



27 April 2011

Robert Morin  
Secretary General  
CRTC  
Ottawa, ON  
K1A 0N2

Dear Mr. Secretary General,

**Re: Broadcasting Notice of Consultation CRTC 2010-783. Review of the regulatory framework relating to vertical integration (May 9 2011).**

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

MAC requests the opportunity to appear before the Commission in Gatineau to address issues raised in this proceeding, and requests sign language interpretation and CARTT. We will contact you within the specified time frame if we require video conferencing. If you have any questions, please do not hesitate to contact the undersigned.

Sincerely yours,



Beverley Milligan  
Chief Executive Officer

# **The benefits of Vertical Integration for achieving 100% accessible broadcast day by 2020**

Intervention of Media Access Canada on behalf of the  
Access 2020 Coalition

Regarding

**Broadcasting Notice of Consultation CRTC 2010-783. Review of the regulatory  
framework relating to vertical integration (May 9 2011).**

27 April 2011



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## Executive Summary

1. The CRTC mandated the establishment of a Broadcasting Accessibility Fund (BAF) in response to submissions by MAC<sup>1</sup> during the BCE/CTV acquisition hearing. MACs submissions were made on behalf of the Access 2020 Coalition, a unique organization representing the largest number of Canadian disability groups ever united for a common purpose. The Access 2020 Coalition selected and appointed the MAC board of directors with a view towards the administration of the BAF and it supports MAC, a not-for-profit corporation in this capacity. The MAC Board of Directors<sup>2</sup> has drawn up a set of Governing Principles<sup>3</sup> in order to carry out this mandate.
2. In its proposal, MAC submitted a program, then termed the Accessibility Initiative that outlined 5 areas in which the BAF would focus its funding. These 5 Program Funding Envelopes<sup>4</sup>, PFEs are:
  - a. Business Innovation,
  - b. Technical Innovation,
  - c. Monitoring and Measurement,
  - d. Standards and Best practices, and
  - e. Education.
3. The Board of Directors will appoint Program Funding Committees for each Program Funding Envelope, (PFE). These committees decide the framework and priorities for each PFE. Two thirds of the members of the committees will be representatives of persons with disabilities, representatives of disability organizations and/or other parties with relevant expertise in developing or implementing accessibility solutions. The final third will be representatives of broadcasters and BDUs. The appointments of PFE Committee members will be renewed annually. The CEO of MAC will be on each committee.
4. In the CRTC decision, it was very clear that the fund was to be independent, open-ended and that both tangible benefits and BDU contributions would be directed to the fund<sup>5</sup>. Vertical Integration, therefore, provides an opportunity both to expand the fund and to develop policy across broadcast and BDU platforms to ensure accessibility in the Canadian broadcast network.
5. This document, therefore, will address the opportunities for accessibility through vertical integration, and specifically:

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<sup>1</sup> [http://www.mediac.ca/crtc\\_subs.asp](http://www.mediac.ca/crtc_subs.asp)

<sup>2</sup> See MAC Board of Directors, Appnedix A

<sup>3</sup> See Governing Principles, Appendix B

<sup>4</sup> For more detail on the PFE's, consult Appendix C

<sup>5</sup> <http://www.crtc.gc.ca/eng/archive/2011/2011-163.htm>

- a. Increasing contributions to the Broadcasting Accessibility Fund
  - i. Tangible Benefits
  - ii. BDU Contributions
- b. Vertically integrated policy opportunities
- c. Address key issues raised by the Commission

## **Media Access Canada and the Access 2020 Coalition**

6. 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, making presentations to regulatory and Parliamentary bodies and disseminating information about accessibility in the media.
7. MAC's work also includes the development of accessibility standards,<sup>6</sup> participation in national and international standards development committees and working groups,<sup>7</sup> presentations to regulatory and Parliamentary bodies,<sup>8</sup> supporting disability organizations in related regulatory and Parliamentary work, and the dissemination of information about accessibility in electronic media.<sup>9</sup>
8. Over the last year MAC has led the Access 2020 Coalition with the objective of achieving complete accessibility in Canada's communications system for Canadians with disabilities within the next decade.
9. The Access 2020 Coalition involves disability organizations sharing the goal of 100% accessibility by 2020. A growing number of the organizations and individuals in Canada support MAC's work through participation in the Access 2020 Coalition. Access 2020 Coalition participants include, but are 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

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<sup>6</sup> 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.

<sup>7</sup> 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.

<sup>8</sup> 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.

<sup>9</sup> MAC's last conference was held at next at Ryerson University on March 28, 2011, where MAC presented 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).

- 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 Starling Access Services.

## 1. Background

10. A variety of technologies exist to permit people with disabilities to access and use television programming distributed across cable, satellite and the internet. We describe these technologies and their use below.

### 1.1 Captioning

11. 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.<sup>10</sup> In 1982, the US National Captioning Institute developed real-time captioning to caption newscasts, sports events or other live broadcasts.<sup>11</sup>

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<sup>10</sup> Mary Bellis, "Closed Captioning" online: about.com "Inventors"  
<<http://inventors.about.com/library/inventors/blclosedcaptioning.htm>> (accessed 22 November 2010).

<sup>11</sup> *Ibid.*

12. In 1979 after representatives from the deaf, deafened and hard of hearing community appeared before the CRTC during 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.<sup>12</sup>

13. The CRTC's statement led to the 1981 decision 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.
14. By 1984 the CRTC decided that closed captioning "should receive high priority".<sup>13</sup> Through subsequent decisions the CRTC required 90% of TV station programming to be captioned in 2002.<sup>14</sup>
15. 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.
16. Unfortunately, as of the time of writing (April 2011) these standards have not yet been circulated for comment.
17. It has been some 44 years since captioning was initially developed, but only through the creation of the Broadcasting Accessibility Fund (BAF) is full captioning and descriptive video to become a reality.

## 1.2 Described video

18. 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.
19. 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

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<sup>12</sup> *Renewal of the Canadian Broadcasting Corporation's television and radio network licences*, Decision CRTC 79-320 (Ottawa, 30 April 1979) at 40,

<sup>13</sup> *Services using the Vertical Blanking Interval (Television) or Subsidiary Communications Multiplex Operation (FM) Introduction*, Public Notice CRTC 1984-117 (Ottawa, 17 May 1984).

<sup>14</sup> *Introduction To Decisions Renewing the Licences of Privately-Owned English-Language Television Stations*, Public Notice CRTC 1995-48 (Ottawa, 24 March 1995).



- display sports scores on the screen, but also read them aloud so that the visually impaired can receive the information.”<sup>15</sup>
20. Described video provides those who have significant loss of vision with a greater appreciation of television programming content, and enables them to share the experience of this content with their families and friends without having to constantly ask: “what’s happening?”
  21. The concept of described video was developed in 1974 by a student working on his broadcasting master's thesis in "television for the blind".<sup>16</sup> The technology 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.”<sup>17</sup>
  22. In 2001, the CRTC said that the presence of described video programming “in the Canadian broadcasting system is an important contribution.”<sup>18</sup> 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.<sup>19</sup>
  23. 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.”<sup>20</sup> The Commission also

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<sup>15</sup> Broadcasting Decision CRTC 2001-457, at ¶68.

<sup>16</sup> Audio Description Coalition, “A Brief History of Audio Description in the U.S.” <http://www.audiodescriptioncoalition.org/briefhistory.htm>.

<sup>17</sup> *Ibid.*

<sup>18</sup> *Licence renewals for the television stations controlled by CTV*, Broadcasting Decision CRTC 2001-457 (Ottawa, 2 August 2001) at ¶75.

<sup>19</sup> *Ibid.*, at ¶¶71-72.

<sup>20</sup> *Ibid.*, at ¶75.

- expected broadcasters such as CTV to provide audio descriptions, such as emergency information, “where appropriate”.<sup>21</sup>
24. 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.<sup>22</sup>
25. 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”<sup>23</sup>
26. 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
  - licencees 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.<sup>24</sup>
27. 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.

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<sup>21</sup> *Ibid.*, at ¶70:

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.

<sup>22</sup> Broadcasting Regulatory Policy CRTC 2009-430, at ¶109.

<sup>23</sup> 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.

<sup>24</sup> *Ibid.*, at ¶122.

28. 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 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.

### Telecommunications technology

29. 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.<sup>25</sup>
30. 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".<sup>26</sup>
31. The Access 2020 Coalition wishes to express its concern with the rate of progress in making Canada's telecommunications system accessible. Our recommendations in this submission address these concerns, by suggesting means of achieving full accessibility more quickly.

## 2. The Broadcasting Accessibility Fund

32. The Broadcasting Accessibility Fund was established by the Commission to address accessibility to the Canadian broadcasting system for over 4.4 million Canadians who are deaf, hard of hearing, blind, low-vision and mobility impaired. Even 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, 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; and they are members of our communities.
33. 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

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<sup>25</sup> 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.

<sup>26</sup> *Ibid.*, at ¶14.

path of people who first used the TTY or what is now called the Telephone Device for the Deaf (TDD)? Hundreds of thousands of people have disabilities in Canada, and their lives touch us all.

34. MAC through the BAF will stimulate more success stories, where technology, business and infrastructure developed for Canadians with disabilities will be adopted by and benefit all Canadians. Through this important work, Canada will become the world leader in achieving 100% accessible content across all distribution platforms in the next decade.

### **3. Building the Broadcasting Accessibility Fund**

35. The Commission has acknowledged, “persons with disabilities generally are not able to influence the market sufficiently to obtain accessible telecommunications products and services”<sup>27</sup>. 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**

36. 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.

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<sup>27</sup> CRTC Broadcasting and Telecom Regulatory Policy CRTC 2009-430, paragraph 8

### Third-party non-capital funds

37. The Commission has also approved third-party funds that are not invested. 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 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 was distributed over five years 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.
38. The CRTC then, has established a precedent for generating revenue to improve the Canadian broadcast and telecommunications systems, as well as great flexibility in how the funds are distributed.
39. Therefore, we are asking that the BAF have two distinct structures:
  - a. A Capital Fund for Program Funding Envelopes from tangible benefits
  - b. A Non-Capital Fund to underwrite descriptive video for Canadian Content from BDU contributions
40. MAC proposes that the existing 5.7 million be used to establish a capital fund that will allow for an annual operating budget of \$850,000 per year on an on-going basis. Given 5.7 million will not allow for an operating budget of \$850,000.00, MAC will need to borrow from the fund until such time that tangible benefits can accumulate to a total capital fund of \$32 million. The PFE's would then have ongoing operating revenue of \$850,000.00 from capital fund interest.
41. Simultaneously, and as part of the vertical integration opportunity for accessibility, a yearly contribution to a non-capital fund from the BDU's of \$2.40 per household to be used to pay for original descriptions of Canadian content not otherwise paid for by CMF or others.
42. It is therefore proposed that an annual contribution<sup>28</sup> from BDU be established and paid to the fund on a yearly basis, within 30 days of year-end, from each BDU. This distribution which is quite separate from the tangible benefits capital fund will be dedicated to underwriting description and costs of the approximately 4.5 hours per day of original descriptions, while future tangible benefits contributions to the BAF will go directly to MAC's BAF capital fund that will accumulate to \$32 million, rendering approximately \$850,000.00 per year for the Program Funding Envelopes. Please note the existing 5.7 will be borrowed from until the fund can support an annual operating budget of \$850,000.

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<sup>28</sup> Please note this is equal to the Accessibility Channel pass-through and will pay for 100% of closed captioning and descriptive video of all Canadian content where funding is not otherwise available, by 2020.

43. The benefits from establishing a central source for underwriting costs associated with captioning and description are:
- a. Improved quality, broadcast quality assurance,
  - b. Cost reduction through larger RFP's,
  - c. Stimulation of a Canadian independent accessible content production industry,
  - d. 100% accessible content broadcast day across all distribution platforms.

### 3.1 Broadcasting Accessibility Fund Goal

44. The BAFs goal for funding revenues is two-fold.
45. First, to support the annual Program Funding Envelopes at \$850,000 per year through a capital fund of 32 million; and second, to underwrite as much as possible first window Canadian content descriptive video and later closed captioning to, ideally, 100% by 2020. This content must NOT qualify for Canadian Media Fund or other funds. Our target of 100% by 2020, would require this second BAF non- capital funding stream to come from BDU annual contributions totaling approximately \$24<sup>29</sup> million per year, or \$2.40 per household. Therefore, MAC would administer two funding streams:
- a. **Tangible Benefits:** thirty-two million capital fund to accumulate from future tangible benefits to support the on-going operating budget of \$850,000.00 for Program Funding Envelopes; and
  - b. **BDU Contribution:** Non-capital annual contribution from BDU's of \$2.40 per household to underwrite costs of Canadian content descriptions not covered by CMF or other funds. Once these costs have been covered over time, to address same for closed captioning.

### 3.2 Tangible Benefits

46. In broadcasting, the CRTC addresses lack of competition through tangible benefits. 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.
47. "In the Commission's view, the absence of a competitive process for changes to the ownership or control of programming undertakings makes

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<sup>29</sup> By 2020, the cost of description will be reduced so that achieving 100% will not require and increase in BDU contributions.

- the benefits test an appropriate mechanism for ensuring that the public interest is served<sup>30</sup>.
48. The Accessibility Initiative involves a contemporary business approach to the creation of an independent fund whose annual investment income will pay for and stimulate projects in five separate envelopes. The envelopes will include projects as follows:
- the development and validation of digital standards and best practices guidance for accessible content across all communications platforms,
  - monitoring achievement of the standards through empirical research and a complaints mechanism,
  - technical R&D targeted at reducing costs and streamlining broadcast distribution,
  - business innovation that models revenue opportunities, as well as
  - marketing and education.
49. The five envelopes have been flexibly designed to recognize that the return on investment in the BAF Capital Fund Stream may fluctuate over time depending on national economic conditions and other factors. We propose a five-year term for receipt of tangible benefits monies, as our objective is to ensure that in conjunction with annual interest income from the trust fund, the Accessibility Initiative will leverage additional financing going forward.
50. The components of the five envelopes are as follows:
- Standards and best practices includes the development and implementation of validated standards and published best practices guides, which will include approaches for broadcaster self monitoring.
  - Monitoring includes validation, software design, and statistics for CRTC monitoring reports, analysis of the costs and revenues of accessibility, the monitoring of new media with respect to accessibility, and a mechanism for monitoring complaints.
  - Technical innovation includes an objective of reducing costs for producing accessible content and for ensuring that handheld devices and boxes are functional interfaces that permit the development and introduction of new digital options for accessibility.
  - Business innovation includes the development of business cases, seed funding, and expanded markets for new revenues to underwrite the costs associated with accessible content.
  - The education envelope includes the promotion of the work being undertaken within the other four envelopes, the development of post-secondary educational curricula, and the promotion at conferences and

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<sup>30</sup> Public Notice CRTC 1999-97 BUILDING ON SUCCESS - A POLICY FRAMEWORK FOR CANADIAN TELEVISION, paragraph 24,25

other events of Canada's approach to achieving 100% accessibility by 2020.

### **Annual reports**

51. For all of the PFE's the MAC will provide the accessibility community, broadcasters, Parliament, Industry Canada and the CRTC with regular reports on progress. These annual reports will include summaries of the independent monitoring reports that the Broadcasting Accessibility Fund would also support.
52. Annual reports on the degree to which national accessibility standards are being achieved will ensure that progress is made, and best ensures accountability.
53. MAC 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.

### **Phase 1 (first twelve months): Launch**

54. The first step to achieving complete accessibility involves standards.
55. Complete standards are vital, as they will enable broadcasters, distributors and producers to understand the targets to be met to achieve complete accessibility. As established in Public Notice CRTC 1988-13, standards consist of more than numeric targets, and when initiated outside the CRTC must meet specific criteria set by the CRTC. We intend to respect the requirements of Public Notice CRTC 1988-13, while balancing the interests of persons with disabilities, broadcasters, distributors, telecommunications, and production houses. The appropriate balance may vary according to the nature of the standard being addressed: user interfaces, for example, must place the needs and interests of persons with disabilities first, while broadcast production and distribution standards will be weighted in favour of engineers and manufacturers.
56. Developing standards will therefore require the formation of bilingual committees with expertise in technical, engineering and knowledge of the user community. Phase I of the BAF will permit each committee:
  - to meet to determine its administrative and research needs,
  - to engage engineering and technical expertise, and
  - to draft and test standards in production, distribution and presentation settings.
57. Another key objective in phase one is the development of a strategic plan. This will be accomplished through assessing the accessibility needs of each licensee, identifying opportunities for business and technical innovation and establishing the necessary partners to leverage the funds



into larger initiatives. This approach should ensure success in funding initiatives as well as achieving MAC's mandate.

**Phase 2 (years 2, 3 and 4):**

58. The second stage of the Accessibility Initiative involves the review and validation of the standards developed in Phase I, by the communities for whom the standards are being developed. The Accessibility Initiative will ensure that individual experts who contribute their time and expertise in living with a disability, and who test our and other products, will be compensated for their time. Phase 2 also introduces business innovation projects, in which business plans will be created to address primary and secondary revenue markets.
59. As Phase I introduced the standards and best practices, Phase 2 will transfer information to academic institutions for the development of curricula targeted at students working towards careers in film, television and new media production. In addition, funding under Phase 2 will enable attendance at conferences such as the International Institute of Communications to promote the success of Canada's policy to provide accessibility. It will also permit participation in academic and other publications to expand awareness of Canada's approach to accessibility.
60. Finally, during Phase 2, the successes of the partners and programs involved in each of the envelopes will be publicly recognized.

**Phase 3 (begins year 5): Ongoing long-term activities**

61. The third phase of the Initiative will begin in 2016, the last year in which we anticipate the need for tangible benefits funding. In this phase, the Initiative will undertake projects within each of the five envelopes. Most importantly, however, Phase 3 begins with just 4 years remaining until complete accessibility is expected. The focus of Phase 3 initiatives will be on ensuring demonstrable impact on increasing the volume of high-quality accessible content. Empirical analyses will be undertaken to determine whether priorities within the envelopes must be re-examined to achieve the 2020 objective.

**Annual operating budget**

62. The Access 2020 Coalition has considered the needs of Canadians with disabilities and initially developed a budget that would fully address these needs. The table below sets out costs, by envelope, for the first, second and third phases of the Accessibility Initiative. It is intended to demonstrate the changes in priorities as the BAF addresses the many challenges for accessibility today and over time:

Envelope	Activity	Year 1 budget	2016 budget	2017 budget
Business Innovation	New Markets Clearing house Other	70,000	130,000	90,000
Technical Innovation	CC Efficiencies DV Efficiencies Harmonization User interface	160,000	220,000	260,000
Measurement and Monitoring	Validation CRTC Monitoring Report Broadcaster Revenues Complaints	150,000	120,000	170,000
Standards and Best Practices	Digital Production Presentation Multiplatform User Interface Harmonization	220,000	110,000	80,000
Complaints Mechanism	CRTC Reporting Problem resolution	72,000	82,000	90,000
Education	Social Media Curriculum Presentations/Events Publishing	110,000	120,000	140,000
<b>Sub-total</b>		<b>782,000</b>	<b>782,000</b>	<b>780,000</b>
Administration 8%	Translation Accessibility Office Auditing Legals	68,000	68,000	68,000
<b>Total</b>		<b>850,000</b>	<b>850,000</b>	<b>850,000</b>

## Cost to achieve 100% accessibility in 2020

63. MAC on behalf of The Access 2020 Coalition proposed in the BCE/CTV transaction that 1% of the value of ownership transactions be allocated to the BAF. Our plan was based on the notion of a trust fund whose annual investment interest would provide sufficient funding for all the initiatives needed to achieve 100% high-quality captioning and descriptive video across the many digital operating environments used by Canadians.

64. The table below sets out the existing revenue from the BAF at three critical points.

1-3 year	\$ 5,700,000	0.0162	1	\$92,340
3-5 year	\$ 5,700,000	0.0228	1	\$ 129,960
5-10 year	\$ 5,700,000	0.0299	1	<b>\$ 170,430</b>

65. The \$5.7 million tangible benefit will generate approximately \$170,000 dollars per year in interest at current rates. This is well below the \$850,000.00 that will be needed in each year to 2020. Therefore, MAC will need to borrow from the capital fund against future tangible benefit contributions.

66. A total of \$32 million would yield approximately \$850,000 per year in interest. This is sufficient to underwrite costs associated with the PFEs to 2020 and beyond.

67. 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.

68. Therefore, we propose that, in the context of vertical integration reviews, CRTC introduce a policy which will require all broadcast transactions to allocate a significant amount of tangible benefits to the BAF until a capital fund of \$32 million is established.<sup>31</sup>

## It is time for a policy that will benefit BAF

69. We have reviewed the CRTC's decisions regarding benefits in the ten largest ownership transactions involving television for the past decade. These transactions involved the transfer in control of \$9,009 million dollars worth of programming services. The CRTC approved tangible benefits of

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<sup>31</sup> The initial seed funding of 5.7 million will be used over 6 years, at \$850,000.00 per year<sup>31</sup> while the capital fund is being built.

- \$878 million (or 9.7% of the transaction amount) in relation to these transactions.
70. Of the ten transactions since 2000, seven did not provide benefits in relation to accessibility. The three transactions whose benefits at least addressed accessibility – BCE’s purchase of CTV in Broadcasting Decision CRTC 2000-747, Quebecor’s purchase of TVA in Broadcasting Decision CRTC 2001-384, and Shaw’s purchase of Canwest in Broadcasting Decision CRTC 2010-782 – directed funds worth \$5.5 million to captioning or described video.
  71. Accessibility-related benefits therefore amounted to 0.06% of the total value of the ten transactions, and amounted to 0.6% of the total benefits in these transactions.
  72. The Access 2020 Coalition respectfully submits that the tangible benefits system is a simple and straightforward way for the CRTC to enable and empower the accessibility community to obtain complete accessibility.
  73. We respectfully submit that a regulatory policy that permits 99% of tangible benefits to be used in ways that do not benefit Canadians with disabilities – who represent almost 15% of the population<sup>32</sup> – cannot continue. Reasonable accommodation must take place to enable Canada’s communications system to become fully accessible, and the tangible benefits systems is the most appropriate mechanism for accomplishing this objective.

### 3.3 BDU Annual Contribution

74. The Accessible Channel is distributed on a mandatory basis with a monthly subscriber rate of \$0.20.<sup>33</sup> As the following sample of programming from for a recent day in January shows that, while The Accessible Channel provides a fully described and captioned programming service, it is not a solution to 100% accessible content. It is interesting to note that if a \$0.20 monthly rate, payable annually (\$2.40 per household) were to be dedicated to the Broadcast Accessibility Fund, it would cover the cost of description across the entire broadcasting system on a yearly basis.

The Accessible Channel Schedule for Saturday, January 8 2011.			
12:01am	Movie: Miracle on I-880 (1993)	12:00pm	Love Lucy
2:00am	Movie: Miracle on I-880 (1993)	12:30pm	I Love Lucy
4:00am	Disaster DIY	1:00pm	Perry Mason

<sup>32</sup> Statistics Canada, *The Daily: Participation and Activity Limitations Survey*, Dec. 3, 2007:

<<http://www.statcan.gc.ca/daily-quotidien/071203/dq071203a-eng.htm>>

<sup>33</sup> 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 ¶23.

4:30am	Danger Bay	2:00pm	Movie: Woman of the Year (1942)
5:00am	Road to Avonlea	4:00pm	Ray Bradbury Theatre (French)
6:00am	The Canadians (aka Faces in History)	4:30pm	Real NBA
7:00am	Emily of New Moon (French)	5:00pm	Dead Man's Gun - Alliance
8:00am	Little Bear	6:00pm	Departures
8:30am	Franklin	7:00pm	Movie: Woman of the Year (1942)
9:00am	The Black Stallion	9:00pm	Movie: Six Degrees of Separation (1993)
9:30am	Ready or Not	11:00pm	Ray Bradbury Theatre (French)
10:00am	Emily of New Moon (French)	11:30pm	Glenn Martin DDS
11:00am	Ice Pilots NWT		

Source: the accessible channel, "Schedule" (8 January 2011) <<http://www.theaccessiblechannel.com/fullschedule>>.

75. 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"<sup>34</sup>
76. Even the then National Broadcast Reading Service, in its application stated The Accessibility Channel was not a solution for accessibility when they stated

"39. While we do not propose The Accessible Channel as a substitute for the described video obligations of broadcasters, nor as an "amnesty" for BDUs' with respect to their delivery obligations, the service proposed will be an effective means to dismantle these barriers and provide improved access almost immediately."<sup>35</sup>

77. 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."<sup>36</sup>

78. Media Access Canada and the Access 2020 Coalition respectfully submits, that if the Commission can justify a \$0.20 pass-through mandatory carriage for a program undertaking simply because it provides

<sup>34</sup> 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.

<sup>35</sup> Application by The National Broadcast Reading Service Inc. on behalf of a company to be incorporated ("NBRS"), to obtain a broadcasting licence to operate a satellite-to-cable described video programming undertaking to be known as The Accessible Channel and for the issuance of a distribution order pursuant to s. 9(1)(h) of the *Broadcasting Act*

<sup>36</sup> CRTC, "CRTC takes steps to improve access to communications services for Canadians", News release (Ottawa, 21 July 2009) <<http://www.crtc.gc.ca/eng/com100/2009/r090721.htm>>.

- 100% accessibility, that our request for same to underwrite 100% accessibility of all Canadian content by 2020, is reasonable.
79. Approximately 22-27% of the broadcast day requires original captioning and descriptions<sup>37</sup>. Once this Canadian content is fully described, the remainder will become described through CMF funds or through the acquisition of foreign captioned and described content.
80. Further, the Monitor 2: Quantitative Analysis reports that of the 10 broadcasters sampled for descriptions only 3 provided any:<sup>38</sup> This means most licencees are ignoring their conditions of licence and there is no real way to enforce compliance. The commission has stated they only have one tool to administer compliance by reducing the term of a licence for a licencee.

“6741 (Commissioner Lamarre) First of all, on the monitoring issue, I just need to make a comment. You are asking that we monitor it, and if they are non-compliant, either we shorten the licence term or we impose a fine.

6742 Well, under the Broadcasting Act we have no power to impose fines, and believe me, there are some of us here who wish greatly we would be able to impose fines, but at this point in time we can't. So we are basically limited to shorter licence terms of mandatory orders. Those are our two main tools just so you keep it in mind.”<sup>39</sup>

81. There is no real ability to enforce compliance by the commission under existing conditions as it is not reasonable to ask the disability community to wait 5 or even 3 years to make a broadcaster accountable for non-compliance.
82. An easy solution to the issue of non-compliance could be a yearly cable contribution of \$2.40 (\$0.20 per month) per household to MAC's non-capital BAF fund to administer the production of original descriptions for Canadian Content.
83. If approved by the Commission, in the first year, while awaiting the first BDU payment, MAC will develop an accessibility strategy that will outline a content plan for accessibility across the entire Canadian broadcasting system. Once completed, MAC will submit “The Accessibility Plan for Canadian Broadcasting” to the Commission outlining programming priorities and strategies for achieving 100% accessibility.
84. Upon first payment into MAC's non-capital stream of the BAF from BDU contributions, quarterly RFP's will be published and contracts will be awarded based on cost. Each RFP will require a minimum quality standard of “Broadcast Quality Certification”.

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<sup>37</sup> To be confirmed in the accessibility assessment, (Phase 1) still to be conducted

<sup>38</sup> [www.mediac.ca](http://www.mediac.ca)

<sup>39</sup> Transcript, Volume 7, To consider the broadcasting applications for the group-based licence renewals for English-language television groups listed in Broadcasting Notice of Consultation CRTC 2010-952, 2010-952-1, 2010-952-2 and 2010-952-3

85. This structure will provide increased leverage for broadcasters within a vertically integrated system. Instead of having to produce description internally for their Canadian content, they will be able to obtain it from one central source, which will be able to reduce production costs.
86. Such changes will not only benefit the large communications companies that are passing-through the funds, but also smaller independent broadcasters and specialty channels that might not otherwise be able to afford to provide description.

#### **4. Vertical Integration and Emerging Distribution Platforms**

87. The benefits of owning multiple content and distribution platforms will allow communications organizations to leverage all activities regulated and un-regulated under the broadcasting act. De-regulation or a lack of regulation for a vertically integrated communications organization must employ a policy that relies substantially on leveraging. A leveraging policy for vertical integration will ensure accessibility.
88. The benefit, therefore, of vertical integration is that regardless of the distribution platform, companies are large enough to somehow benefit from consumer preferences. For example, should all consumers give up cable and/or satellite in favour of “online” or Internet-based content delivery services, this same infrastructure is able to provide ISP services.
89. Industry Canada also 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.<sup>10</sup> 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).<sup>40</sup>

90. In the United States, a class action suit has been filed against Netflix which is accused of being in violation of title II of the Americans with Disability Act of 1990<sup>41</sup>.
91. The introduction of new technology, policies and business models often results in the loss of current accessibility and a lack of consideration for

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<sup>40</sup> Consultation on a Policy and Technical Framework for the 700 MHz Band and Aspects Related to Commercial Mobile Spectrum, page 11

<sup>41</sup> See Donald Cullen versus Netflix, Inc., Appendix D, submitted as an attachment with this submission

accessibility needs in the basic framework of development. For Canadians with disabilities, **new will often un-do**, as is the case in the lack of accessible content in the “new” broadcast distribution platform on the Internet.

92. As Kevin Crull recently stated:

“8147 As you know, regulatory symmetry is a very significant issue for BCE given the competitive dynamics of the communications and media sectors. And we observe that symmetry is a regulatory objective for the Commission. It has been applied to LPIF contributions, to the 5 percent annual BDU payments and priority programming requirements, to name just a few. In all cases, the same requirements apply to all contributors regardless of their revenue, profit or asset mix profile, which vary widely. It would therefore be inconsistent with past practice to abandon this principle.”<sup>42</sup>

93. The principle of symmetry within the context of accessible content in a vertically integrated organization must require that it exist on all distribution platforms, regardless of whether or not they are regulated. This is the benefit of vertical integration: to leverage size and control in an ever-evolving broadcast and distribution system to ensure full access of Canadian content to all Canadians.

94. 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.<sup>43</sup>

95. 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

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<sup>42</sup> **Kevin Crull: Response to interventions, presentation by CTV, now known as Bell Media.**

TranscriptTo consider the broadcasting applications for the group-based licence renewals for English-language television groups listed in Broadcasting Notice of Consultation CRTC 2010-952, 2010-952-1, 2010-952-2 and 2010-952-3

<sup>43</sup> *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)



- disabilities. In fact, it was the accessibility community – not broadcasters – who developed the advertising model that created revenues from accessibility – it was Canada Caption Inc., a Charitable organization that created, brought to market and demonstrated the ability to profit from captioning sponsorship advertising.
96. Such an approach is now unworkable, as was noted at the 2008 accessibility hearing when the CRTC eliminated limits on advertising on conventional television. Removing those limits effectively drove down the price of advertising, thus limiting its potential as a source of funding for accessibility initiatives. This is another example of how “new will un-do”.
97. Therefore, it is critical that the existing vertically integrated and regulated infrastructure ensure that any new or existing un-regulated content venues or content distribution opportunities are accessible.

## 5. Recommendations

### Recommendation 1:

98. Identify the BAF Capital Stream as a vertical integration priority for future tangible benefits over the next 5 years until a capital fund of \$32 million is established<sup>44</sup>. This BAF Capital Stream will support the Program Funding Envelope’s annual operating budget of \$850,000 per year.

### Recommendation 2:

99. Require annual BDU contribution to the BAF Non Capital Stream of \$2.40 per household, (equivalent of \$0.20 per month), paid yearly and within 30 days of year end to be used exclusively for original closed captioning and descriptive video of Canadian content that does not qualify for CMF or other funding sources.

### Recommendation 3:

100. Enact policy to ensure any new or existing vertically integrated licencees be required to ensure all content across all distribution platforms, both regulated and unregulated be both captioned and described if captions or descriptions exist.

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<sup>44</sup> The initial funding of \$5.7 million will need to be borrow from at \$850,000.00 per year<sup>44</sup> while the capital fund is accumulating.

## 6. Appendices

### 6.1 Appendix A

#### **Access 2020 Coalition Board of Director Submission for MAC as Administrator of Broadcasting Accessibility Fund**

\*The Access 2020 Coalition chose a board not representative of any one organization, but rather, seasoned and well-respected representatives of the accessibility community. We hope BCE will do same when considering board appointments.

#### **Broadcasters:**

**Terry Coles**, Chairman has had a distinguished career in radio and television. Currently President and COO of Vista Broadcast Group, in his 55 years in broadcasting, Terry brings to MAC a legacy of success, be it building the Mid-Canada TV System, President of CFCN-Calgary, CKY-TV Winnipeg CUC Communications or YTV. Throughout his career, he has utilized his professional skills for philanthropic purpose and currently serves on the board of the Youth Orchestra of the Americas, based in Washington, DC.

#### **Accessibility Community and Experts:**

**Dr. Charles Laszlo**, Vice Chair is a Professor Emeritus, Order of Canada recipient and Engineer – Mr. Laszlo is a successful businessman and academic having made significant contributions to the field of biomedicine. As the founding President of the Canadian Hard of Hearing Association, Charles served on its executive and board of directors in various capacities for 17 years.

**Allister Byrne**, Treasurer, has had a distinguished career in business and finance comprised of 40 years culminating with his role as Managing Partner to Grant Thornton LLP serving as Chairman of the National Board of Directors. He has served on many chartered accounting bodies, as the Chair of the March of Dimes and on the York Region Community Foundation.

**Gary Malkowski**, Secretary, is the first ever Province of Ontario deaf MPP - for York East from 1990-95. Serving as Parliamentary Assistant and on many Standing Committees, he introduced a Private Member's bill leading to the introduction and implementation of the Accessibility for Ontarians with Disabilities Act of 2005 - leaving a legacy for accessibility that is recognized internationally. Gary serves on the boards of various disability organizations and is currently working as Special Advisor to the President, Public Affairs at the Canadian Hearing Society (CHS).

As a law student, **Anthony Tibbs** co-founded and served as the director of the Centre for Students with Disabilities at the University of Ottawa. This student-funded, cross-disability initiative was formed to provide representation, advocacy support, and other services to students with disabilities. Anthony is currently pursuing a career in law.

For the past 6 years, **Max Beck** has been the Chief Executive Officer of Easter Seals Canada one of the largest National not-for-profit disability organizations in Canada. He has been head of Ontario Place, Social Planning for the City of Vancouver, Secretary of State (BC and Yukon), and Opportunities for Youth.

**Cathy Moore** has participated on various boards and committees. She was a commissioner on the Nova Scotia Human Rights Commission and participated in the Partners Against Racism Committee. She was also a founding board member of REACH Nova Scotia, an organization dedicated to providing pro bono legal services to persons with disabilities. Currently Cathy serves as National Director, Government Relations for the CNIB.

To be appointed:

1 Broadcaster/BDU Eastern Canada

1 Broadcaster French Broadcasting

Total 9 Board members 2/3 disability and/or accessibility experts.

\*Please note, the MAC board was appointed by the Access 2020 Coalition and confirmed its support at the 28 March, 2011 Access 2020 Coalition workshop, held in Toronto, Canada.

The Access 2020 Coalition appointed this MAC board for the sole purpose of administering the fund.

## 6. 2 Appendix B

### Broadcasting Accessibility Fund Governing Principles

#### 1. MAC and the Broadcasting Accessibility Fund Mandate

MAC, through the BAF, has a mandate is to improve the accessibility of the Canadian broadcasting system through establishing 5 Program Funding Envelopes<sup>45</sup>, PFEs: Business Innovation; Technical Innovation; Monitoring and Measurement; Standards and Best practices; and Education.

MAC and its Board of Directors are committed to adhering to best practices in corporate governance to ensure that MAC is managed responsibly for the benefit of the Access 2020 Coalition, funders, industry stakeholders and the public.

MAC's members are the MAC Board of Directors.

#### Program Funding Envelope Committees<sup>46</sup>

There will be a committee appointed by the Board of Directors for each PFE. Two thirds of the members of these committees will be representative of persons with disabilities, representatives of disability organizations and/or other parties with relevant expertise in developing or implementing accessibility solutions. The final third will be representatives of broadcasters and BDUs. The PFE Committee members will be appointed and renewed yearly.

The CEO will be on each committee.

#### 2. Board of Directors<sup>47</sup> – Independent Board

MAC's Board of Directors is fully independent from management, its funders and any beneficiaries of the BAF. The Access 2020 Coalition will nominate the initial 9 (nine) board of directors, all of whom are Canadian; six of which will be persons with disabilities, representatives of disability organizations and/or other parties with relevant expertise in developing or implementing accessibility solutions. The final three will represent BDUs or broadcasters, and casting no more than one third of the votes in a meeting. All decisions must be made by majority vote<sup>48</sup>, except as may otherwise be required by the MAC bylaws or relevant legislative provisions.

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<sup>45</sup> For more detail on the PFE's, consult Appendix C

<sup>46</sup> See all committees Appendix E

<sup>47</sup> List of Access 2020 Coalition appointments for founding board, Appendix A

<sup>48</sup> Quorum must be a mandatory full board, unless the board determines otherwise

## How we determine independence

In order to be “independent”, a Board nominee:

- Must not be in conflict with the successful growth and prosperity of the Broadcasting Accessibility Fund
- Must not be an employee of MAC; and
- Must not have any direct or indirect material relationship with MAC, one of its funders or a beneficiary of the BAF that could reasonably be perceived to interfere with the exercise of independent judgment by the individual or the ability of the individual to carry out his or her responsibilities as a director of MAC.

The determination of whether an individual is independent is made by the Board. Such a determination requires an affirmative vote of two-thirds of the directors.

The Board assesses whether an individual is independent annually and whenever a director provides new information. The Board considers all relevant information in assessing whether an individual is independent. If a director ceases to be independent, he or she immediately ceases to be a member of the Board.

## Chair of the Board

The Chair presides at all meetings of Members and the Board. The Chair is responsible for ensuring that all orders and resolutions of the Board are carried into effect. The position description for the Chair will be posted on MAC's website.

## 3. Board Mandate

The Board is responsible for the stewardship of MAC, including oversight of the BAF and MAC's other activities, oversight of MAC's strategic direction, and ensuring that management conducts the business and affairs of MAC in accordance with its objectives. Some of the Board's key responsibilities include:

### Strategic Planning

The Board reviews, provides input into and approves MAC's strategic plans that take into account MAC's objectives and major risks and opportunities. In addition, the Board oversees the execution and fulfillment of MAC's strategies and key goals.

A strategic plan is prepared at least every three years (setting out MAC's five-

year plan) by MAC with the Board's input and oversight. MAC's annual business plan details MAC's objectives for the year, reflecting the direction set out in MAC's strategic plan.

## **Program Guidelines**

The Board approves BAF policy decisions that form the basis for the PFE Guidelines for each fiscal year.

## **Corporate Governance**

Through its Governance and HR Committee<sup>49</sup>, the Board reviews MAC's corporate governance practices and policies, including MAC's Code of Business Conduct, with a view to ensuring that such practices and policies conform to "best practices".

## **Succession Planning**

The Board oversees succession planning for executive management. The Governance and HR Committee reviews management's long-range planning for executive development and succession, and is responsible for the CEO succession plan.

## **Reporting Reviews**

MAC will establish, in consultation with the CRTC, appropriate reporting protocols mandating, at a minimum, annual reports with quarterly interim updates. MAC also reports to its stakeholders and to its funders. The Board oversees and monitors MAC's reporting. Financial reporting is reviewed through the Board's Audit Committee and governance reporting is reviewed through the Board's Governance and HR Committee.

## **Risk Management**

Through its Audit Committee, the Board reviews and ratifies MAC's systems of risk management, internal compliance and control, and legal compliance to ensure appropriate compliance frameworks and controls are in place. The Board ensures that management has implemented and is maintaining effective internal controls.

## **Day-to-day Management and Administration**

Responsibility for the day-to-day management and administration of MAC is

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<sup>49</sup> Members of this committee are: Terry Coles, Allister Byrne, Gary Malkowski and Charles Laszlo

delegated by the Board to the CEO and executive management of MAC.

#### **4. Position Descriptions**

The Board will adopt position descriptions for the Chair of the Board and the CEO and will be approved by the Board. The Governance and HR Committee shall review the position descriptions on an annual basis, and the Board approves any changes. The responsibilities of directors are set out in the Board Charter.

#### **5. Director Developments and Continuing Education**

##### **Orientation**

New directors participate in orientation sessions to learn MAC's operations and responsibilities, and to understand the role of the Board, its committees and their responsibilities as individual directors.

- Orientation sessions are given in the following areas:
  - The structure and mandates of the Board and its committees,
  - Program Funding Envelopes,
  - An overview of current issues.

##### **Director Development and Continuing Education**

The Governance and HR Committee oversees a director development and continuing education program to ensure that directors have the information and skills needed to fulfill their responsibilities.

#### **6. Accountability**

The Board considers one of its primary responsibilities to be the responsible management of the funds contributed by its funders to the BAF. As such, the Board strives to be transparent in its governance of the BAF and accountable to its funders and to industry stakeholders.

The Board believes it to be of fundamental importance that any risk to the management of the funds be identified and actions taken to mitigate such risks. The Board will develop a comprehensive on-going risk-based audit plan for internal audits. In addition, audits will be conducted of select applicants who have received funding from the BAF. MAC will retain an internal audit specialist, who reports directly to the Audit Committee on audit matters, to conduct these audits.

The Board regularly receives audit reports from the Audit Committee.

## Measures for Receiving Stakeholder Feedback

MAC will adopt a number of measures for receiving stakeholder feedback. It will adopt a Consultation Policy, which will require MAC to conduct meaningful, formal, ongoing and inclusive consultations with its stakeholders including the Access 2020 Coalition; individual users; accessible content providers; broadcasters and the BDU industry. Some other measures include:

- Biannual (i.e. twice per year) workshop for stakeholders conducted by MAC's management staff to address program policy changes, issues with stakeholders and issues impacting accessibility,
- periodic client surveys to solicit feedback on a variety of issues,
- attendance at industry events and conferences by MAC's staff to meet directly with stakeholders.

In addition, MAC will adopt formal issue resolution processes for applicant issues, guideline compliance issues, Access 2020 Coalition issues and broadcaster issues.

## 7. Code of Business Conduct

MAC is committed to conducting its activities with integrity, in accordance with the highest ethical standards and all laws, rules and regulations applicable to MAC or its activities. The Board will adopt a Code of Business Conduct similar to existing independent production funds 1997-98 and 1999-29 and broadcasting Regulatory Policy 2010-833) to promote:

- honest, responsible and ethical conduct, including the ethical and responsible handling of personal and professional relationships;
- full, fair, accurate and timely disclosure in the reports that MAC files with the CRTC and all other public communications;
- prompt reporting of any known or reasonably suspected violations of the Code; and;
- accountability for adherence to the Code.

The Code applies to all of MAC's directors, officers and employees (including contract employees).

The Code establishes a communication channel for employees and other associates of MAC to raise concerns about possible violations of laws, unethical conduct, conflicts of interest or other non-compliance with the provisions of the Code. The Audit Committee monitors this process.

The Code is reviewed annually by the Governance and HR Committee to ensure that it continues to reflect best practices. Compliance with the Code is monitored by the Audit Committee.



## 8. Compensation Governance

The Governance and HR Committee oversees the compensation of MAC's executive management. In regards to CEO, the Committee oversees the Board's process for setting goals and objectives, evaluating performance annually in light of these goals and objectives and, determining annual remuneration.

For the rest of MAC's executive management, the Committee reviews and recommends to the Board for approval, compensation plans and the structure of executive management.

There is no compensation for directors, however all reasonable expenses incurred as a result of performing their responsibilities, as a director will be reimbursed.

All PFE Committee members will have their out of pocket expenses covered. PFE Committee members, who are not already being paid to participate on the committee through their employer or otherwise, shall receive an honorarium, the amount of which will be decided by the Board of Directors.

## 9. Audit Committee

The Board has established an Audit Committee, which is responsible for overseeing MAC's accounting and financial reporting processes, internal financial controls, external audit function, investments and risk management practices.

The Audit Committee's responsibilities include:

- Accounting policies:
  - review of MAC's significant accounting policies and all issues regarding accounting principles and financial statement presentations;
- Financial reporting process and financial statements:
  - making the necessary inquiries into the integrity of MAC's financial reporting process and the adequacy of internal controls, to be reasonably assured as to the reliability of the financial reporting and the preparation of financial statements;
  - review of issues related to liquidity, investments and reserves;
  - annual review and approval of MAC's investment policies;
  - review of the quarterly financial statements with management and recommend the annual audited financial statements to the Board for its approval;
- External auditor:
  - direct responsibility for the recommendation of an external auditor to the Members and oversight of the external auditor's work, including the approval of audit plans and scope of work;
- Internal controls and risk management:

- receipt and review of reports from management and the internal and external auditor regarding MAC's accounting system and internal controls;
- discussion of guidelines and policies to govern the process by which risk assessment and risk management are handled;
- review and approval of the designated signing authorities for MAC;
- Internal audit and compliance:
  - review and approval of the appointment of the internal audit specialist; and
  - review of reports prepared by the internal audit specialist.

## **10. Assessments**

The Board's approach to assessment is meant to be constructive and to ensure that the right programs are in place to encourage continual improvement in directors' individual skills and the Board's and its committees' functioning and effectiveness.

### **Board and Individual Director Feedback**

Directors complete an annual feedback survey on Board effectiveness and performance, as well as a self-assessment. Directors are asked to consider what the Board could do differently, and what the Board's priorities in the coming year should be. The Chair of the Board has a one-on-one discussion with the directors about their performance and any development needs of the Board, its committees and the individual.

Consolidated results are reviewed by the Governance and HR Committee with the Chair to identify trends and possible actions. The Chair then leads a discussion of the results and the proposed action plans with the Board. The Governance and HR Committee monitors the implementation of the action plans throughout the year.

### **Committees**

Each committee holds a self-assessment meeting to discuss feedback and viewpoints and then sets goals or objectives to respond to any development opportunities identified in the discussions. Each committee chair then reviews the results and proposed action plans with the Board. Each committee monitors its activities to address goals and objectives throughout the year.

## **11. Fund Dissolution Distributions**

In the unlikely event the fund is dissolved, a not for profit or charitable organization(s), with a similar mandate to BAF will receive all or a portion of the funds. The Board of Directors will identify and decide on distribution.



## 6.3 Appendix C

### Program Funding Envelopes

#### Business Innovation

Business Innovation will focus on the examination and seed funding of business plans which can demonstrate new revenues for accessible content. For example, an accessible content clearing house for copyrighted captions and descriptions, or a web based BDU site that provides the ability to enable captioning and descriptions. It will also, as a second priority, examine business opportunities that will assist in achieving 100% accessible content broadcast day. For example, new accessible content production company start-ups in a region where none exists.

#### Technical Innovation

As a key priority, Technical Innovation will focus on bringing the cost of producing closed captioning and descriptive video down through technology. For example, technology that harmonizes the captioning and description process, or advances in speaker dependent voice recognition. As a second priority it will fund research and development for monitoring accessible content for quality and compliance.

#### Standards and Best Practices

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.<sup>50</sup>

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.

MAC has established collaborative working groups and continues to do so. 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

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<sup>50</sup> *Monitor 1*, "Chairman's message".

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.

The Broadcasting Accessibility Fund will fund the development of standards and best practices and ensure that the costs of all participants – especially the accessibility representatives – are covered. It will 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.

MAC recognizes, as a key priority that achieving accessibility, like achievements in Canadian programming, is not charity, that people and organizations who participate on its committees must be paid as experts much like the broadcasters and other participants.

### **Monitoring and Measurement**

After standards have been created, progress in meeting the standards must be 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 "... some agency should be responsible for periodically assessing captioning and publicly reporting its findings".<sup>51</sup> The purpose was not to "to point a finger", but to "draw valid conclusions about the state of captioning in Canada" in 1992.<sup>52</sup>

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

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<sup>51</sup> *Monitor*, "Chairman's Message".

<sup>52</sup> *Ibid.*

2553 COMMISSIONER LAMARRE: Thank you for that precision.

2554 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.

2555 It has been proposed that broadcast licensees be required to develop an internal quality control policy for closed captioning.

2556 In your opinion, what should an internal quality control policy include to be truly effective?

2557 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.

2558 There has been a lot of misrepresentation and lies about what they have done, so I don't trust them.

2559 **We need an outside person to be able to monitor the quality.**

2560 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?

2561 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.

2562 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.

2563 At CAD, we would like to adopt what they have as proposed regulations for the FCC.

Part of the mandate of MAC 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.

## Education

A Fifth activity of the Broadcasting Accessibility Fund involves education. For example, knowing that Canada is facing an aging population that will inevitably face vision and hearing loss, the accessibility production industry will in all likelihood require more staff over time.

MAC 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.

## **6. 4 Appendix D**

**Donald Cullen vs. Netflix**

**Filed under separate cover**

## **6.5 Appendix E**

### **MAC Committees:**

#### **Board of Director Committees**

**Audit**

**Governance and HR**

#### **Committees appointed by the Board of Directors:**

- 1. Business Innovation**
- 2. Technical Innovation**
- 3. Monitoring and Measurement**
- 4. Standards and Best Practices**
- 5. Education**

**\*\*\*\* End of Document \*\*\*\***