virtual network operators (MVNOs). The Department has acted to encourage a competitive telecommunications marketplace, as it believes that competition stimulates innovation and investment in the industry, which can lead to lower prices, better services and more choice for consumers and businesses.”

15 While we agree that increased competition could lead to lower prices and better services, both of which are desperately needed in the Canadian communications system, the reality is that this policy conflicts with the ever growing vertically integrated communications system, where the power and revenues are held in

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\(^1\) Consultation on a Policy and Technical Framework for the 700 MHz Band and Aspects Related to Commercial Mobile Spectrum, page 11
fewer hands, where there is little or no competition or choice. Respectfully, we note that while it is noted in the competition section of the proposal attempts to increase choice and competition, these smaller players really cannot compete for consumers who want to rural, provincial or national coverage.

This year alone, vertical integration has occurred in the Shaw/CanWest acquisition and the pending BCE/CTV buy further shrinking the broadcast and telecommunications industry². In reality, it would take an extremely severe policy framework, like the limiting the spectrum to only telecoms with fewer than 50,000 subscribers, to truly introduce competition in the Canadian communications system.

Competition is and should be encouraged, but in reality, it is often a smokescreen. The larger players are in no real way threatened by the smaller entities. In the spectrum bid, these same conglomerates will be the winning bidders most of the time. This is we all know to be true.

In broadcasting the CRTC addresses this lack of competition through tangible benefits, which requires:

24. The Commission generally expects significant benefits to be offered to the community in question, and to the Canadian broadcasting system as a whole, when considering applications to transfer ownership or control of a television undertaking. Because the Commission does not solicit competing applications, the onus is on the applicant to demonstrate that the application filed is the best possible proposal under the circumstances and that the benefits proposed in the application are commensurate with the size and nature of the transaction.

25. In the Commission’s view, the absence of a competitive process for changes to the ownership or control of programming undertakings makes the benefits test an appropriate mechanism for ensuring that the public interest is served³

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² Broadcasting Decision CRTC 2010-782 and Broadcasting Notice of Consultation CRTC 2010-926
³ Public Notice CRTC 1999-97 BUILDING ON SUCCESS - A POLICY FRAMEWORK FOR CANADIAN TELEVISION, paragraph 24.25
Therefore, because there is no real competition, The Access 2020 Coalition believes there is precedent for tangible benefits that would contribute to activities and programs that would enhance the entire communications industry in Canada. Further, the model for creating this type of “payment” already exists as the business model for auctioning around the world through the creation of a purchasing framework which includes a winning bid price as well as a buyer’s premium on successful bids; meaning the “hammer price” – the actual winning bid – is smaller than the amount the purchaser will pay. Make the buyer’s premium 10% of the winning bid and have it go toward funding activities that will improve Canada’s telecommunication and broadcasting system.

This would be consistent with the CRTC tangible benefits:

22. The Commission hereby amends its benefits policy in respect of all transfers of ownership or control involving television-broadcasting undertakings, including conventional, pay, pay-per-view and specialty television undertakings. It will generally expect applicants to make commitments to clear and unequivocal tangible benefits representing a financial contribution of 10% of the value of the transaction, as accepted by the Commission. This policy will apply to any application filed on this date or after.  

Recommendation 3: 1% for 100% - The Accessibility Initiative Fund

BCE, as part of its tangible benefits package in the recent CRTC hearings, has proposed to the CRTC that $5.7 million be set aside for an Accessibility Fund. This Fund was proposed by Media Access Canada, supported by the Access 2020 Coalition, as a way to finally empower the accessibility industry to address the key issues facing accessibility in the Canadian communications system. While $5.7 million cannot fix a 28 billion dollar industry, it is a beginning – we have a dedicated Accessibility fund that Industry Canada and others can

4 http://www.christies.com/features/guides/buying/buyers-premium.aspx


5 IBID, paragraph 22

6 MAC Undertaking filed with CRTC attached as Appendix 1
contribute to when key milestone events, like the 700 Mhz auction occurs. It is only at these critical times that policy can address accessibility in tangible and innovative ways.

Further, the Commission has stated, "persons with disabilities generally are not able to influence the market sufficiently to obtain accessible telecommunications products and services".⁷

It is understood, therefore, by the Commission and by the broadcast and telecommunications industry, through statements and the creation of this fund, that special consideration must be given to ensuring access to the communications system for Canadians with disabilities. The CRTC, in its Broadcasting Public Notice CRTC 2008-62, stated:

In the 1999 Television Policy, the Commission amended its benefits policy regarding all transfers of ownership or control involving television-broadcasting undertakings, including conventional, pay, pay-per-view and specialty television undertakings. In light of this amendment, the Commission expected applicants to make commitments to clear and unequivocal television tangible benefits representing a financial contribution of 10% of the value of the transaction, as accepted by the Commission. 17. Unlike the Commercial Radio Policy, the Commission's benefits policy for television does not specify the approach that must be taken regarding the administration of benefits packages. In the past, one of three approaches has been taken: third-party capital funds, third-party non-capital funds and self-administered funds.

Third-party capital funds

18. The Commission has approved the creation of third-party entities to administer and allocate benefits monies. Under this approach, the third party invests the funds and uses the interest generated from the capital to provide stable, long-term funding. The third party disburses the proceeds independently and in perpetuity rather than over a finite time period such as five years. An example is the Independent Production Fund (IPF) - a permanent fund established as a result of a 1989 transfer of ownership from Selkirk Communications Limited to Maclean Hunter Limited, which the Commission approved in Decision 89-766. The IPF was established in 1991 with capital endowments of $29.2 million. Since 1991, the IPF has invested close to $43.5 million in television series, according to the IPF's annual report. The fund's 2007 investment in series production was $2.3 million.

Third-party non-capital funds

⁷ CRTC Broadcasting and Telecom Regulatory Policy CRTC 2009-430, paragraph 8
19. The Commission has also approved third-party funds that are not invested; therefore, no interest is generated from the benefits and the initial capital is spent. Under this approach, the funds are finite and administered independently over a finite period such as five years. An example is the Canadian Western Independent Producers (CWIP) Fund, established as a result of CanWest Global’s purchase of WIC Western International Communications Ltd. - a transaction approved in Decision 2000-221. A total of $23.9 million over five years was distributed to qualifying production companies based in Manitoba, Saskatchewan, Alberta and British Columbia. These funds were dispersed in the form of non-recoupable contributions to production budgets.

30. The CRTC then has established precedent for generating revenue to improve the Canadian broadcast and telecommunications systems, as well as great flexibility in how the funds are distributed.

31. Therefore, we request that ten percent of the buyer’s premium or 1% of the total winning bid be contributed to the Accessibility Initiative Fund, to be used to achieve 100% accessibility in Canada’s communications system by 2020 through:

- Working groups to develop, test and write standards for a harmonized multi-platform approach to accessibility for regulated, exempted and forborne communications services, in conjunction with regularly updated best practices guides. Key to the development of accessibility standards is the ability to be able to pay for professional engineering and technical expertise
- technical and engineering research and development
- accessible content production industry development
- export market research,
- tools development for accessibility manufacturers
- clearing house/archive of accessible content
- independent and systematic third-party monitoring of the quantity and quality of an accessible Canadian communications system (irrespective of distribution platform)
- education, curriculum development, and regular reports to Canadians, including Canadians with disabilities, Parliament, and other stakeholders in the communications industry
- ongoing consultation with the accessibility community, and
annual reports on the quantity and quality of accessible programming content in Canada.

**Recommendation 4. Cross border interoperability – New will un-do**

The Access 2020 Coalition strongly urges, wherever possible that cross border interoperability be key in all decisions. The introduction of new spectrum, new technology, policies and business models often results in the loss of current accessibility and a lack of consideration for accessibility needs in the basic framework of development. For Canadians with disabilities, new will un-do.

Further, it is often challenging for accessibility manufacturers, with limited markets and revenue to develop accessibility tools and features for multiple spectrum. Key to a 100% accessible communications system will be consistency and harmonization of spectrum internationally.

**Recommendation 5: Access to spectrum for research and development**

Through the Accessibility Fund, technical innovation will be seeded that would lead to new revenues for industry stakeholders in the production and distribution of accessible content over multiple distribution platforms. The success of this work will depend on having access to spectrum for the purposes of testing and evaluating both technology and standards. For this reason, it is critical that a portion of the 700 MHz and 2500 MHz spectrum bands be set aside for this purpose. To require a partnership with existing licensees of spectrum can often be a barrier to entry where opportunities for increased accessibility are possible.
I  Access 2020: 100% accessibility by 2020

A  What is the Access 2020 Coalition?

Media Access Canada (MAC) is a not-for-profit organization with a mandate to advocate for improved quantity and quality of accessible content in Canadian broadcasting and telecommunications. MAC’s work includes the development of accessibility standards, participation in national and international standards development committees and working groups, presentations to regulatory and Parliamentary bodies, supporting the disability organizations in their similar regulatory and Parliamentary work, and the dissemination of information about accessibility in electronic media.

Over the last year MAC has led the Access 2020 Coalition whose goal is to achieve the complete accessibility of Canada’s communications system for Canadians with disabilities within the next decade.

The Access 2020 Coalition involves a number of the organizations and individuals in Canada who are advocating for 100% accessible communications system in Canada.

B  Why was the Coalition formed?

The Access 2020 Coalition formed because Canada’s broadcast and telecommunications system is well over 80 years old and is still to some degree inaccessible. Of great concern is the undoing of the accessibility that exists now. The introduction of new spectrum, new technology, policies and business models often results in the loss of current accessibility and a lack of consideration for accessibility needs in the basic framework of development. For Canadians with disabilities, new will un-do.

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MAC has organized the following committees in Canada: Descriptive Video Production and Presentation for Digital Environments (French and English); Closed Captioning Production and Presentation for Digital Environments (English); and Vertical and Horizontal Multi-platform Distribution for Digital Environments.

MAC is a member of the following international standards bodies: CAC/JTC1 – SWG – A: On-going identification and creation of technical reports identifying accessible standards internationally; CAC/JTC1/SC35 – Accessible User Interfaces; CAC/JTC1/SC38 (Accessibility Expert for Cloud Computing); CEO r4wg19 – Accessible User Interfaces and ICT Standards Advisory Council of Canada.

Most recently before the House of Commons Standing Committee on Canadian Heritage, in its study of vertical integration, and the CRTC’s public hearing on Shaw’s acquisition of Canwest in September 2010.

MAC’s next conference will be held at Ryerson University on MARCH 28, 2011, to present and discuss the results of the latest quantitative research on levels and error rates in accessible content in Canadian television, which MAC commissioned from Analysis and Research in Communication Inc. (ARC).

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This does not have to be the case, but without the accessibility industry and their experts involved, if very often is, leaving 4.3 million Canadians without access to Canada’s communications system.

For example, deregulation and market forces often undo gains in accessibility. Take descriptive video where only 3% of the Canadian broadcast week is required to be described, yet when a broadcaster streams that content to the unregulated web, it is NOT accessible. Even if the content were available on a web site with accessibility, there all limited and sometimes no wireless handsets available to provide the same access to the Canadian communications system.

While MAC embraces technical innovation, decisions around it must at all times consider Accessibility as a foundation check in advance of any decision.

The Coalition’s members wish to acknowledge the work of Industry Canada and its staff in developing policies and technology standards regarding access to the Canadian communications system. It has also done a good job in ensuring the accessibility of closed captioning and descriptive video in any standard that could impact Canada’s communication system.

But more is needed.

A forthcoming study of accessibility in Canadian broadcasting, which examined Internet broadcasts of Canadian television broadcasters, found that none of the accessible programming made it to the Internet with the accessibility intact.\(^{12}\) The CRTC’s decision to forbear from regulating the Internet means that no requirements exist at all for television content being made available through computer screens or mobile telephones. Very little, therefore, – if any – content online is accessible: for example, in 2008 CTV acknowledged “…we do not provide closed captioning or described video on web based video content.”\(^ {13}\)

Given vertical integration of large companies that own broadcast, telecommunications, ISP and wireless, these same organizations will bid for and receive spectrum. It is critical therefore, like the tangible benefits model for broadcast acquisition, that they a pay bidding premiums to ensure accessibility

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\(^{12}\) This study will be published at the end of March 2011.


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organizations will be empowered and enabled to achieve 100% accessibility in non-regulated environments.

C Canadians with disabilities seek a fully accessible communications system – by 2020

Having launched in 1952, Canadian television almost qualifies as a senior citizen. Telecommunications is still older. Despite decades of promises from long-established private and public industry to provide all Canadians with service, Canadians with disabilities are still waiting for those promises to be kept. Empty promises from government and other industry stakeholders have failed to find solutions, to make our communications system accessible for all and it is only at key milestone events, like a spectrum auction, that we can begin to fully address the opportunity to ensure full access by 2020.

We have concluded that without the involvement of and leadership by the accessibility community in a way that empowers them, Canada’s communications system will never become fully accessible. We respectfully submit that the time has come to establish concrete goals and to fund mechanisms to achieve that goal. Having experienced first-hand the results when the regulatory authority, telecommunication and broadcasters take action, it is time to enable the accessibility community to achieve this objective. We note that in the early 1980s, following the development of captioning technology, broadcasters in Canada were unable to develop a business model for captioned programming. Canada’s accessibility community, through Canada Caption Inc., developed the closed-captioning sponsorship model, which successfully helped generate revenues from accessible programming.

Access 2020 Coalition’s goal is the 100% accessibility of the Canadian communications system within the next ten years, regardless of the delivery platform. It is only the industry who will benefit from its success that has the ability and interest in achieving this goal.

14 Canadian Broadcasting Corporation, Annual Report 1952-1953, at 5: The outstanding development of 1952-53 for the Corporation was the start of television broadcasting. In September the CBC entered this new form of broadcasting with regular program services in two languages with production centres at two points, Montreal and Toronto.
Why 2020? We have chosen this year because it provides the accessibility community, broadcasters, communications industry stakeholders and the CRTC with a clear, defined window in which to act, by setting targets, developing and testing standards for broadcasters, for telecommunications companies and for manufacturers of communications equipment. Indeed, 2015 would actually be ideal, because this is when Toronto will host the Pan-Am games; or 2017: Canada’s 150th birthday. The Access 2020 Coalition therefore asks that Industry Canada join the CRTC in innovative policy development, thereby adding a substantial contribution to the Accessibility Fund. The Accessibility Fund was established to allow us to begin now to work within a clearly defined time frame, to achieve complete accessibility.

Canadians with disabilities should be able to expect that when major ownership transactions occur that purport to benefit the entire communications system, we will not be excluded from those benefits.

II Accessibility touches every Canadian

a. Dimensions of accessibility

If Canadians do not have someone in their immediate or extended family with a disability, chances are that they meet people with disabilities every day. Deaf, deafened, hard of hearing, blind, and low-vision or mobility-impaired people live and work in every part of Canada, from the smallest hamlet to the largest metropolitan centre. People with disabilities are part of our families; they are among our friends, or members of our communities.

Canadian society’s decision to ensure the inclusion of people with disabilities in contemporary life through protection under Canada’s Charter of Rights and Freedoms means that many of us are familiar with accommodations made to make inclusion a reality. Almost everyone has probably used a wheelchair ramp at one time whether in a wheelchair or not – but how many of those who text a message today know that when they casually use the letter “u” to mean “you”, they are following in the path of people who first used the TTY or what is now called the Telephone Device for the Deaf (TTD)? Hundreds of thousands of people have disabilities in Canada, and their lives affect us all.

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54 Results from the 2006 Census established that 4.4 million Canadians\textsuperscript{16} – 17\% of the population at the time – had physical or cognitive disabilities. In its 2008 accessibility proceeding with respect to telecommunications and broadcasting, the CRTC pointed out that demand for accessible content will increase over the next decade and a half:

\begin{quote}
[a]n estimated 4.4 million Canadians—one out of every seven in the population—reported having a disability in 2006. In 2006, 43.4 percent of persons over 65 reported having a disability, and more than half (56.3 percent) of persons over 75 reported having a disability. The rate of disability among the Canadian population is expected to increase dramatically over the next 10 to 15 years. Projections indicate that by 2026, seniors will comprise the largest population group with disabilities, at just over three million people.\textsuperscript{18}
\end{quote}

55 Accessibility issues are not restricted to the deaf, deafened, hard of hearing, blind or low-vision. Persons with severe mobility impairments are also affected by poorly designed broadcasting technology. For example, to obtain descriptions of movies and programs on some set-top boxes\textsuperscript{17} on Channel 199, using the Relax Box (an environmental control system for persons with severe mobility impairments) requires emulation of channel-up or -down commands. If a user is on channel 3, 196 switch activations will be required to get to channel 199 – and returning to the original channel 3 would require the same effort. As well, when the on/off command from the Shaw Box is programmed into the Relax Box, it almost immediately becomes deprogrammed. Finally, a combination of buttons is typically needed to perform certain functions – but a limitation within the Relax Box further restricts the number of different functions per device. While these issues appear to be problems that technology could solve relatively quickly and easily, little incentive appears to exist for set-top manufacturers to address these issues, or to provide required technical information and technical support to assistive technology developers.

56 Insofar as hearing and visual disabilities are concerned, Statistics Canada has estimated that in 2006 1.3 million adult Canadians had hearing limitations, while

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{16} CRTC questions to parties, noted in Shaw Telecom Inc.(CRTC)10June08-100.
\item \textsuperscript{17} Shaw’s in the present example.
\end{itemize}
\end{footnotesize}
816.2 thousand had seeing disabilities.\textsuperscript{18} These numbers underestimate the number of deaf, deafened, hard of hearing, blind or low-vision people, however, because they exclude children under the age of 15.

The numbers of people seeking a fully accessible communications system will increase not only because sight and hearing can be lost through accidents or illness,\textsuperscript{19} but also because Canada’s population is aging (see Appendix ). Where people over the age of 65 currently make up 14\% of Canada’s population, by 2021 they will comprise 19\% of the population, and 24\% of the population by 2031.

What does an aging population mean for the numbers of deaf, deafened, hard of hearing, blind or low-vision that our broadcasting system will have to serve? Medical professionals already know that in the case of vision, age-related macular degeneration “is the leading cause of blindness in North America”\textsuperscript{20} and could affect up to 30\% of people over the age of 75.\textsuperscript{21} Loss of hearing occurs for more than 30\% of Canadians over the age of 65.\textsuperscript{22} Based on Statistics Canada’s low-growth population projections, the numbers of older Canadians with hearing or vision losses will grow by several hundred thousand (670,000 and 206,000, respectively).

\begin{tabular}{|l|c|c|c|c|c|}
\hline
Type of age-related loss & 2010 & 2021 & 2031 & \% change 2010-2021 & \% change 2010-2031 \\
\hline
Hearing loss – 31\% over 65 years & 1,494.1 & 2,164.1 & 2,875.5 & 45\% & 92\% \\
AMD – 29\% over 75 years & 651.4 & 857.9 & 1,276.5 & 32\% & 96\% \\
\hline
\end{tabular}

We set out these statistics to provide context to the dimensions of the challenge facing our communications system. If the present approach remains unchanged, should Canadians who grow older be forced to accept the loss of television and

\begin{flushright}

\textsuperscript{19} The Canadian Association of Optometrists


\end{flushright}
telecommunication services due to age-related disabilities? Should Canadians simply accept that by 2021, more than 4.4 million of their family members, friends or neighbours may lose their ability to participate in a digital economy, simply because they have grown older and have some kind of disability?

**b. Accessibility is not a choice, but a fundamental human right**

Some elements of the human condition exist by choice, and others do not. Examples of choice-related elements are the clothes we wear when we are alone; the people we like to meet; or the things we do when our time is our own. Examples of elements that are not related to choice include our abilities. For the last several decades, most advanced societies have consciously chosen to reduce barriers based on abilities.

Unfortunately, many barriers to those who have disabilities remain in Canada. As Statistics Canada commented in late 2009, “every day, people with disabilities encounter barriers to their daily activities that are not caused by their impairments, but by an environment that does not take account of their impairment”. What is unusual about barriers in Canada in 2011 is that these barriers can be more than an inconvenience – they can be an illegal breach of the rights of people with disabilities.

**1 Human rights in Canada**

The *Canadian Charter of Rights and Freedoms* clearly established the rights of Canadians with disabilities, for matters within the authority of Parliament (including broadcasting):

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

....

32. (1) This Charter applies

(a) to the Parliament and government of Canada in respect of all matters within the authority of Parliament including all matters relating to the Yukon Territory and Northwest Territories ....
We also note that section 5 of the Canadian Human Rights Act further clarifies that it is a discriminatory practice in the provision of services customarily available to the general public:

(a) to deny, or to deny access to any such service to any individual, or
(b) to differentiate adversely in relation to any individual, on a prohibited ground of discrimination.

Canadians with disabilities have been denied access to the communications services available to the general public for decades. The result is that these Canadians have been excluded from accessing television coverage of political debates, news and most popular culture. They are left behind and not considered in new technology and policy.

It is not surprising, therefore, that the Supreme Court of Canada has clarified that the purpose of section 15(1) of the Charter is not only to prevent discrimination by the attribution of stereotypical characteristics to individuals, but also to ameliorate the position of groups within Canadian society who have suffered disadvantage by exclusion from mainstream society as has been the case with disabled persons.

The Supreme Court has also held that the Charter "applies to private entities in so far as they act in furtherance of a specific government policy":

[Just as governments are not permitted to escape Charter scrutiny by entering into commercial contracts or other "private" arrangements, they should not be allowed to evade their constitutional responsibilities by delegating the implementation of their policies and programs to private entities.]

It is therefore clear that federal laws that grant discretion to delegated decision-makers must be consistent with the Charter. Allowing people with disabilities to be excluded from Canada’s broadcasting and telecommunications system on the ground that section 3(1)(p) of Parliament’s broadcasting policy for Canada
implies that accessibility must wait until all other financial needs are met, is unacceptable.

In addition, while it is reasonable for the Industry Canada to consider how its decisions and policies will affect bidders, it is equally important to remember that the holding of a spectrum licence is a privilege, rather than a right, and that the Industry Canada’s policy decisions must first and foremost “take into account the public interest”. In exercising its discretion, therefore, we respectfully submit that Industry Canada must consider relevant factors such as the unacceptably slow pace of accessibility in our market driven communications system, and must act in good faith and in accordance with the law including overarching constitutional commitments to the human rights of Canadians with disabilities.

We urge the Industry Canada to consider the implications of the November 2010 Federal Court of Appeal case of Jodhan v. Canada (Attorney General), which addressed the inaccessibility of the federal government’s internet sites. The Federal Court stated that:

- negative effects included the applicant having to rely on sighted assistance to complete tasks that she would otherwise be able to complete independently and on her own time;

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28 3(1)(p) states:
programming accessible by disabled persons should be provided within the Canadian broadcasting system as resources become available for the purpose ....

3(1)(p) states in French that
le système devrait offrir une programmation adaptée aux besoins des personnes atteintes d’une déficience, au fur et à mesure de la disponibilité des moyens;

Finally--and this is an extremely important consideration, as we will see later--the appeal before us is not challenging a CRTC decision that deprives or strips the appellant of a right. The appeal has to do with a decision not to renew a privilege that had been granted to the appellant. The obtaining or exercise of a privilege is generally accompanied by conditions with which the licensee undertakes to comply subject to penalties for non-compliance, including possible non-renewal or loss of the privilege. In other words, the appellant not only has no right to a broadcasting licence, it also has no vested interest in the fixed-term privilege that was granted to it: see Procureur général du Canada v. Compagnie de Publication La Presse, Ltée (La), 1966 CanLII 35 (S.C.C.), [1967] S.C.R. 60, where the Court writes [at page 76]: “there was no contractual relationship between the Crown and respondent, and the latter had no vested or property right in the licence which it held.”

30 Ibid., at ¶31.
31 Ibid., at ¶37:
A discretionary power is exercised judicially when the holder of that power acts in good faith, in accordance with the law, does not take into account irrelevant factors and does not fail to consider relevant factors. [citations excluded]


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- visually impaired individuals do not receive the benefit of the government’s online services and information equally with non-visually impaired Canadians; and

- this failure perpetuates a disadvantage which undermines the dignity of the visually impaired.

70 Given the availability since the 1970s of technologies for accessibility, we respectfully submit that continued inaccessibility of broadcasting and telecommunications in this country is a form of unconstitutional discrimination against people with disabilities.

71 We submit that the Industry Canada’s policy development must comply with the Charter’s requirements. This is especially true in cases where the Industry Canada’s decisions have the potential to affect the entire broadcasting and telecommunications system now and in the future. Industry Canada must consider the interests of the entire Canadian public, including Canadians with disabilities in its policy framework. That a bidding premium be created and that resulting benefit from the transaction should benefit Canada’s broadcasting and telecommunications system.

2 United Nations’ Convention on the Rights of People with Disabilities


73 The specific provisions of the Convention that we believe are more germane to our submission are provided in 3, along with the news release issued by the government of Canada upon its ratification of the Convention. Of special note is Article 30, part of which recognizes the right of persons with disabilities to “Enjoy access to television programmes, films, theatre and other cultural activities, in accessible formats”.

33 Ibid., at ¶20.
We note that in adopting the *Convention*, Canada recognizes “… the importance of accessibility to the physical, social, economic and cultural environment, to health and education and to information and communication, in enabling persons with disabilities to fully enjoy all human rights and fundamental freedoms,” (Subsection (v) of the Preamble)

Under Article 31.1 of the *Vienna Convention on the Law of Treaties*, Canada agrees to interpret the *Convention* “in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose”. We also note that in the seminal case of *Baker v. Canada (Minister of Citizenship and Immigration)*, the Supreme Court of Canada established the importance of international human rights laws, such as the *Convention on Persons with Disabilities*, in informing the context of Canadian law.

## III Accessibility in Canadian Communications

In this section we summarize the current law concerning accessibility, as well as the information available about progress towards 100% accessibility.

### A The law

In broadcasting and telecommunications alike, accessibility refers to the ability of persons with physical disabilities to use the services of broadcasters and telecommunications providers. Parliament has addressed accessibility in its

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38 General rule of interpretation:
1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.
2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:
   (a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;
   (b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.
3. There shall be taken into account, together with the context:
   (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;
   (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;
   (c) any relevant rules of international law applicable in the relations between the parties.
4. A special meaning shall be given to a term if it is established that the parties so intended.
statutes for communications – most clearly in its broadcasting and telecommunications laws.

Under the 1991 *Broadcasting Act*, Parliament’s broadcasting policy for the country states that Canada’s broadcasting system should

- “safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada” (3(1)(d)(i))
- “through its programming … serve the needs and interests … of Canadian men, women and children, including equal rights …” (3(1)(d)(iii))
- “be readily adaptable to scientific and technological change” (3(1)(d)(iv))
- “provide a reasonable opportunity for the public to be exposed to the expression of differing views on matters of public concern …” (3(1)(i)(iv))

Parliament’s broadcasting policy for the country also states that the “programming originated by broadcasting undertakings should be of high standard” (3(1)(g)), and that “a range of broadcasting services in English and in French shall be extended to all Canadians as resources become available” (3(1)(k)).

Finally, Parliament specifically requires that

- (p) programming accessible by disabled persons should be provided within the Canadian broadcasting system as resources become available for the purpose;
- (p) le système devrait offrir une programmation adaptée aux besoins des personnes atteintes d’une déficience, au fur et à mesure de la disponibilité des moyens;

The 1993 *Telecommunications Act* sets out among its objectives the “orderly development throughout Canada of a telecommunications system that serves to safeguard, enrich and strengthen the social … fabric of Canada …” (7(a)), the “efficiency … of Canadian telecommunications” (7(c)), the stimulation of “research and development in Canada in the field of telecommunications” and the encouragement of “innovation in the provision of telecommunications services” (7(g)).

The *Telecommunications Act* also requires telecommunications companies “to respond to the economic and social requirements of users of telecommunications services” (7(h)) and “to contribute to the protection of the privacy of persons.” (7(i)).

*The Access 2020 Coalition*
Finally, Parliament also stipulated that in providing telecommunications services telecommunications companies should not “subject any person to an undue or unreasonable disadvantage” (27(2)).

We note that the Radiocommunication Act does not specifically address accessibility, but does enable the government to require that communications equipment meet specific standards. Sections 5(1) and 6(1) allow the Minister of Industry and Cabinet to make regulations regarding standards:

5. (1) Subject to any regulations made under section 6, the Minister may, taking into account all matters that the Minister considers relevant for ensuring the orderly establishment or modification of radio stations and the orderly development and efficient operation of radiocommunication in Canada,

\[\ldots\]

(d) establish technical requirements and technical standards in relation to

(i) radio apparatus,
(ii) interference-causing equipment, and
(iii) radio-sensitive equipment,
or any class thereof;

\[\ldots\]

6. (1) The Governor in Council may make regulations

(a) respecting technical requirements and technical standards in relation to

(i) radio apparatus,
(ii) interference-causing equipment, and
(iii) radio-sensitive equipment,
or any class thereof;

While Parliament’s policies for Canada’s communications system are now set out in three separate statutes, the Access 2020 Coalition believes the time is nearing when Parliament will adopt converged legislation, as countries such as the United Kingdom have already done. This is why we welcomed the CRTC’s foresight in 2008 to launch a policy proceeding on accessibility that simultaneously addressed telecommunications and broadcasting issues. That said, accessibility cannot be considered in isolation (as a single policy) but must be addressed when licensing spectrum or other determinations involving telecommunications or the internet. Technological convergence requires policies that address all aspects of communications, including measures to ensure that all
Canadians, including people with disabilities, can access the country’s communications systems.

**B. Technology, CRTC and progress in accessibility**

A variety of technologies exist to permit people with disabilities to access and use television programming. We describe these technologies and progress in using them, below.

*a Captioning*

Closed captioning was demonstrated for the first time at the First National Conference on Television for the Hearing Impaired in the United States in 1971. In 1982, the US National Captioning Institute developed real-time captioning to caption newscasts, sports events or other live broadcasts.

In 1979 after representatives from the deaf, deafened and hard of hearing community appeared to address CBC’s licence renewal, the CRTC encouraged the CBC to think about captioning:

> … the Corporation should examine the possibility of providing this service in order to permit the many thousands of Canadians to enjoy more fully the programming to which they are entitled. At the same time, the Commission recognizes the cost of such a service and cannot direct the Corporation to undertake such an activity unless specific monies can be obtained for that purpose.

The CRTC’s statement led to the decision in 1981 of the federal government (not broadcasters) to establish the Canadian Captioning Development Agency, a not-for-profit organization to provide and promote captioning in Canada.

By 1984 the CRTC decided that closed captioning “should receive high priority”. Through subsequent decisions the CRTC required 90% of TV station programming to be captioned in 2002.

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41 Ibid.
42 Renewal of the Canadian Broadcasting Corporation’s television and radio network licences, Decision CRTC 79-320 (Ottawa, 30 April 1979) at 40.

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In the CRTC’s current group licence renewal process, television licensees are invited to provide 100% captioning by the fourth year of their licence terms – which we understand to mean 2015.

Unfortunately, as of the time of writing (February 2011) these standards have not yet been circulated for comment.

Under the CRTC’s current approach to accessibility, Canada’s regulated broadcasting television system will become fully captioned 44 years after captioning was developed.

**b ** Described video

Described video enriches television for the visually impaired, by providing voiced descriptions of programming content. Delivered during gaps in spoken content, described video explains what is happening visually on screen in television, movies, DVDs or live performances. It describes physical elements that improve understanding of what is happening in the performance, including scenes, settings, costumes, body language and even sight gags.

Audio description is a type of described video that typically entails the reading aloud of text items – such as stock prices or emergency weather alerts – that appear on screen. As the CRTC explained in 2001, “A broadcaster providing audio description will, for example, not simply display sports scores on the screen, but also read them aloud so that the visually impaired can receive the information.”

Described video provides those who have significant loss of vision with a greater appreciation of television programming content, and as significantly, enables them to share the experience of this content with their families and friends without having to ask regularly and repeatedly, “what's happening?”

The concept of described video was developed in 1974 by a student working on his broadcasting master's thesis in “television for the blind”. The technology

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45 *Broadcasting Decision CRTC 2001-457*, at ¶68.

was then first used in 1982 when the Metropolitan Washington Ear worked with the producers of the PBS "American Playhouse" television broadcast to simulcast audio description on radio reading services.\footnote{Ibid.}

In 2001, the CRTC said that the presence of described video programming “in the Canadian broadcasting system is an important contribution.”\footnote{Licence renewals for the television stations controlled by CTV, Broadcasting Decision CRTC 2001-457 (Ottawa, 2 August 2001) at ¶75.} Broadcasters such as CTV

... proposed a seven-year plan for upgrading the technical facilities of all of its stations so that they could transmit described video. Roll out would begin in the largest markets, and other markets would be upgraded over the licence term. At the reply stage of the hearing, however, CTV committed to an accelerated schedule, making a commitment that it would complete the process by the end of the second year of the licence term.

CTV also committed to a ramp up of the amount of described programming. As they are upgraded, stations will provide two hours a week of described Canadian priority programming within the first two years of the licence term. This minimum level will increase to three hours per week in the third year, and to four hours per week in year five. At least 50% of the described video programming aired each week will be original, with the remainder consisting of program repeats. The Commission commends CTV on this significant commitment.\footnote{Ibid., at ¶¶71-72.}

The CRTC required over-the-air television broadcasters to air an average of 3 hours of described video each week beginning in 2003, and 4 hours in 2005, of which half of the hours would be original broadcasts. The CRTC expected broadcasters such as CTV “wherever possible, to acquire and exhibit described versions of the Canadian and non-Canadian programming that its stations broadcast.”\footnote{Ibid., at ¶75.} The Commission also expected broadcasters such as CTV to provide audio descriptions, such as emergency information, “where appropriate”.\footnote{Ibid., at ¶70.}

\footnote{70. CTV indicated that it is committed to its general practice of providing audio description of important graphic information. It conveys all emergency information, such as weather warnings, in audio form as well as in video form. The Commission notes this commitment, and expects CTV to ensure that it provides audio description where appropriate. It further expects the licensee to take the necessary steps to ensure that its service responds to the needs of visually impaired audiences.}
As for discretionary television services such as specialty and pay television, the CRTC has not yet established specific requirements. Its 2009 accessibility policy stated its intention

... to conduct a further proceeding to consider expanding the types of specialty services to which it will apply requirements for described video as well as the minimum amount of described video that licensees must provide. At that time, the Commission will also consider amending its regulations to require all licensees that offer programming in applicable genres to provide described video.  

Since then, the CRTC has proposed that category B specialty programming services “provide audio description for all the key elements of information programs, including news programming”

The CRTC’s 2009 accessibility policy also emphasizes the importance of informing people with disabilities about described video, requiring

- broadcasters to display a standard described video logo and air an audio announcement indicating the presence of described video before the broadcast of each described program. The Commission encourages broadcasters to repeat the announcement and logo following each commercial break;
- broadcasters to make information available regarding the described programs that they will broadcast; and
- licensees of BDUs to develop one or more means of identifying programming with described video in their electronic program guides. This could include an audio tone, a visual indicator, or the offer of an audio electronic program guide.

In addition to the CRTC’s general policy statements regarding television, we would like to acknowledge the licensing in 2007 of The Accessible Channel, an English-language digital service, which provides a variety of described programming. The Accessible Channel is distributed on a mandatory basis with a monthly subscriber rate or $0.20. As the following sample of programming

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53 See Call for comments on standard conditions of licence and expectations for Category B services, Broadcasting Notice of Consultation CRTC 2010-621 (Ottawa, 26 August 2010), Appendix (Standard conditions of licence, expectations and encouragement for Category B services), proposed condition of licence 6.
54 Ibid., at ¶122.
55 New digital specialty described video programming undertaking; Licence amendments; Issuance of various mandatory distribution orders, Broadcasting Decision CRTC 2007-246 (Ottawa, 24 July 2007) at ¶123.

The Access 2020 Coalition
from for a recent day in January establishes, while The Accessible Channel provides a valuable service it does not provide programming related to news, sports or analysis.

<table>
<thead>
<tr>
<th>Time</th>
<th>Program</th>
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<tbody>
<tr>
<td>12:01am</td>
<td>Movie: Miracle on I-880 (1993)</td>
<td>12:00pm</td>
<td>Love Lucy</td>
</tr>
<tr>
<td>2:00am</td>
<td>Movie: Miracle on I-880 (1993)</td>
<td>12:30pm</td>
<td>I Love Lucy</td>
</tr>
<tr>
<td>4:00am</td>
<td>Disaster DIY</td>
<td>1:00pm</td>
<td>Perry Mason</td>
</tr>
<tr>
<td>4:30am</td>
<td>Danger Bay</td>
<td>2:00pm</td>
<td>Movie: Woman of the Year (1942)</td>
</tr>
<tr>
<td>5:00am</td>
<td>Road to Avonlea</td>
<td>4:00pm</td>
<td>Ray Bradbury Theatre (French)</td>
</tr>
<tr>
<td>6:00am</td>
<td>The Canadians (aka Faces in History)</td>
<td>4:30pm</td>
<td>Real NBA</td>
</tr>
<tr>
<td>6:30am</td>
<td>The Canadians (aka Faces in History)</td>
<td>5:00pm</td>
<td>Dead Man's Gun - Alliance</td>
</tr>
<tr>
<td>7:00am</td>
<td>Emily of New Moon (French)</td>
<td>6:00pm</td>
<td>Departures</td>
</tr>
<tr>
<td>8:00am</td>
<td>Little Bear</td>
<td>7:00pm</td>
<td>Movie: Woman of the Year (1942)</td>
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<tr>
<td>8:30am</td>
<td>Franklin</td>
<td>9:00pm</td>
<td>Movie: Six Degrees of Separation (1993)</td>
</tr>
<tr>
<td>9:00am</td>
<td>The Black Stallion</td>
<td>11:00pm</td>
<td>Ray Bradbury Theatre (French)</td>
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<tr>
<td>9:30am</td>
<td>Ready or Not</td>
<td>11:30pm</td>
<td>Glenn Martin DDS</td>
</tr>
<tr>
<td>10:00am</td>
<td>Emily of New Moon (French)</td>
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</tr>
<tr>
<td>11:00am</td>
<td>Ice Pilots NWT</td>
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</table>


The CNIB has pointed out, while “the accessibility channel is an excellent interim step, … a special channel in the long term is not a solution to access to broadcasting, both news and entertainment”.

The Access 2020 Coalition acknowledges the CRTC’s work in this area. We took special note of the CRTC’s statement when it released its accessibility policy in 2009:

"We understand that Canadians living with disabilities have increasing needs as communications technologies become more prevalent in our daily lives," said Konrad von Finckenstein, Q.C., Chairman of the CRTC. "The measures announced today are an important step in making it easier for them to use the latest communications services."

To summarize the CRTC’s general approach to described video and television broadcasting, in the 37 years since described video was invented in 1974, over-the-air television broadcasters are currently required to ensure that 3% of their

56 Cathy Moore, on behalf of the CNIB, Unresolved issues related to the accessibility of telecommunications and broadcasting services to persons with disabilities, CRTC Public Hearing, Transcript, Vol. 1 at ¶60.

The Access 2020 Coalition
The Access 2020 Coalition programs are described. Under the Commission’s current approach it is not clear when the system will be fully accessible to blind or low-vision Canadians.

c. **Telecommunications technology**

In 2008 the CRTC directed incumbent local exchange telecommunications carriers to allocate $25.4 million to fund initiatives to improve accessibility for persons with disabilities, including those with visual, mobility, dexterity, cognitive, hearing, and speech disabilities.  

We note that the Commission encouraged these companies “to continue to work with advocacy organizations to further the important public objective of accessible telecommunications services for persons with disabilities, including consulting with regional organizations as appropriate”.  

The Access 2020 Coalition wishes to express is ongoing concerns with the degree of progress in making Canada’s telecommunications system more accessible. Our recommendations in this submission address these concerns, by suggesting the means by which faster progress can occur.

c. **Accessibility statistics**

Having set out what we understand to be the current nature of accessibility regulation in broadcasting and telecommunications, what is the actual state of accessibility in Canada’s broadcasting system today?

Relatively limited information on the level, the quality and the costs versus advertising revenues, of accessible content in Canadian broadcasting is available at this time. While the CRTC is to be commended for publishing summaries of its requirements for accessible content (by medium and licensee) on its website, it has not consistently published data on the number of hours of accessible programming actually broadcast by television programming services in Canada.

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58 Use of deferral account funds to improve access to telecommunications services for persons with disabilities and to expand broadband services to rural and remote communities, Telecom Decision CRTC 2008-1 (Ottawa, 17 January 2008), at ¶6.

59 Ibid., at ¶14.

60 CRTC, “Current described video requirements for TV services”, online: CRTC.gc.ca <http://www.crtc.gc.ca/eng/info_sht/b323.htm>.

61 That is, there is neither a fact sheet to show results from licensees’ logs, nor consistent reporting within the CRTC’s licensing and licence renewal decisions to show accessibility requirements by calendar year (rather than the confusing, year 1 – year 2 – year 3 system now used).
The only studies of which we are aware regarding the availability of accessible television content in Canada have both been funded by parties other than the CRTC.

The first quantitative study of captioning was commissioned by the Canadian Captioning Development Agency in the early 1990s. The Monitor project used content analysis techniques to measure the quantity and quality of captioning in over-the-air broadcasts of two national, two provincial and four local English-language stations operating in southern Ontario. Between February and October 1992, each broadcaster was recorded for twenty-four hours daily for one week, twice a month, in two separate months – yielding four weeks of programming content for each of the eight broadcasters. Results from the captioning analyses were subsequently presented to seven focus groups including members of the hard-of-hearing community, broadcasters and captioning producers.

The Monitor study found that 68% and 69% of programming hours and programs, respectively, were not captioned. Provincial and local broadcasters offered more captioning than national broadcasters. Up to a fifth of the dialogue in programs with live captioning was unusable, because the captions were missing, not synchronized with dialogue, or unreadable due to excessive speed. Within captioned programs, just over a third (36%) used live display, 11% used real-time captioning and just over half (53%) used off-line captioning, considered to offer the highest quality of captioning.

Since the publication of the Monitor study, little systematic research has been published about accessibility in Canadian television and non for telecommunications. In 1994, for example, the CRTC mentioned that 70% of the CTV network’s programming was being captioned, but did not clearly state how many hours each week this represented, since the CTV network provided 20.5 hours weekly of “affiliate sales time” and 40 hours of network sales time. It is unclear how many of the remaining 86 hours of the regulated broadcast week were captioned by individual CTV affiliates, or other broadcasters.

The Monitor study is now being replicated, however, no funding was available to examine telecommunications. The Monitor 2 content analysis of conventional

63 Ibid, at 5.
and discretionary television services is being conducted by Analysis and Research in Communication Inc. (ARC), as part of the CTV tangible benefits with respect to CTV’s purchase of CHUM. *Monitor 2, phase 1 Qualitative* will be published at the end of March 2011 and will contain up-to-date statistics on the level and error rate in captioning and described video.

Based on the data now available from CRTC decisions and policies, however, it is possible to say that approaching 100% closed captioning has taken a very long time. Full captioning of TV programs – excluding advertising, promotions and public service announcements – was provided by Canadian broadcasters 36 years after captioning was developed in 1971. As for described video technology, since its invention 26 years ago Canadian broadcasters have described 3% of their regulated broadcast schedule.

As for described video, we note that the CRTC first required 2 hours/week of described video in 2001. The level increased to 4 hours/week in 2004. According to the CRTC’s current group licence renewal application for CTV, Shaw/Corus/Canwest and Rogers, the CRTC is prepared to maintain this level for the next licence term. If described video remains at four hours for the next several years, the actual average annual increase in described video will be just under 7% (6.7%). At this rate of increase, all television programs will be fully
described in 2070 – 59 years from now, or 95 years after the introduction of described video technology:

The Access 2020 Coalition respectfully submits that obtaining fully described video programming in 2070 is too long to wait for Canadians.

Further as content moves to new and unregulated platforms resulting from the auctioning of the 700 Mhz spectrum, there is a real possibility that Canadians with disabilities lose what access they have. The Accessibility Fund is targeted and will support innovation while ensuring the necessary tools, policies and businesses for accessibility are developed.

While demanding complete accessibility today or tomorrow would be unreasonable, we believe it is feasible with proper planning, research and funding to achieve 100% described video and captioning on existing and new distribution platforms by 2020.
IV The Accessibility Initiative

1 Purpose

The Access 2020 Coalition is proposing that a small portion of a bidders premium be set aside to build a bridge to the future that will yield complete, high-quality accessibility within ten years.

The request for establishment of a Bidders Premium is to address the very real lack of competition in the Canadian communications system and has a has precedent both in the business model of auctioning at Internationally recognized auction houses and in the tangible benefits, established by the CRTC to improve the Canadian communications system.

The Accessibility Fund now exists and is awaiting approval from the CRTC. While it is just 5.7 million, which means we cannot establish a trust, as we build the fund, through opportunities like the 700Mhz auction, we can achieve 100% accessibility ensuring that the new networks, platforms and technology built on the spectrum is accessible.

The Access 2020 Coalition respectfully submits that 10% of the Bidders Premium or 1% of the winning bid be used to help create and promote accessibility using Canadian resources for innovation that will protect what accessibility exists today and ensure accessibility in the future.

2 Governance by the accessibility community

The Accessibility Initiative would be directed and managed by the accessibility community in consultation with relevant experts and representatives of the communications industry, including licensed and non-licensed stakeholders.

Operating on a not-for-profit basis, and directed by the very community that is seeking complete accessibility, the Accessibility Initiative would ensure that the steps needed to achieve complete accessibility of Canada’s communications system by 2020 are implemented efficiently and at the lowest possible cost for broadcasters.
3 Mandate of the Accessibility Initiative

The mandate of the Accessibility Initiative would include standards development, engineering research, education, independent monitoring and annual reporting. Each of these elements is interrelated.

d Standards: development, testing, maintenance

For example, to ensure a consistent approach to accessibility, broadcasters across Canada must be able to rely on clear and well-researched standards. The issue of standards was addressed almost twenty years ago, in the first Monitor report:

[i]f all parts of the community are to have equal access to broadcast program[ming], as everyone agrees, some form of captioning standard or code must be established to resolve the conflict between quality and quantity. It has been far too easy in the pursuit of volume to relinquish the quality that is required to make a programme understandable to deaf and hearing impaired people.  

Standards must address the digital environment, by ensuring that regardless of the distribution platform (broadcast, internet or telephone), regulated or not regulated, that it be accessible.

The Access 2020 Coalition has established collaborative working groups and continues with this. However, developing standards in this area is simply not easy, especially with respect to the issue of acceptable or tolerable error rates which can change over time, and by delivery platform. This complexity is why Canadian broadcasters are still waiting for useful standards, ten years after the major licence renewals in 2001.

Standards alone are insufficient to ensure that accessibility is achieved, however, because the standards themselves require explanation and examples. We propose that Best Practices Guides be developed to accompany standards for accessibility: the Guides would provide broadcasters and broadcast employees with explanations, tips and suggestions for increasing and improving the accessibility of their broadcast programs.

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Monitor 1, “Chairman’s message”.

The Access 2020 Coalition
The Accessibility Initiative will fund the development of standards and best practices and ensure that the costs of all participants – especially the accessibility representatives – are covered, and to pay for research and experts. Currently, industry appears to expect that accessibility service organizations have budgets sufficiently large to cover the costs of participating in proceedings and consultation – which is simply not the case. The CNIB explained this to the CRTC in 2008:

The disability community is a vulnerable population, not because of what may seem to be the natural, the inability to access certain telecommunications or broadcasting devices, we are vulnerable because of our lack of capacity to be experts on the huge current and future trends and technicalities around telecommunications and broadcasting.

We respectfully submit that achieving accessibility, like achievements in Canadian programming, is not charity, but a legal requirement.

Contributing to the Accessibility Initiative Fund will enable the development, research and testing of standards and Best Practices Guides across all communications platforms, at no new cost to broadcasters or other companies in the communications system.

**Monitoring**

After standards have been created, progress in meeting the standards must monitored. The lack of systematic monitoring of accessibility levels has contributed substantially to lack of progress in this area.

In 1992, the head of the Canadian Captioning Development Agency recommended that “… some agency should be responsible for periodically assessing captioning and publicly reporting its findings”.\(^{65}\) The purpose was not to “to point a finger”, but to “draw valid conclusions about the state of captioning in Canada” in 1992.\(^{66}\)

In 2008 the Canadian Association of the Deaf also addressed the issue of monitoring, and recommended third-party, independent assessments:

COMMISSIONER LAMARRE: Thank you for that precision.

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\(^{65}\) *Monitor, “Chairman’s Message”.*

Now, a subject that is dear to you, Mr. Vlug, I am sure, is the closed captioning issue. The first question I have is in regards to quality control at the level of the broadcaster.

It has been proposed that broadcast licensees be required to develop an internal quality control policy for closed captioning.

In your opinion, what should an internal quality control policy include to be truly effective?

MR. VLUG (interpreted): Firstly, I don’t believe that it should be internal. It should be outside monitoring. I don’t trust the broadcasting companies.

There has been a lot of misrepresentation and lies about what they have done, so I don’t trust them.

We need an outside person to be able to monitor the quality.

They don’t measure their own quality, really. I believe they were telling you yesterday that we use a voice recognition system, and the quality is less than the real-time captioners, and that kind of thing, but how do they know? They have no measurements, so how do they know about the levels of quality?

They say that there is no good way to actually measure it. They assume that voice recognition software is not as good as real-time captioning.

When you look at the American FCC proposal for the regulations from the deaf groups, they have a lot of details. They give you percentages and goals to meet. I am sure you will be asking other groups about the percentages and the requirements -- what error rate they accept, and all of those details.
At CAD, we would like to adopt what they have as proposed regulations for the FCC.

Part of the mandate of the Accessibility Initiative is to continue the path set by the Monitor and Monitor 2 reports, so that people with disabilities, broadcasters, the CRTC and Parliament understand that Canada’s communications system is becoming more accessible.

Moreover, by maintaining the Monitor reports’ practice of using focus groups with representatives of the accessibility community, broadcast engineering and production, communication industry stakeholders will receive regular updates as to the success of specific accessibility approaches – at no direct charge to them.

**f Education**

A third activity of the Accessibility Initiative involves education. For example, knowing that Canada is facing an aging population that may face vision and hearing loss, it is likely that the accessibility production industry will require more staff over time.

The Accessibility Initiative will work with provincial representatives to develop curricula for students interested in learning how to caption or describe programming. It will institute a certification program that will better train and certify captioners for broadcast quality captioning and description.

**g Annual reports**

A fourth activity of the Accessibility Initiative is to provide the accessibility community, broadcasters, Parliament, Industry Canada and the CRTC with regular reports on progress towards the Access 2020 objective. These annual reports would include summaries of the independent monitoring reports that the Accessibility Initiative would also support.

In our view, annual reports on the degree to which national accessibility standards are being achieved will ensure that progress is made, and best ensures accountability.

Accessibility Initiative will work with broadcasters and telecommunication providers to develop specific plans for achieving the objective, and to ensure that costs common to more than one receive the necessary support.
B  The Accessibility Initiative will benefit the entire communications industry

A counter-intuitive aspect of accessibility is that broadcasters and telecommunication providers whose programming and services are not fully accessible appear indifferent to the market potential of reaching a larger percentage of the available audience. For example, in the 2008 accessibility hearing, the then-head of the Canadian Association of Broadcasters commented that:

1248             ... broadcasters are audience driven. At the core of our business model is the necessity to constantly attract new viewers and new listeners. To put it simply, it is in our best interests, where resources permit, to respond decisively to the needs of all segments of our audience.67

The fact is that during the 1980s and 1990s, when conventional television broadcasters arguably had more resources at their disposal than now, progress in achieving accessibility was extremely slow. Broadcasters simply did “not respond decisively” to the needs of Canadians with disabilities. In fact, it was the accessibility community – not broadcasters – who developed the advertising model that created revenues from accessibility. The reasons this model will not work now were explored at the 2008 accessibility hearing, and centre on the CRTC’s decision to eliminate the limits on advertising in conventional television, thereby driving down the price of advertising. Another example of new will un-do.

First, the Accessibility Initiative will fund the standards and engineering research necessary to enable programming to be accessible on all communications devices. Second, a central complaints and information centre will be established to balance the needs of consumers with the needs of business. Third, the cost of monitoring the entire communications system will occur and be reported.

In our view, the Accessibility Initiative represents a 4-win scenario. The accessibility community will enjoy increased access to the communications sector. Industry stakeholders will benefit from fulfilling their duty to invest financial resources into the broadcasting and telecommunication system. Broadcasters will benefit from access to a larger audience and from

67  Unresolved issues related to the accessibility of telecommunications and broadcasting services to persons with disabilities, CRTC Public Hearing, Transcript, (Gatineau, 17 November 2008) Vol. 1, at ¶1248 (Mr. O’Farrell)
programming whose chances of sale to export markets increase with the inclusion of accessibility. The CRTC benefits as it is able to demonstration the achievement of its mandate under the broadcasting and telecommunications statutes to accommodate people with disabilities.

V Recommendations

To summarize, the Access 2020 Coalition has 5 major recommendations. Our first is that policy and technical decisions must at all times consider accessibility as a foundation check in advance of implementation.

Second, we ask that a bidders premium be established and used to tangibly benefit the entire communications industry.

Third, that 10% of the bidders premium be allocated to the Accessibility Fund.

Fourth, we ask that at all times harmonization of spectrum occur to limit the inevitable challenges faced by the accessibility community in developing tool kits and technology to adapt to new technologies and to avoid the “new will un-do” issues associated with accessibility.

Finally our 5th recommendation is that Industry Canada that spectrum be put aside for research and development, thereby eliminating the need for spectrum licensee partnerships when testing and analysing new product development in accessibility.
Appendices