



February 16, 2016

Ms. Danielle May-Cuconato
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario K1A 0N2

Filed Electronically

Dear Ms. May-Cuconato:

**Re: Broadcasting Notice of Consultation CRTC 2015-421
A review of the policy framework for local and community television programming**

1. This is the joint final written submission in the above-noted matter from the Alliance of Canadian Cinema, Television and Radio Artists (ACTRA), the Canadian Media Producers Association (CMPA), the Directors Guild of Canada (DGC) and the Writers Guild of Canada (WGC) (collectively, "the Group").
2. In our original submission, the Group focused primarily on the allocation of contributions from broadcasting distribution undertakings (BDUs) between local expression, the Canada Media Fund (CMF), and the Certified Independent Production Funds (CIPFs). We stated our understanding that, while the Commission is contemplating the possibility of re-allocating resources currently directed to local and community programming, it is not contemplating in this proceeding re-allocating the split in the BDUs' regulated contributions as between community access programming and the CMF and/or CIPFs in order to increase the former at the expense of the latter. The Commission seemed to confirm the correctness of our understanding in its 12 January 2016 Working Document for discussion at the hearing¹ when it stated:

Many interveners have already commented on the possibility of establishing a funding mechanism to help contribute to the creation of locally relevant and reflective programming. The Commission is interested in discussing such mechanisms, which would allow for the redistribution of the resources currently in the system and

¹ Broadcasting Notice of Consultation CRTC 2015-421-3, <http://www.crtc.gc.ca/eng/archive/2015/2015-421-3.htm>.

earmarked for local expression, in order to allocate them according to the demonstrable needs of each platform and each market.²

3. Nevertheless, three parties in the proceeding – BCE Inc. (BCE), Cogeco Cable Inc. (Cogeco) and TELUS – proposed some form of re-allocating CMF and/or CIPF funding to support their local or community programming. For the reasons set out in our original submission and as set out below, the Group opposes all of these proposals.

BCE

4. In its written submission to this proceeding, BCE proposed “the creation of a local news fund (LNF) to support the production of local news on conventional television stations”, under which a portion of the existing funds for both community programming and the CMF/CIPFs would be redirected to the LNF.”³ BCE did not modify this proposal at the public hearing.⁴
5. The Group opposes BCE’s proposal to the extent it contemplates re-directing funds from the CMF/CIPFs to the proposed LNF, since BCE’s plan would have a significant impact on the CMF and CIPFs. In its written submission, BCE estimated the impact of its proposal at approximately 4% of the CMF’s total revenues, which it characterized as “minimal”. We submit that this description masks a far more significant impact.
6. Firstly, BCE’s 4% calculation is based upon the CMF’s total revenues, including \$134.1 million in annual funding from the federal government. This federal government funding is not part of the BDU contribution regime under CRTC regulation, so it’s unclear why it should be included in BCE’s calculation of the impact on BDU contributions to Canadian programming. 4% of the CMF’s 2013-2014 total revenues—i.e. \$386 million—is over \$15.44 million, or around 7% of the \$218 million in BDU contributions it received that year.⁵
7. Secondly, and more importantly, when the Group does the math on BCE’s proposals, we get different numbers than BCE does. Taking the formulae proposed by BCE in the table at paragraph 33 of its written submission, and applying them to the 2014 BDU revenues reported at Table 4.3.1 of the 2015 Communications Monitoring Report, we see a reduction in CMF contributions of \$19.6 million. This is a 9% reduction from current contributions. Further, BCE’s proposal impacts both the CMF and the CIPFs, the latter of which received \$55 million in 2014.⁶ Applying BCE’s proposals to 2014 BDU revenues shows a \$1.3 million reduction in CIPF

² Ibid., at par. 23. Emphasis added.

³ BCE Submission, pars 32-34.

⁴ Transcript, 25 January 2016, <http://www.crtc.gc.ca/eng/transcripts/2016/tb0126.htm>, ll 1172-1173.

⁵ Communications Monitoring Report 2015, Figure 4.3.9 – Contributions to the CMF, LPIF, and other independent production funds, and expenditures on local expression (community channels), as reported by BDUs (\$ millions).

⁶ Ibid.

contributions. The total impact on CMF and CIPF revenues therefore appears to be approximately \$20.9 million annually based on 2014 numbers.

8. Thirdly, as we noted in our initial written submission, the Commission has recognized that each \$1 of funding provided by the CMF results in \$3.38 towards the creation of Canadian programming.⁷ Applying this multiplier to the above CMF revenue reduction calculation shows a \$66.2 million loss in total production volume. It is reasonable to assume a similar multiplier effect exists for CIPF funding—if so, its share of production volume decline would be over \$4.4 million. In total, BCE’s proposal would likely result in approximately \$70 million in lost production in the genres supported by the CMF and the CIPFs. This represents 3-4 big-budget dramatic series. The Group considers this to be a very significant impact.

Cogeco

9. In its written submission Cogeco called for the Commission to reverse its decision in Broadcasting Regulatory Policy CRTC 2012-154 (BRP 2012-154)⁸ to reduce from 2% to 1.5% the portion a BDU may allocate to its community channel from its mandatory contribution to Canadian programming.⁹ At the hearing, Cogeco introduced an additional proposal which would allow it to allocate to its own local news programming 1) the contribution its affiliated video-on-demand (VOD) service is currently required to allocate to the CMF/CIPFs; and 2) the portion of its mandatory BDU contribution to Canadian programming which it is permitted to allocate to CIPFs.¹⁰ The Group opposes all of these Cogeco proposals.

Reversing BRP 2012-154

10. As part of its 2010 Community Television Policy, the Commission determined that the level of contributions to local expression at that point in time was sufficient to allow the community sector to attain its objectives, and so it decided that further increases to total contributions to local expression were not warranted. It then changed the contribution rules for the community channel to set a maximum dollar amount that a BDU could contribute to its community channel in a year.¹¹ Specifically, the Commission established that the maximum contribution to local expression by each terrestrial BDU licensee would be based on its 2010 contribution level, which would be adjusted yearly for inflation. Further, once the inflation-adjusted 2010 contribution

⁷ Broadcasting Regulatory Policy CRTC 2015-86, *Let’s Talk TV - The way forward - Creating compelling and diverse Canadian programming*, <http://www.crtc.gc.ca/eng/archive/2015/2015-86.htm>, at par. 27.

⁸ Broadcasting Regulatory Policy CRTC 2012-154, *Revised approach regarding contributions by broadcasting distribution undertakings to local expression*, <http://www.crtc.gc.ca/eng/archive/2012/2012-154.htm>.

⁹ Cogeco Submission, at par. 8.

¹⁰ Cogeco Opening Remarks, 27 January 2016, Schedule A.

¹¹ Broadcasting Regulatory Policy CRTC 2010-622, *Community television policy*, <http://www.crtc.gc.ca/eng/archive/2010/2010-622.htm>, at pars 37-40. See also Broadcasting Notice of Consultation Policy CRTC 2010-623, *Call for comments on contributions by broadcasting distribution undertakings to local expression*, <http://www.crtc.gc.ca/eng/archive/2010/2010-623.htm>.

level represented 1.5% of the licensee's broadcasting revenues (which the Commission noted would eventually occur if increases in a BDU licensee's revenues were sustained), the allowable contribution to local expression would move to a percentage formula of 1.5% of a BDU's broadcasting revenues.¹² This represented a reduction from the 2% level which had previously applied, which did not have a maximum dollar limit.

11. Cogeco argued that the Commission should re-instate the 2% maximum contribution level on the basis that, among other things, annual BDU revenues have been declining. What Cogeco failed to acknowledge, however, is that the Commission designed its amended contribution formula to take possible BDU revenue declines into account in order to protect the community channel's funding level against such declines. Specifically, the Commission noted that, if a BDU licensee's revenues were to remain at or below 2010 levels, the 1.5% threshold would not be attained and the maximum allowable contribution of the licensee to local expression would represent the lesser of 2% of the licensee's current year's gross revenues derived from broadcasting activities or the 2010 contribution level to local expression, adjusted annually for inflation.¹³
12. Accordingly, the Group submits that there is no reason to reverse the Commission's decision in BRP 2012-154 so as to allow a BDU to divert more of its mandatory contributions to its own community channel and away from the CMF and/or CIPFs.

Re-allocating VOD and CIPF Contributions

13. Under the current regulatory framework for VOD undertakings, each VOD licensee is required to contribute a minimum of 5% of its revenue to the CMF/CIPFs. If a VOD service is affiliated with a BDU, the VOD service's revenue is deemed to be 50% of the total VOD associated retail revenue received from customers by the related BDU distributing the service.¹⁴
14. Of the 3.5% of revenues BDUs must allocate to Canadian programming other than to their community channel, up to 20% may be allocated to one or more CIPFs. Any of that funding that the BDU does not allocate to a CIPF must be allocated to the CMF, along with the remainder of the 3.5% of its revenues. At the hearing, Cogeco tabled a proposal which would allow it to allocate its optional CIPF contribution to its own local news initiatives instead.
15. In Broadcasting Notice of Consultation CRTC 2015-467 (BNOC 2015-467)¹⁵, the Commission initiated a review of its policies relating to CIPFs with "the primary objective of ensuring that

¹² Ibid., above note 3, pars 12-13.

¹³ Ibid., at par. 14. Emphasis added.

¹⁴ Broadcasting Regulatory Policy 2011-59, *Standard requirements for video-on-demand undertakings*, <http://www.crtc.gc.ca/eng/archive/2011/2011-59.htm>.

¹⁵ Broadcasting Notice of Consultation CRTC 2015-467, *Call for comments on the Commission's policies relating to Certified Independent Production Funds*, <http://www.crtc.gc.ca/eng/archive/2015/2015-467.htm>.

these funds contribute to the development of a robust Canadian production sector that is better able to offer compelling, high-quality content to Canadians and global markets.”¹⁶

16. The Group submits that Cogeco’s proposal to re-allocate its required VOD programming contribution to its own local news initiative would be self-serving and harmful to the CMF and CIPFs. Moreover, we question the appropriateness of permitting a licensed VOD programming undertaking to honour its programming contribution condition of licence by allocating its required contribution solely to a separately-licensed but affiliated BDU. For these reasons, the Group submits the Commission should reject this Cogeco proposal.

17. The Group also submits that the Commission should reject Cogeco’s proposal to re-allocate its CIPF contribution to its own news initiatives. We note that Cogeco’s current CIPF contributions are directed solely to the Cogeco Program Development Fund (CPDF) and that it is the sole supporter of that Fund. We also note that, in its submission in the Commission’s recent CIPF review process, Cogeco stated that these contributions amount to approximately \$3 million per year.¹⁷ In that same submission, Cogeco stated:

As contemplated by its founders, the original purpose of the CPDF was to provide to the Canadian production communities of both official languages, funding for the development of scripts and concepts for new Canadian television drama productions. The funding of projects at their earliest stage was, and continues to be, a high-risk proposition where assistance from a not-for-profit funding source is needed and valued by the Canadian program community.¹⁸

Cogeco also acknowledged that the Commission has recognized the Cogeco Fund “as a significant benefit to the Canadian broadcasting system.”¹⁹

18. Cogeco’s proposal to re-allocate its contributions away from the CPDF would substantially undermine if not put an end to that Fund’s ability to support Canadian programming and would thus clearly run counter to the Commission’s objective for CIPFs as set out in BNOC 2015-467; therefore it should be rejected.

TELUS

19. In its written submission, TELUS encouraged the Commission to consider decreasing the allocation of contribution monies to the CMF in favour of the community element, at least for

¹⁶ Ibid., Introduction.

¹⁷ Cogeco Intervention to BNOC 2015-467, at par. 5.

¹⁸ Ibid., at par 3.

¹⁹ Ibid., at par. 2.

those BDUs which are not vertically integrated and have no programming undertakings which benefit from the CMF.²⁰

20. At the hearing, TELUS clarified that what it is really requesting is the same flexibility in the small communities it serves under its all-encompassing regional licences as it would have if it had held individual licences for each of those communities and then benefited in each case from the exemption order for small BDUs, namely the flexibility to allocate all of its required 5% contribution to its community channel.²¹
21. All things being equal, the Group is sympathetic to TELUS's request for equal treatment, as clarified at the hearing. However, before actually supporting the TELUS request, we would have to be assured that TELUS could properly and accurately – and in a transparent manner – distinguish the revenues it receives from subscribers in the small communities which would benefit from the associated contribution flexibility from the revenues it receives from subscribers in the larger communities which would not. This would be necessary to ensure that TELUS makes the full and appropriate contributions to the CMF/CIPFs as and where required and does not cross-subsidize its community programming with funding that should be allocated to those Funds.
22. Moreover, given that TELUS operates a VOD community programming service rather than separate community channels serving individual communities, we question how it would properly and accurately – and, again, in a transparent manner – ensure that the additional funding it could use to serve a small community would actually support programming for that community. If TELUS were to use the additional contribution flexibility simply to support programming which serves its larger communities, the Group submits such financial support would more properly be allocated to the CMFs/CIPFs as is currently the case.
23. For these reasons, the Group cautions the Commission against granting TELUS's request for more contribution flexibility at this time.

Conclusion

24. The Group shares the Commission's goal of fostering "a robust Canadian production sector that is better able to offer compelling high-quality content to Canadians and to global markets."²² To that end, we wholeheartedly agree with the Commission that the financial contributions to the creative sector which it mandates through the CMF and other independent production funds "are key to cultivating a strong Canadian production sector."²³

²⁰ TELUS Submission, at par. E5.

²¹ Transcript, 2 February 2016, <http://www.crtc.gc.ca/eng/transcripts/2016/tb0202.htm>, ll 11685-11688.

²² Ibid., above note 7, at par. 116.

²³ Ibid., at par. 107.

25. Therefore, the Group reiterates our opposition to any proposal to re-allocate the BDUs' regulated contributions in any manner that would reduce the share to be allocated to the CMF and/or CIPFs.

Yours very truly,



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