



November 2, 2009

FILED ELECTRONICALLY

Mr. Robert A. Morin
Secretary General
Canadian Radio-television and
Telecommunications Commission
Les Terrasses de la Chaudière
Central Building
1 Promenade du Portage
Hull, Québec J8X 4B1

Dear Mr. Morin:

Re: Broadcasting Notice of Consultation CRTC 2009-614: Call for Comments following a request by the Governor in Council to prepare a report on the implications and advisability of implementing a compensation regime for the value of local television signals (the "Notice")

Please find enclosed the submission of the Writers Guild of Canada in connection with the above-noted hearing. WGC wishes to appear at the public hearing scheduled for December 7, 2009, to further elaborate on the points raised in this submission and to address any questions that the Commission may have in that regard.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Maureen Parker'.

Maureen Parker
Executive Director

Introduction

1. These comments are filed by the Writers Guild of Canada (“WGC”) in connection with the above-noted Notice of Public Hearing calling for comments following a request by the Governor in Council to prepare a report on the implications and advisability of implementing a compensation regime for the value of local television signals. The WGC is the national association representing 2000 screenwriters working in English-language film, television, radio and digital media production in Canada.
2. WGC members are the creators of Canadian stories including indigenous dramatic series such as “Flashpoint” and “Corner Gas,” acclaimed movies of the week such as “Mayerthorpe” and internationally successful children’s programming such as the “Degrassi” series. WGC members create the Canadian television programs that Canadian audiences want to watch. For that reason, the WGC is committed to building a strong and vibrant broadcasting industry that offers Canadian audiences the choice to watch a wide variety of Canadian television programming.
3. The WGC’s primary goal as an organization is to ‘further the professional, creative and economic rights and interests of screenwriters in Canada’¹. The screenwriter is the original creator of Canadian programming. However, when appearing before the CRTC, the WGC also shares the goals of the Canadian public as enshrined in the principles of the *Broadcasting Act*. The Canadian broadcasting system is ‘a public service essential to the maintenance and enhancement of national identity and cultural sovereignty.’² Affordable access to a wide variety of Canadian programming is an important element of that Canadian broadcasting system. The WGC is filing this submission to express the hope that while the Commission explores measures that might be necessary to ensure affordable access, they take no steps that might undermine the existing regulatory supports of the Canadian broadcasting system. The WGC is particularly concerned about maintaining broadcasters’ revenue streams to ensure their ability to fund a wide variety of high quality Canadian programming for Canadian audiences.
4. The WGC will not address issues outside of its areas of concern and expertise, such as the question of the possible financial impact of a compensation for signals

¹ Constitution of the Writers Guild of Canada, Article 2(a)

² S.3(1)(b) of the Broadcasting Act

regime on consumers. We will address primarily our recommended solution to affordable access for those who need it most, and the potential risks involved in some of the alternative solutions to affordable access which are being proposed by other stakeholders.

Balancing the Objectives of Affordability and Ensuring the Provision of Canadian Programming

5. For the WGC the big question for this hearing is how to balance the objectives of affordability and ensuring the provision of Canadian programming. The issue actually breaks down into several questions. Who is most affected by the high cost of cable and satellite access? How should they be accommodated? How to accommodate them without affecting the overall health of the Canadian broadcasting system by reducing revenues and therefore reducing Canadian Programming Expenditures? Should anything be done for the rest of the public who think cable and satellite rates are too high?
6. In Broadcasting Public Notice CRTC 2008-100 (the “BDU Regulatory Framework”), the CRTC reviewed the BDU regulatory framework and specifically addressed the issue of requiring BDUs to offer a small, all-Canadian, affordable service to those who could not afford the regular basic service. The BDUs advised that 95% of their customers buy more than basic service so there did not seem to be a market demand for a smaller basic. The CRTC decided therefore to rely on market forces and not regulate a smaller, low-cost basic. We are back to discussing this issue as a result of the BDUs passing on the additional contribution for the Local Programming Improvement Fund (“LPIF”) to subscribers and their threat to pass on any negotiated fee for signal to subscribers. With cable and satellite bills already so high, subscribers are concerned that these additional fees will make access to television unaffordable. But there is another issue as well. Those who cannot afford basic now will find it even harder to afford it when the digital transition occurs August 31, 2011 and will therefore be cut off from television.
7. The Commission was only addressing the affordability issue of existing subscribers in the BDU Regulatory Framework decision. Since that time the broadcasters have made it clear that it is not economically feasible for them to cover 100% of subscribers in the digital transition. Those Canadians who currently cannot afford basic should have access to a low-cost all-Canadian service rather than be shut out of television. This low-cost small basic would

therefore only be accessible to consumers who are not currently subscribers to a BDU service.

8. In order to preserve broadcasters' revenue streams, consumers would only be able to buy additional packages of programming if they had acquired the regular basic package. Canadians could not be allowed to plead poverty in order to acquire the low-cost basic and then spend more on specific packages. This directs the support to where it is truly needed.
9. Proposals to reduce basic or move to a-la-carte pricing (i.e., pay for the channels you want) in order to address the issue of affordability run the risk of undermining the Canadian broadcasting system by seriously impacting the revenues to Canadian discretionary services. It is an important element of the *Broadcasting Act* that Canadians are able to access a diverse domestic broadcasting system. The Canadian broadcasting system is 'a public service essential to the maintenance and enhancement of national identity and cultural sovereignty'³. That means regulatory support is required for smaller Canadian channels against competition from better-funded U.S. channels with bigger promotional budgets. It also means ensuring that Canadian channels get a chance to build an audience or even maintain a small, niche audience in order to provide Canadians with choice and diversity of voices. The simplest way to do this is to maintain the basic package and the simple preponderance rule.
10. Without such support discretionary services would not be able to make their current levels of Canadian Programming Expenditures ("CPE"), which are calculated as a percentage of revenues. The CPE of the discretionary sector has become the backbone of the Canadian broadcasting system, providing hundreds of hours of high-quality Canadian programming at a time when conventional broadcasters have steadily been lowering their expenditures on Canadian programming. The health of the Canadian broadcasting system depends on a healthy discretionary sector that has not been weakened by a reduced basic or a-la-carte pricing.
11. In the BDU Regulatory Framework decision, the Commission decided to simplify regulation by removing complicated packaging and linkage rules and moving to a

³ S. 3(1)(b) of the Broadcasting Act

simple preponderance rule. As of August 31, 2011, after buying the basic package subscribers will be able to buy whichever channels they want as long as the majority of their final package of channels is Canadian. No one can predict with any certainty how consumers are going to act once those rules are in place. It is hoped that there will be minimal disruption but it is possible that some discretionary services will be dropped and their subscriber revenues will drop. The WGC strongly recommends that no further amendments to the regulatory framework, other than the small basic proposed above, be made until after the impact of the new regulatory framework can be assessed.

12. None of this however, addresses the problem of BDUs passing on to subscribers the contributions mandated by the CRTC, namely the LPIF and value for signal negotiated fee. In the BDU Regulatory Framework decision, the Commission determined:

In light of the performance levels of the BDU sector and the benefits accruing to BDUs as a result of other changes being made to the regulatory framework, the Commission is of the view that there is no justification for BDUs to pass along any increased costs relating to the LPIF - estimated to be on average approximately \$0.50 per month - to their subscribers.

13. Notwithstanding the above statement, the BDUs did exactly that and passed the costs on to subscribers. They have also warned that they will pass on any value for signal fees as well. Subscribers are now concerned about the increases and threatened increases to their already very large cable bills. However, it would be counter-productive to amend the regulatory framework to allow subscribers to reduce their cable bills by reducing services (i.e., through a smaller basic or a-la-carte pricing) as that would reduce BDU profits, discretionary services' revenues and, in turn, the volume of Canadian programming. If BDUs do not absorb these fees they may soon find that they have fewer subscribers to pay them. This is a dangerous game of chicken.

Impact of a Compensation Regime for Local Signals

14. As part of Notice of Consultation 2009-411, the WGC proposed a regulatory framework to ensure that broadcasters made appropriate contributions to the creation and presentation of Canadian programming, and particularly underserved categories of drama, documentaries and children's programming. That framework

is based on the concept that Canadian broadcasters have to spend a percentage of their revenues on Canadian programming. This is a very flexible proposal as the expenditures required go up or down depending on revenues.

15. Accordingly, if our proposal were to be implemented, should there be a compensation regime for local signals then Canadian programming would benefit based on the higher expenditure which would then be required. There would be no need to specifically tie the compensation to a commitment to Canadian programming as one would already be in place. In turn, broadcasters would be free to spend the balance of revenue where they deem most appropriate.
16. The WGC can certainly see how a compensation regime would lead to higher revenues for conventional broadcasters and therefore a stronger Canadian broadcasting system. Conventional broadcasters would be healthier, local stations would likely be able to stay open, and with our proposed regulatory framework, there would be more Canadian programming. Conventional broadcasters would be in a better position to weather the shifts in advertising that are currently occurring. The question for us has always been though – at whose cost? The WGC does not feel that it is right for consumers to foot the bill, particularly when so many of the problems currently being experienced by conventional broadcasters are of their own making.
17. In the Public Notice for this Hearing, the Commission asked for empirical evidence of the impact a compensation regime would have. We think that it would be very difficult to accurately quantify the impact of a compensation regime because of the variables involved. If the fees are passed on to subscribers then they might reduce services or leave the system, ultimately reducing revenues to programming services. How many subscribers would leave and how many would instead reduce services? This is impossible to predict, particularly after years of subscribers quietly paying increases in rates without leaving the system. The fees could be absorbed by the BDUs. Despite their protests to the contrary, the added cost is not so high as to risk their downfall. The added revenue to conventional broadcasters could mean more Canadian programming but only if a regulatory framework similar to the one proposed by the WGC was put in place by the Commission. Otherwise, the broadcasters would simply get a financial windfall with no promises of an improved or sustained Canadian broadcasting system. Local stations might stay open but broadcasters have refused to make any

commitments to do so. We cannot see how any projections on impact could be reliable.

Conclusion

18. With broadcasters and BDUs fighting over consumers' fees, it is very timely and fair that the Commission now look at the question of affordability and the impact on the consumer of the steadily increasing costs of accessing television. The Commission has stated on numerous occasions that it does not want to cause unintended consequences when making changes to any regulatory framework. We therefore urge caution in recommending any changes intended to improve affordability of television without considering the impact those changes might have on subscriber behaviour, revenues and ultimately the entire system.
19. We thank you for this opportunity to provide you with our comments on these issues.

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