Writers Guild of Canada

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March 30, 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 Public Consultation, CRTC 2009-70, CRTC 2009-70-1 and CRTC 2009-113 – Licence Renewals for Private Conventional Television Stations

Introduction

1. These comments are filed by the Writers Guild of Canada ("WGC") in connection with the above-noted Public Notices. 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 such as *Little Mosque on the Prairie*, feature films like *Passchendaele*, indigenous dramatic series such as *Flashpoint* and *Being Erica*, and children's programming such as the *Degrassi* series. The WGC is committed to building a strong and vibrant broadcasting and film industry firmly supported by a healthy independent production community.

3. WGC requests to appear at the public hearing commencing on April 27, 2009. We would like to provide the Commission with our perspective on how the issues

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raised in the Public Notices may affect the Canadian broadcasting system and the production and presentation of Canadian programming in particular. The Commission will benefit from having a discussion of the current economic uncertainty with all stakeholders.

4. The WGC agrees with the Commission that it will be appropriate to assess licence renewal applications by ownership group, including both OTA and discretionary services, rather than on a sectoral basis. Further consideration is needed with respect to such an approach in light of the significant structural changes that have taken place in the industry and the unprecedented step of reviewing obligations and performance on an ownership basis. Therefore, the WGC agrees with the Commission's proposal to issue short-term one-year licence renewals for the OTA services. Such an approach will permit the Commission, and all interested parties, to give prudent consideration to the appropriate parameters of a group-based licence renewal process which is scheduled for April of 2010.

5. The WGC firmly believes that the Commission needs to take a "holistic" look at all elements of the Canadian programming sector. The one-year renewal approach will ensure that necessary "breathing space" is accorded to all stakeholders to accurately and meaningfully assess the appropriate level of contributions that should be made by all Canadian programming services, including those companies that operate affiliated services across sectors (e.g., OTA, specialty, pay) and whose programming acquisition, scheduling and accounting practices are often carried out on a group basis.

6. However, the WGC firmly believes that no significant policies should be implemented during the one year renewal term. Quite simply, the Commission does not at this time have sufficient information to make any significant determinations on the longer term regulatory framework that should govern OTA licensees. The Commission acknowledged this in its March 19, 2009 letter to the WGC in which it declined to place 2006 and 2007 historical data and projected (2010) financial information on the public file[1]. As a result, the WGC and other stakeholders have even less information available to them to provide the Commission with informed assistance in making any policy decisions. These

[1] Letter to Maureen Parker, Executive Director, Writers Guild of Canada, March 19, 2009.

factors, namely the economic downturn, the lack of long term data and the impending group licensing hearing, suggests that no significant decisions or *a priori* determinations should be made at this time.

7. The Commission based its decision to put the discussion of fee for carriage off till the April 2010[2] on the fact that the adoption of a fee for carriage would have a significant impact on the Canadian broadcasting system and therefore it was more appropriate to deal with it at the later more comprehensive hearing. The same logic applies to any discussion of the appropriate levels of Canadian programming as these issues cannot be discussed or implemented on a short term basis. The WGC submits that in view of the absence of a complete record and due to the current climate of economic uncertainty any discussion of the appropriate contribution to Canadian programming and the proposed imposition of an expenditure ratio should be postponed until the group licensing hearing next year. The current environment presents a risk that any measures imposed at this juncture may be premature and may have unforeseen consequences which could last long after the economy and the OTA sector recovers.

8. Even the responses by some of the private conventional television broadcasters to Broadcasting Notice of Consultation 2009-70 provide support for the proposition that the Commission should not pre-judge the issues at this time. In that regard, CTV argues in its submission that relief that is short-term in focus due to a one-year licence renewal would be "of little utility" as many of the decisions with respect to current program commissions and acquisitions have already been made for the 2009-10 broadcast year. There is no point discussing issues such as a 1:1 expenditure ratio, priority programming, local etc. for a one year term, given the significant "lag effect" that exists between the implementation of a given policy measure and when its actual impact will occur.

9. The WGC agrees that OTA sector has been negatively affected by the current economic downturn. Nevertheless, audiences continue to devote viewing hours to OTA services in substantial numbers. In that regard, we attach as Appendix "A" to these comments a summary of data from BBM Nielsen Media Research of the Top 30 TV programs in English Canada[3]. The top 30 programs earned

[2] Notice of Public Consultation CRTC 2009-70-1
[3] BBM data from March 9 – 15, 2009

"average minute audiences" (AMA) of between 854 million and 2.31 million which were broadcast on CTV, Global, CBC and even the "A" Channels. Specialty services are not appearing in this Top 30 because even the most popular programs aired on specialties do not come close to capturing the audiences of OTA broadcasters. For example, History Television recently announced[4] an all time ratings high for the broadcaster of 606,000 for a re-airing of the "M*A*S*H" series finale. Their highest ever audience rating does not come close to making the weekly Top 30 BBM list. This underscores that while audience fragmentation is a real concern, OTA television continues to command huge audiences among Canadian television viewers.

10. We note that many of the issues facing OTA services are, to a significant degree, "self-inflicted":

- inflated costs of foreign programming (leading to a current average ratio of expenditure on foreign to Canadian drama of 9:1!);
- the recent history of consolidation and increased debt on the part of some OTA broadcasters;
- loss of audience due to branding strategies that have proven to have little resonance with Canadian audiences leading to accelerated audience migration (e.g., the rebranding of the CH stations to E! and the loss of those stations as local stations); and
- the failure of OTA licensees to devote resources to more high quality, distinctive Canadian content (e.g., series programming) that would brand OTA stations as destination programming distinct from American stations, which in turn would garner more viewers.

11. The WGC further submits that the impact of the current economic downturn has been to introduce distortions into the broadcasters' business model, suggesting that more time is needed to assess the longer-term health and financial viability of the OTA sector. As the Chair of the Commission stated in a speech to the Canadian Association of Broadcasters[5] the 'movement of viewers and advertising away from general interest television . . . is clearly a system problem that requires a systemic solution.' Most recently the Chair said to the Standing Committee on Canadian Heritage: 'While our short-term focus is quite clearly set on helping the industry weather the storm, the combination of the arrival of New Media as a possible alternate system of distribution and the onset of the

[4] Media release dated February 19, 2009
[5] Konrad von Finckenstein to the Canadian Association of Broadcasters Annual Conference November 3, 2008

global financial crisis have shown us that the current model is in desperate need of a systemic solution'.[6] We echo the Chair's remarks and call for a thoughtful review of all of the issues at a fulsome group licensing hearing so that we might arrive at that 'systemic solution'.

12. The WGC acknowledges that the current economic contraction has amplified the problems already facing the OTA sector due to reductions in advertising revenue, though it must be noted that there is no publicly available data at this time to support that supposition. However, at the same time, the creative community has endured a significant diminution of economic welfare for the past decade, as the level of spending by broadcasters on Canadian content has fallen as a result of changes in Commission policies over the last decade. As we will point out in greater detail below, these Commission policies have allowed OTA broadcasters to sidestep their obligations under the *Broadcasting Act*. Now that the combination of the global recession and their own bad business practices have resulted in a crisis for the Canadian broadcasting system, the OTA broadcasters are asking for even greater relief from the obligations under the *Broadcasting Act* and particularly from their obligation to broadcast Canadian Content.

13. For all of the above reasons, the WGC proposes that the Commission grant the OTA broadcasters one year terms for the renewal of their licences but on the condition that their 2008-09 spending on Canadian programming be the minimum spent during 2009-10 on Canadian programming, with particular reference to the expenditure on dramatic programming. There would be no other changes to conditions of licence that affect expenditures or exhibition requirements for Canadian programming. Status quo is a sacrifice for the creative community who have been weathering this economic storm for ten years. The short term solution needed to 'weather the storm' should be based on additional revenue streams that can replace lost advertising revenues and not further sacrifices from Canadian programming. While a lowering of Canadian programming obligations would be a 'cost control' measure it would also have the impact of excusing broadcasters from their obligations under the *Broadcasting Act* effectively rewarding them for mismanagement while penalizing Canadian audiences.

[6] Konrad von Finckenstein speech to the Standing Committee on Canadian Heritage March 25, 2009

14. The WGC therefore proposes that the Commission look to the Local Programming Improvement Fund ("LPIF") and the new regime for distant signals to bring added revenues to the OTA broadcasters quickly and simply. Again, only fast, short term solutions should be considered for the one year renewal term while more systemic solutions should be left for group licensing. The Commission has acknowledged that this is likely the way to go by clarifying the scope of the hearing through Notice of Consultation CRTC 2009-70-1. The WGC's position on the LPIF and distant signals are included in this submission.

15. Specifically in regards to the LPIF, if the eligibility condition that it only supports 'incremental' production was removed for the one year term, then those funds (estimated by the Commission at $60 million) would assist OTA broadcasters in meeting the existing needs of local communities. If this condition is not removed broadcasters may be unable to access the LPIF as without sufficient funds to meet existing local programming production they will be unable to commission incremental production. The Commission can assess the fund's effectiveness and the state of the economy and chose to return to incremental funding for the 2010-11 broadcast year. If the economy has not yet recovered the Commission would be able to easily continue non-incremental funding. This position is consistent with the WGC's call for status quo at 2008-09 expenditure levels, in particular for dramatic programming, but provides the broadcasters with assistance to be able to meet those levels.

16. Distant signals have been valued at varying amounts but in their submission to the Commission as part of the BDU hearing CTVglobemedia and CanWest Global estimated that they were losing $47.2 million due to insufficient compensation for distant signals. The Commission decided to leave the broadcasters and the BDUs to negotiate appropriate compensation but to step in and mandate compensation if they could not agree. The Commission has identified distant signals as an important source of added revenue and commented in Notice of Consultation CRTC 2009-70-1 that it is considering advancing the date for implementation of the new distant signal regime. The WGC supports this step and urges the Commission to set a deadline date for the broadcasters and BDUs to come to terms on compensation for distant signals or be subject to a mandated rate. The WGC suggests that any deadline date

should be in advance of an implementation date of September 1, 2009, the date that the LPIF will be implemented and the new broadcast year commences.

17. Both of these proposals involve revenues that have already been identified. Implementing the proposals will make no significant or lasting changes in policy but will bring more money sooner into the pockets of the broadcasters. We strongly recommend that the Commission consider this proposal rather than attempt any short term shift in the regulatory framework for OTA broadcasting.

18. However, in case the Commission continues to want to have a detailed policy discussion of the four issues that it identified in the public notice, the WGC makes the following submissions on some of the issues raised by the Commission in Broadcasting Notice of Consultation 2009-70, as set forth below.

What are the appropriate contributions to Canadian programming in the current economic circumstances?

19. The Commission's policies on contributions to Canadian programming, including its policies with respect to priority programming and programming obtained from the independent production sector have been well canvassed in previous proceedings.[7] WGC has participated, either individually or through the Coalition of Canadian Audio-Visual Unions ("CCAU"), in urging the Commission to ensure that OTA licensees make the appropriate contributions to Canadian content. The key point of these submissions has been the need to ensure minimum levels of Canadian drama through expenditure requirements as well as exhibition requirements. The importance of this objective has been articulated on several occasions by the Commission. In Broadcasting Public Notice CRTC 2003-54, the Commission underscored the key importance of television drama, noting that Canadian drama "should be a cornerstone of the Canadian broadcasting system. Drama can, and should, reflect Canadians of every background and culture to each other".[8] In a speech at the annual conference Canadian Association of Broadcasters[9] the Chair of the Commission described the role of OTA

[7] See, for example, Public Notice CRTC 1999-97, Broadcasting Public Notice CRTC 2003-54, Broadcasting Public Notice CRTC 2007-53, Notice of Public Hearing 2007-10, Broadcasting Public Notice CRTC 2008-100).
[8] Broadcasting Public Notice CRTC 2003-54, para. 3.
[9] Konrad von Finckenstein to the Annual Conference of the Canadian Association of Broadcasters November 5, 2007

broadcasters in fulfilling that obligation to broadcast high quality expensive programming:

> "However, there is another key role that OTA television plays in fulfilling the objectives of the *Broadcasting Act*. Most of the OTA stations are now part of networks or ownership groups. It is these networks or ownership groups that have the economic power to develop, acquire and broadcast the relatively expensive types of original Canadian programming that can really reflect this country. These are national news, sports, major documentaries, prime-time dramas and other high-end arts programming."

20. WGC does not wish to revisit in detail what has been set out in the public record in previous proceedings with respect to meeting the objective of more Canadian drama programming. Among the key developments were the confluence of the Commission's determinations in 1999 where the Commission eliminated expenditure requirements for Canadian drama and introduced the concept of priority programming to give broadcasters increased programming flexibility in 'underserved' categories. Genre specific quotas on drama and other categories were replaced with 'priority programming', now defined to include drama, documentaries, variety, regional productions and entertainment magazine shows.[10]

21. However, as the 2007 Dunbar-Leblanc Report noted, "[p]riority programming obligations appear to be largely satisfied by the broadcasting of entertainment magazines and reality television programming, and by scheduling priority programming during lower viewing periods."[11] These are not the type of high-cost drama programs whose production values and quality meet the standard of the U.S. programming to which Canadian viewers are accustomed. Entertainment magazine shows were intended to help create and support a Canadian star system by promoting Canadian creative talent and productions. In reality they are low cost programming with a greater focus on Canadians in

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[10] The Commission replaced these genre-specific sub quotas with an omnibus category called "priority programming"—drama, music and dance variety, long-form documentary, certain types of regional programming, and entertainment magazines—of which larger private English-language conventional broadcasters were required to broadcast on average at least 8 hours per week of priority Canadian programs during the 7 p.m.-11 p.m. viewing period during each broadcast year. See: Public Notice CRTC 1999-97, paragraphs 29 and 37.

[11] Lawrence Dunbar and Christian Leblanc, *Review of the Regulatory Framework for Broadcasting Services in Canada* (Report to the CRTC, 31 August 2007) at page 8.

American programs and American stars attending Canadian events than on actually developing a domestic star system. As well, low cost reality television has infiltrated priority programming through a loose definition of documentary programming. Again this has allowed broadcasters to substitute easily available low budget programming for the underserved and more expensive forms of programming that the definition of priority programming was intended to support.

22. The creation of “priority programming” as an omnibus category succeeded in increasing broadcasters’ flexibility but at the expense of high-cost drama programming. Since the introduction of the “priority programming” regime and release from any expenditure requirement, private English-language over-the-air television broadcasters have steadily reduced spending on Canadian dramatic productions, and have increased spending on non-Canadian drama programming.

23. Between 2000, the first broadcast year after the spending requirement was removed, and 2008, spending on Canadian programming by English language OTA broadcasters increased from $366.3 million to $452.8 million. Expenditures on non-Canadian programming, which had started the period at $422.3 million rose to $739.7 million in 2008. The situation is even more acute for Canadian drama. In 2000 English language OTA broadcasters spent $62.1 million (or approximately 4% of revenues) on Canadian drama while spending $325.7 million on non-Canadian drama (approximately 22% of revenues). In 2008 the expenditure on Canadian drama had recovered from a precipitous fall to $40.3 million in 2007 to land at $53.8 million for 2008 (3.2% of revenues). Meanwhile non-Canadian drama had shot to $490.3 million (29% of revenues). Detailed charts setting out the figures in greater detail are attached as Schedule “B”.

24. Even with Canadian drama’s slight recovery in the year before licence renewal the expenditure on foreign drama has increased from a ratio of 6 to 1 over Canadian drama in 2000 to 9 to 1 in 2008. At numerous occasions the Commission itself has expressed the opinion that English language conventional broadcasters should be spending closer to 6% of revenues on Canadian

drama[12]. In 2004 the CRTC implemented the drama incentive plan because it recognized that the 1999 OTA Policy had had such a negative impact on levels of Canadian dramatic production. Rather than wait for licence renewal or the next review of the OTA Policy the Commission attempted to use an incentive program to get broadcasters where they should be. However the drama incentive plan was eliminated when advertising limits were lifted as part of the 2007 OTA Policy with no thought to a replacement program. In a good year, broadcasters are still spending less on Canadian drama as a percentage of revenue than they were in 2000. At times broadcasters have argued that the drop in spending on Canadian drama reflects an audience shift to reality programming. However, this argument fails to account for the sharp increase in spending on non-Canadian drama in the past three years or the many drama titles in the BBM Nielsen Top 30 (see Schedule "A"). It is more likely that the increase in spending has been due to broadcaster competition or as the President of Rogers Media stated during the BDU hearing, the rise in prices was "driven by one of the parties believing they can acquire a superior position over the other."[13]

25. The foregoing suggests that significant thought needs to be given to how a better mix of OTA expenditures can be effected to ensure that a minimum level of resources are directed to drama programming. As the Chair of the Commission recently said to the Heritage Committee "if you're going to make money as a Canadian broadcaster you should not spend all your money buying programming from Hollywood."[14]

26. WGC submits that one way to increase the expenditure on Canadian drama is to amend the definition of "priority programming" to remove entertainment magazine shows and tighten up the definition of documentary. While the Commission's purpose in adopting the priority programming approach in 1999 was to "define a framework…with the economic realities of a competitive environment as a starting point, [and to] maximize flexibility for broadcasters, opportunities for

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[12] Public Notice 2004-93, Incentives for English-language Canadian television drama, paragraph 8

[13] Public Notice 2007-10 Review of the regulatory frameworks for broadcasting distribution undertakings and discretionary programming services, Transcript, 8 April 2008, at paragraph 659.

[14] Konrad von Finckenstein to the Standing Committee on Canadian Heritage, March 25, 2009

producers and choice in Canadian programming for viewers", WGC submits that the excessive flexibility in the definitions of the categories of priority programming has not met the underlying objectives in the Act and even those articulated by the Commission in initially adopting such categories. Implementing this proposed amendment to the policy would open up exhibition hours to drama, variety, regional production and true documentaries and would necessarily result in a more money being spent on underserved Canadian programming.

27. The WGC continues to maintain however that there need to be specific, direct obligations on broadcasters to commission, acquire and air Canadian drama programming. WGC looks forward to discussing the appropriate approach to such measures in the proceedings leading to the ultimate longer term licence renewals following the 2010 public hearing.

28. We are concerned that the Commission in this proceeding appears to be suggesting that obligations governing OTA licensees with respect to local, priority and independently-produced programming may be lessened "given the current economic conditions". We were very concerned to hear the Chair of the Commission tell the Heritage Committee that the Commission was willing to "consider lower levels of local, priority and independent programming that each station will be required to broadcast over the 12 month transition period".[15]

29. WGC submits that there is no evidence on the record that supports the conclusion that lessening these obligations will have any direct impact on the sustainability or financial viability of the OTA broadcasters. While they would reduce expenditures on Canadian programming, as noted above, many of the challenges facing OTA broadcasters are in fact structural in nature. Further, given the track record of the last ten years, unless the Commission also set limits on where the freed up monies may be spent it is likely that it would be spent on more American programming. There are no simple solutions when dealing with Canadian programming obligations. These challenges require further deliberation, more evidence and more stakeholder consultation before any measures are adopted by the Commission, even those on a short-term (one-year) basis.

[15] Konrad von Finckenstein to the Standing Committee on Canadian Heritage, March 25, 2009

30. With respect to independent production, WGC submits that the current minimum threshold of 75% should be maintained, in view of the objectives set out in the *Broadcasting Act.* It has resulted in higher quality production, is a better economic model, and is better for the industry as a whole and Canadian audience in particular. Independent production fosters creativity and diversity. Ideas and projects compete for broadcast licences and financing and only the best succeed. There is a winnowing with independent production that does not happen with broadcaster in-house production. Broadcasters make minimal investments during development, relying on the writer and producer, those least able to financially, to fund or find funding for the bulk of development costs. Competition inherent in independent production fosters creativity as only the best projects are licensed by broadcasters and find full financing. Independent producers seek to maximize a project's return on investment through exploitation around the world and on all platforms. This returns revenues to all the creative participants thereby supporting a vibrant and diverse talent pool in Canada. Only independent producers can access the necessary financing to be able to produce high quality Canadian programming that can compete with U.S. programming for Canadian audiences. In particular, given the high cost of prime time drama broadcasters would find it difficult to finance the high quality drama that Canadian audiences want to watch (e.g. "Flashpoint" and "Corner Gas") as they are unable to access third party financing such as federal and provincial tax credits. Increasing the ability to produce in-house is likely to only result in more low-budget programming such as reality and lifestyle programs.

31. Broadcasters have tried to justify their request for lower independent production levels by citing their need to own and control all rights to programs. However, this is a red herring. Producers routinely assign more than enough rights to broadcasters to enable them to exploit multiple platforms in Canada. Prior to that assignment, the creative unions have licensed to the producers the necessary rights to enable such exploitation. The real issue is that broadcasters want to keep all revenue potential for themselves. Now that there are new revenue opportunities through download to own and DVD sales among others the broadcasters want to own and control all of these rights. They could do this if they were the producers and owners of the programs they aired however this

would create a very unbalanced broadcasting system. The creative and production talent in the industry take the greatest financial risk in producing television programming. They deserve to share in the rewards. The WGC supports the CFTPA in its negotiations with broadcasters for terms of trade. Only with terms of trade can the creative community be assured that the results of their work will be fairly valued and appropriately exploited.

32. As the Commission noted in Public Notice 1999-97:

> Another highly successful segment of the industry is the Canadian independent production sector. Over the past decade, production export revenues have tripled, investment in Canadian film and television projects has quadrupled, and the sector's profits have quintupled. The growth of this industry is a credit to the entrepreneurial spirit and creativity of those involved, combined with successful public policy.

33. The foregoing successes were not achieved in a vacuum and sadly given the policy shift in 1999 were not maintained. The Commission's policies to assist the independent production sector, in order to meet the objectives set out under the *Broadcasting Act*, prevented the loss after the removal of expenditure requirements in 1999 from being even greater. However, the economic challenges of the current environment, and the digital issues raised over the last decade, underscore even more powerfully the need to continue to require measures that require broadcasters to devote specified resources to the independent production sector.

Should the Commission impose a 1:1 expenditure ratio?

34. There has been much debate on the issues of the current ratio between non-Canadian and Canadian programming expenditures. This issue must clearly be addressed by the Commission. While the Commission notes in Broadcasting Notice of Public Consultation 2009-113 that it is considering imposing such a requirement even on a trial basis during a short term licence, WGC submits that it is more important for the Commission to examine, with input from all stakeholders, the reasons for the current imbalance in spending on Canadian and non-Canadian programming as set out above.

35. The Spring 2010 hearing provides a real opportunity for the Commission to examine the underlying spending and acquisition policies of the OTA licensees and to consider whether more targeted measures are needed to ensure more Canadian program spending in key categories, such as drama and documentary. WGC submits that in addition to the overall 1:1 expenditure ratio, more specific requirements by program category should be considered, provided that they are implemented in a manner that continues to grant broadcasters flexibility in their programming strategies to meet the challenges of a highly competitive marketplace. Canadian broadcasters have a positive obligation to provide 'a wide range of programming that reflects Canadian attitudes, opinions, ideas, values and artistic creativity, by displaying Canadian talent in entertainment programming and by offering information and analysis concerning Canada and other countries from a Canadian point of view'[16]. It is not 'micro-managing' to require broadcasters to live up to the *Broadcasting Act* when making their programming decisions.

36. The foregoing raises large policy issues that are more appropriately addressed during the group-based renewal applications in 2010 rather make any attempt to address them on a one-year trial basis. Among the issues that should be subsumed within that proceeding are:

- The skew in the ratios due to the under-representation of foreign news programming;
- The need to assess the performance of English-language programming commitments separate from French-language commitments;
- The need for additional safeguards to prohibit broadcasters from 'gaming' the system by allocating expenditures within genre categories or between services or platforms in order to meet targets;
- If meaningful targets are to be adopted, further consideration is needed to ensure that these objectives continue to be realized through more direct measures such as specific overall drama expenditure requirements (across OTA and specialty). Such a measure will act as a safeguard to ensure that drama is not under-represented under an overall 1:1 expenditure ratio requirement; and
- Existing individual CPEs for specialties which have been tailored to the specific needs of the services based on nature of service and profitability should be maintained.

[16] S. 3(1)(d) of the Broadcasting Act

37. WGC acknowledges that any measures adopted will have to be introduced gradually, given the current skew in the ratio of Canadian to non-Canadian expenditures.[17] However, the WGC urges the Commission not to impose any phase-in of the ratio until after the issues have been fully canvassed at group licensing.

38. In view of the complexity of the foregoing issues, WGC recommends that for the short-term (one year) renewals, the Commission ensure that the current level of expenditures on Canadian programming is treated as a “floor” until such time as the Commission can address all of the above-noted issues. WGC is willing to agree to such an approach, notwithstanding our above-noted concerns with respect to the significant reduction in Canadian drama expenditures that have occurred since the 1999 CRTC television policy was adopted. A phase-in of an expenditure ratio policy would have a short term positive impact on expenditures on Canadian programming but could have unforeseen impacts in the future if not considered carefully. The WGC does not want to take that chance. Moreover, as noted above, it will be more appropriate to look at the overall private broadcasting system through group licensing in 2010. By that time, more data will be available from the CRTC and all stakeholders will have a better sense of the projected economic performance for the next seven-year period.

Digital transition

39. WGC is concerned that the anticipated costs for the upcoming digital transition are being cited as a rationale for justifying reductions on Canadian programming. In that regard, WGC understands that discussions have taken place between the CRTC and an informal working group of OTA broadcasters and BDUs, pursuant to which a “hybrid” solution to DTV conversion has been contemplated. Under the hybrid approach, only a sub-set of the transmitters of the large private OTA television broadcasters (CTV and CanWest) would be converted to digital. Transmitters would be converted only where it was more cost effective (for example, in more densely populated areas such as Toronto or Vancouver). For the remaining transmitters, an OTA licensee would provide its signal to BDUs by

[17] OTA licensees expended $428 million on English Canadian programming in 2008, while expending $704 million on foreign programming. This gap, $280 million, suggests that expenditures on English-language programming would have to increase by $140 million and foreign decrease by $140 million to meet the 1:1 ratio, unless broadcasters chose to spend more on programming overall.

"direct feed" (presumably through a fibre connection). This will result in significantly less costs for broadcasters. To the extent that such a hybrid solution or equivalent lower cost solution can be adopted, there will be more resources to spend on "content" rather than on "pipes".

40. The WGC was pleased to hear the Chair of the Commission advise the Standing Committee on Canadian Heritage that the OTA/BDU working group would be submitting a report prior to the upcoming hearing commencing April 27, 2009. We urge the Commission to ensure that this report is on the record prior to the hearings to ensure that the cost of digital transition and its potential impact on broadcasters' operating expenses is thoroughly and accurately assessed. Pending review of the report the WGC may be in favour of such a hybrid solution if it is anticipated to have less impact on broadcasters' ability to fulfill their regulatory obligations to Canadian programming than other more expensive solutions.

Issues Raised by Specific OTA applications

CanWest

41. Much has been debated about the future role of CanWest's OTA licences in continuing to contribute to the Canadian broadcasting system. In its responses to the Commission's questions in regard to its review of the scope of the licence renewal public hearings, CanWest has attempted to open up every possible issue whether germane to the current proceeding or not, even raising matters outside the scope of the Commission's jurisdiction. Among the measures sought by CanWest include:

- Elimination of Part II fees
- Fee for carriage
- Non-simultaneous substitution
- Reduction or elimination of benefits regime (including existing benefits)
- Reduction in Can Con levels
- Disallowing the CBC from airing advertising
- Permitting new ads on VOD
- Prohibiting BDU use of local avails

- Source ad revenues from pharmaceutical companies
- Change the allocation formula at CTF
- Government support for transition to digital
- Government support for emergency alert system
- Reduction in corporate taxes

42. Moreover, CanWest has proposed a complete reduction in the conditions of licence governing its OTA services. Among the elements of the revised conditions would be:

- independent production minimum to be set at 50% (down from 75%)
- In markets of 1 million or more 10 hours of local each week
- In markets of under 1 million 5 hours of local each week
- No priority programming commitments but consider keeping the time credit to encourage drama

CanWest has been suffering from an excessive debt load since it took over the Southam newspaper chain, including the National Post, in 2000. This debt delayed CanWest's move into the specialty broadcast sector until as a matter of survival it had to acquire the Alliance Atlantis specialty assets and pay full price for them, taking on even more debt. In an attempt to lower their costs and increase profits required to pay down debt, CanWest rebranded its secondary network of local CH stations as the E! Network and shifted its programming from local to American entertainment magazine shows. Audiences quickly abandoned the new network and advertising revenues followed. Poor management decisions have significantly affected CanWest's advertising revenues and profits more than the global economy or issues inherent in the conventional broadcast sector. The WGC submits that CanWest's difficulties are, to a significant extent, a function of decisions made by management which should not be borne by the public.

43. Without disaggregated data identifying CanWest's revenues and expenditures over the past licence term, the public and stakeholders cannot assess the validity of CanWest's statements that it is the conventional broadcast business model which is at fault. The WGC and its colleagues at the CFTPA, ACTRA, DGC and NABET requested that more detailed information be filed as part of this proceeding. Without it, stakeholders are unable to verify or disprove assertions

contained within CanWest's application as well as those made by the other broadcasters as well.

44. Further, CanWest is a prime example of why broadcasters need to be reviewed on a station group basis rather than by sector to examine what the broadcaster's financial health truly is. In its own press release CanWest stated when discussing its Canadian television operations (OTA and specialty) for the first quarter of 2009: "Operating profit in the first quarter was $76 million, up 10% compared to $69 million the previous year. These results reflect the strong industry leading performance of the specialty television operations as well as merger synergies and other cost containment initiatives."[18] Note that the reference to merger synergies refers to reductions in costs due to the merger of conventional and specialty assets after the acquisition of Alliance Atlantis Communications television assets. Clearly CanWest itself believes that it should be assessed on the basis of the performance of its conventional and specialty broadcasting businesses together.

45. CanWest's proposals surely represent "throwing the baby out with the bath water". Given the fact that the cause of many of CanWest's current economic challenges have arisen independently of the regulatory burden, there is no rational basis for CanWest's proposal to eviscerate the entire regulatory framework. The WGC respectfully submits that the Commission should treat CanWest's proposals in their proper context. Moreover, the Commission should seek answers from CanWest as to how their programming strategies have actually contributed to the goals of the *Broadcasting Act* (e.g., the rebranding of the CH stations under the E! name and abandoning their role as local stations).

46. As noted above, there is a continued role for these policies, including the priority programming rules (subject to more tailored measures that WGC wishes to discuss at the public hearing) and the independent production rule.

[18] CanWest Media Advisory dated January 14, 2009 "Canwest Global Communications Corp. Reports First Quarter 2009 Results: Specialty channels and digital revenues experience double-digit growth"

Rogers

47. Rogers has characterized its OTA stations as a group of local stations. The WGC takes issue with this description. The Citytv stations originated as local stations and the Citytv brand was synonymous with local programming and serving local communities. However the channels are now retransmitted nationally and no longer serve only their local communities. The brand has also been diluted with the cancellation of many of the local programs in favour of national licences of Canadian programs like “Murdoch Mysteries” and U.S. programs such as “The Tyra Banks Show” and national broadcasts of Toronto-centric local programming like “CityLine”.

48. However, even when the Citytv stations were truly local, as they together had near national reach they were required by the Commission to air 8 hours of priority programming in prime time. There is no justification for removing this regulatory obligation now that these stations are being programmed more like a national network. It should also be noted that at no time does Rogers suggest abandoning U.S. drama in prime time or removing the right to simultaneous substitution of U.S. programming. If Rogers was granted its application the result would be Canadian local programming during the day and U.S. drama during prime time. Or in other words, Rogers would receive the benefit of the simultaneous substitution business model without any of the corresponding regulatory obligations – i.e. support of Canadian priority programming.

CTV

49. CTV argues in its responses to the Commission’s questions that it is subject to a distinct disadvantage relative to the U.S. networks, which are not subject to the same regulatory burden that Canadian licensees face. Moreover, CTV cites the fact that the U.S. networks are cutting back on high cost drama programming and substituting such programming with lower cost programming (for example, the Jay Leno Show which will be telecast at 10 p.m.).

50. CTV argues that Canadian programming will never show a profit. However, in response to this the WGC, CFTPA, ACTRA and DGC have commissioned a study by Nordicity Group Limited to be entitled “Analysis of the Economics of

Canadian Television Programming". Unfortunately there has not been sufficient time between the announcement of the current hearing and the deadline for submissions to be able to fully prepare the report. We anticipate being able to submit the analysis to the Commission for the public record at the time of the public hearing. We do expect however, that the Nordicity Study will demonstrate conclusively that, while Canadian television programming is unlikely to ever be as profitable for Canadian broadcasters as American programming, Canadian programming is profitable and not merely a regulatory burden.

51. Further, we find it disingenuous for CTV to argue that U.S. broadcasters are at a competitive advantage. Canadian programming obligations and the rest of the OTA regulatory framework is the *quid pro quo* of the privilege of having a licence under the *Broadcasting Act*. Further it is those Canadian programming obligations that distinguish the Canadian broadcasters from the American broadcasters pouring over the border. If the regulatory obligations were to be removed to the extent that the Canadian broadcasters are asking for why should they continue to hold licences? Why should Canadians support through federal funding, tax incentives and subsidized programming a broadcaster who for all intents and purposes wants to be a U.S. broadcaster? If the CTV program schedule is to look just like the NBC schedule why not just licence NBC?

52. The WGC has no further comments on the CTV application as CTV chose to apply for a one year administrative renewal with no changes to their conditions of licence. Their logic that any substantive changes to their conditions of licence would not impact their current year's revenue or expenses because this year's programming decisions have been made is sound. Our only concern is that the WGC does not want to see CTV use the economic downturn as an excuse to lower their Canadian programming expenditures, particularly drama, even further and/or increase their foreign programming expenditures. The Commission has said that it is not interested in yet another administrative renewal. This hearing needs to ensure that the system is kept afloat until we can arrive at a systemic solution during group licensing. For that reason we encourage the Commission to amend conditions of licence uniformly across each broadcaster as we have proposed: the Canadian programming expenditure for 2008-09 to act as a floor for 2009-10.

Conclusion

53. Under the Broadcasting Act Canadian broadcasters have made a regulatory bargain. In exchange for broadcast licences and privileges such as simultaneous substitution, protection from foreign ownership and competition those broadcasters have agreed to support diverse high quality Canadian programming. Canadian broadcasters pay a much smaller proportion of the cost of production of Canadian programming than U.S. broadcasters' pay of the cost of U.S. programming. A great deal of the balance of Canadian production financing comes from public sources, i.e. federal and provincial tax credits, independent production funds, provincial agencies and the Canadian Television Fund. For years conventional broadcasters have profited under this regulatory framework. As we demonstrated above, the last ten years have not been as beneficial to the creative and production community. However in light of the very real global economic downturn and the promise of a comprehensive review of the entire broadcast industry we can survive until April 2010. We are willing to wait one more year before the long term decline in Canadian drama is redressed if it means a more systemic solution will be at hand. However, the creative and production community should not have to suffer even greater losses in Canadian programming, particularly drama, in the mean time.

54. Commission has repeatedly stated that this hearing will not deal with substantive policy decisions. The more detailed review and policy making will happen at group licensing in April 2010. The WGC encourages the Commission to be consistent in its approach and to not attempt to make short term policy decisions such as any that would impact the level of Canadian programming, particularly drama, licensed and/or exhibited during this one year renewal. As the Chair said to the Heritage Committee, the purpose of this hearing is so that 'in effect, we buy ourselves one year through various means and trying to find extra sources of revenue so that companies can survive."[19] Those 'various means' must of necessity be limited to simple, short term solutions which will have minimal impact on the Canadian broadcasting system. The WGC's position is that its

[19] Konrad von Finckenstein to the Standing Committee on Canadian Heritage, March 25, 2009

proposal to maintain spending at status quo levels while pursuing new revenue streams through the LPIF and Distant Signals regime is the appropriate course to take during this one year renewal term.

Yours very truly,

Maureen Parker
Executive Director

Schedule “A”

Top Programs – Total Canada (English)
March 9 - 15, 2009
Based on preliminary program schedules and audience data, Demographic: All Persons 2+

Rank	Program	Broadcast Outlet	Weekday	Start	End	Total 2+ AMA (000)
1	HOUSE	Global Total	M......	20:00	21:00	2313
2	AMERICAN IDOL 8 AP	CTV Total	.T.....	20:00	22:05	2251
3	AMERICAN IDOL 8 AR	CTV Total	..W....	21:00	22:01	2239
4	C.S.I. NEW YORK	CTV Total	..W....	22:01	23:00	2144
5	GREY'S ANATOMY	CTV Total	...T...	21:00	22:00	2120
6	ER	CTV Total	...T...	22:00	23:00	2057
7	CRIMINAL MINDS	CTV Total	..W....	20:00	21:00	1959
8	AMAZING RACE 14	CTV Total	......S	20:00	21:00	1868
9	SURVIVOR:TOCANTINS	Global Total	...T...	20:00	21:00	1835
10	DESPERATE HOUSEWIVES	CTV Total	......S	21:00	22:01	1660
11	C.S.I. MIAMI	CTV Total	M......	22:00	23:00	1615
12	C.S.I.	CTV Total	...T...	20:00	21:00	1611
13	LAW AND ORDER:SVU	CTV Total	.T.....	22:05	23:00	1468
14	TWO AND A HALF MEN	CTV Total	M......	21:00	21:31	1434
15	CTV EVENING NEWS	CTV Total	MTWTF..	18:00	19:00	1351
16	FLASHPOINT	CTV Total	....F..	21:00	22:00	1350
17	24	Global Total	M......	21:00	22:00	1284
18	CORNER GAS	CTV Total	M......	21:31	22:00	1166
19	GHOST WHISPERER	CTV Total	....F..	20:00	21:00	1165
20	BONES	Global Total	..W....	21:00	22:02	1162
21	H.N.I.C. GAME #1	CBC Total	.....S.	19:01	22:03	1159
22	RICK MERCER REPORT	CBC Total	.T.....	20:00	20:30	1123
23	THE MENTALIST	CTV Total	......S	22:01	23:00	1118
24	SIMPSONS	Global Total	......S	20:00	20:30	1049
25	NCIS	Global Total	.T.....	20:00	21:00	1044
26	CTV NATIONAL NEWS	CTV Total	MTWTFSS	23:00	23:30	1033
27	FAMILY GUY	Global Total	......S	21:00	21:30	1029
28	JEOPARDY	CBC Total	MTWTF..	19:30	20:00	993
29	DANCING/STARS 8 PERF	'A' Total	M......	20:00	22:02	985
30	BIG BANG THEORY	CTV Total	M......	20:00	20:30	854

Understanding this report …
This chart shows the Top 30 TV programs for all national networks and Canadian English specialty networks for the week indicated. Programs are ranked based on their AMA(000). AMA(000) is the average minute audience in thousands. The chart also indicates the broadcast outlet on which the program aired and the program’s start and end time (shown in Eastern Time).

Schedule "B"

Canadian and non-Canadian Programming Expenditures by English-language Private Conventional Television Broadcasters as a Proportion of Advertising Revenues ($ millions)

	2000	2001	2002	2003	2004	2005	2006	2007	2008
Ad revenues (% of total revenues)	1,477.3 (96.7%)	1,502.5 (97.1%)	1,473.4 (96.4%)	1,607.6 (95.6%)	1,610.6 (95.3%)	1,679.2 (95.4%)	1,688.9 (96.4%)	1,720.8 (95.9%)	1,683.7 (95.7%)
Canadian programming (% of ad revenues)	366.3 (24.8%)	376.5 (25.1%)	384.2 (26.1%)	396.4 (24.7%)	414.1 (25.7%)	419.5 (25.0%)	441.4 (26.1%)	437.0 (25.4%)	452.8 (26.9%)
Non-Canadian programming (% of ad revenues)	422.3 (28.6%)	458.1 (30.5%)	483.7 (32.8%)	524.4 (32.6%)	550.3 (34.2%)	590.7 (35.2%)	664.1 (39.3%)	695.2 (40.4%)	739.7 (43.9%)

Source: CRTC Statistical and Financial Summaries for Private Conventional Television.

Canadian and non-Canadian Drama Programming Expenditures by English-language Private Conventional Television Broadcasters as a Proportion of Advertising Revenues ($ millions)

	2000	2001	2002	2003	2004	2005	2006	2007	2008
Ad revenues (% of total revenues)	1,477.3 (96.7%)	1,502.5 (97.1%)	1,473.4 (96.4%)	1,607.6 (95.6%)	1,610.6 (95.3%)	1,679.2 (95.4%)	1,688.9 (96.4%)	1,720.8 (95.9%)	1,683.7 (95.7%)
Canadian drama programming (% of ad revenues)	62.1 (4.2%)	63.6 (4.2%)	57.5 (3.9%)	63.1 (3.9%)	53.2 (3.3%)	53.4 (3.2%)	39.9 (2.4%)	40.3 (2.3%)	53.8 (3.2%)
Non-Canadian drama programming (% of ad revenues)	325.7 (22.0%)	340.4 (22.7%)	349.5 (23.7%)	364.4 (22.7%)	355.1 (22.0%)	382.7 (22.8%)	458.0 (27.1%)	484.9 (28.2%)	490.3 (29.1%)

Source: CRTC Statistical and Financial Summaries for Private Conventional Television.

Given that the CRTC does not publicly release English-language data separate from total data, we have estimated the English-language data as 105% of Canadian data outside Quebec to reflect the fact that there are only a handful of English-language TV stations in Quebec. Advertising revenues in our calculations include "Local Time Sales", "National Time Sales", "Network Payments", and "Infomercials".

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