

- EXECUTIVE SUMMARY -

***Review of certain aspects of the
Regulatory framework for over-the-air television***

Broadcasting Notice of Public Hearing CRTC 2006-5:

16 interests?

Submission by the
Canadian Conference of the Arts

27 September 2006

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Diane Rhéaume
Secretary General
CRTC
Ottawa, Ontario
K1A 0N2

Dear Ms. Rhéaume,

Re: Broadcasting Notice of Public hearing CRTC 2006-5

The Canadian Conference of the Arts (CCA) is Canada's oldest and largest arts advocacy and cultural policy development organization. In 2005, the CCA celebrated its 60th anniversary. It currently represents the interests of over 250,000 Canadian artists, creators and arts professionals in matters of cultural policy and cultural content. We use the term, "cultural sector", to describe that part of our nation's economy which engages the many talented men and women whose ideas inform, enlighten and entertain Canadians and others, through literature, visual arts and audio-visual creations.

This proceeding places the interests of the thousands of men and women in Canada's cultural sector and millions of Canadians in general, in counterpoint to the interests of the companies that own or control Canada's privately-owned, over-the-air television stations.

Over-the-air television is one of the cultural sector's larger components. In 2005 Canada's licensed privately-owned conventional television broadcasting undertakings alone earned \$2.2 billion or approximately 0.16% of Canada's GDP. To the best of our knowledge, just over one hundred privately-owned, conventional, over-the-air television stations operate in Canada.¹ Based on the CRTC's ownership charts, these stations are ultimately controlled or owned by sixteen companies (Table 1)

¹ The precise number of licensed, over-the-air television stations operating in Canada is difficult to determine. The CRTC does not publish station lists by callsign or licensee, for one thing. The data the Commission does provide are contradictory. Its *Broadcast Policy Monitoring Report 2006* showed there were 101 privately-owned over-the-air television stations as of May 2006 (at p. 3). Then again, the CRTC's *Television Statistical and Financial Summaries: 2001-2005* provide financial data for August 2005 about 96 reporting units. Statistics on the CRTC's website are different, and not current: one CRTC webpage shows 127 over-the-air television stations with studio facilities as of 31 March 2004 (CRTC, "Radio and television stations with studio facilities, 1998-2004 as of March 31" <<http://www.crtc.gc.ca/eng/GENERAL/statistics/tab2004-4.htm>>). Another shows 119 over-the-air television stations that are not licensed to the CBC, educational, community or provincial stations, again at March 2004 (CRTC "Radio, television and network licences by type of station, network affiliation and province as of 31 March 2004" <<http://www.crtc.gc.ca/eng/GENERAL/statistics/tab2004-2.htm>>). Our figure, of 106 privately-owned, over-the-air broadcasters, is based on a review of the CRTC's online ownership charts (CRTC, "Detailed index of multiple ownership charts") <<http://www.crtc.gc.ca/ownership/eng/index.htm#T>>) and its licensing decisions.

Table 1: Privately-owned, over-the-air television stations in 2006 – 16 controlling interests								
BGM (25)	CFCF-TV	Montreal	CanWest (Asper family) (22)	CFRE-TV	Regina	CHUM (Waters family, in trust) (13)	CFPL-TV	London
	CFCN-TV	Calgary		CFSK-TV	Saskatoon		CHMI-TV	Portage La Prairie
	CFCN-TV-5	Lethbridge		CHAN-TV	Vancouver		CHRO-TV	Pembroke
	CFQC-TV	Saskatoon		CHBC-TV	Kelowna		CHRO-TV-3	Pembroke
	CFRN-TV	Edmonton		CHCA-TV	Red Deer		CHWI-TV	Wheatley
	CFRN-TV-3	Whitecourt		CHCH-TV	Hamilton		CITY-TV	Toronto
	CFRN-TV-4	Ashmont		CHEK-TV	Victoria		CIVI-TV	Victoria
	CFRN-TV-6	Red Deer		CHKL-TV	Kelowna		CKAL-TV	Calgary
	CFTO-TV	Toronto		CHKM-TV	Kamloops		CKEM-TV	Edmonton
	CHBX-TV	Sault Ste Marie		CICT-TV	Calgary		CKNX-TV	Wingham
	CICC-TV	Yorkton		CIFG-TV	Prince George		CKVR-TV	Barrie
	CICI-TV	Sudbury		CIHF-TV	Halifax		CKVU-TV	Vancouver
	CIPA-TV	Prince Albert		CIHF-TV-2	Saint John		CKX-TV	Brandon
	CITO-TV	Timmins		CIII-TV	Toronto	CFAP-TV	Quebec	
	CIVT-TV	Vancouver		CISA-TV	Lethbridge	CFJP-TV	Montreal	
	CJCB-TV	Sydney		CITV-TV	Edmonton	CFKMTV	Trois Rivieres	
	CJCH-TV	Halifax		CITV-TV-1	Red Deer	CFKS-TV	Sherbrooke	
	CJOH-TV	Ottawa		CJNT-TV	Montreal	CFRS-TV	Jonquiere	
	CKCK-TV	Regina		CKBT-FM	Kitchener	CKRS-TV	Jonquiere	
	CKCO-TV	Kitchener		CKMI-TV	Montreal	CKSH-TV	Sherbrooke	
	CKCO-TV-3	Oil Springs		CKND-TV	Winnipeg	CKTM-TV	Trois Rivieres	
	CKCW-TV	Moncton		CKRD-TV	Red Deer	CKTV-TV	Chicoutimi	
	CKLT-TV	Saint John		CHEX-TV	Peterborough	CHNU-TV	Surrey	
	CKNY-TV	North Bay		CHEX-TV-2	Oshawa	CIIT-TV	Winnipeg	
	CKY-TV	Winnipeg		CKWS-TV	Kingston	CJMT-TV	Toronto	
Quebecor (Peladeau) (7)	CFCM-TV	Quebec	Corus (Shaw) (5)	CKWS-TV-1	Brighton	Dougall (2)	CMFT-TV	Toronto
	CFER-TV	Rimouski		CKWS-TV-2	Prescott		CHFD-TV	Thunder Bay
	CFTM-TV	Montreal		CFEM-TV	Rouyn	CKPR-TV	Thunder Bay	
	CHEM-TV	Trois Rivieres		CFGS-TV	Hull	CITL-TV	Lloydminster	
	CHLT-TV	Sherbrooke		CFVS-TV	Val D'Or	CKSA-TV	Lloydminster	
	CJPM-TV	Chicoutimi		CHOT-TV	Hull	CFTK-TV	Terrace	
	CKXT-TV	Toronto		CKRN-TV	Rouyn	CJDC-TV	Dawson Creek	
Tele Inter-Rives (Simard family) (4)	CFTF-TV	Riviere-Du-Loup	Pattison (3)	CFJC-TV	Kamloops	Lee, Ho, Lau (1)	CHMN-TV	Vancouver
	CHAU-TV	Carleton		CHAT-TV	Medicine Hat		Nfld Bg (Stirling) (1)	CJON-TV
	CIMT-TV	Riviere-Du-Loup		CKPG-TV	Prince George	Leblanc, Royle (1)	CJBN-TV	Kenora
	CKRT-TV	Riviere-Du-Loup		<i>Italics: multi-lingual broadcasters</i>				
Excludes CITS-TV and CJIL-TV (religious stations)								

Canada's privately-owned, over-the-air television broadcasters and the thousands of men and women in the cultural sector work interdependently. The content that is created, written, developed, produced, directed, performed and broadcast, along with the content from other countries, attracts millions of viewers and millions of dollars in revenue for Canada's privately-owned, over-the-air television broadcasters. The content provided by the cultural sector is critical to private television. Without this content, there would be no need for TV broadcasting undertakings: broadcast distribution undertaking could simply serve Canadians by importing foreign signals, in most cases from our big neighbour down south.

Apart from their mutual interdependence – broadcasters rely on the cultural sector for content, the cultural sector relies on broadcasters for income, employment and access to audiences – Canada's privately-owned, conventional, over-the-air broadcasters and cultural workers share several other characteristics.

One characteristic that both sectors share is competitiveness. Since the late 1980s more entrants have been allowed access to Canada's communications sector in areas such as pay and specialty. Simultaneously, however, the CRTC has granted a number of small and large acquisition applications by Canada's privately-owned, over-the-air television broadcasters, so that the number of companies that control Canadian over-the-air television stations now stands at 16, down from 40 companies in 1968. Many of these 16 companies simultaneously compete against themselves, since they also hold pay, specialty and other broadcast licences.

Canada's several hundred thousand cultural sector workers – many of whom provide the content transmitted using our nation's communications system – also compete against each other, as well as non-Canadians, to create and produce the content desired and accessed by Canadians. In broadcasting, the programming content of these workers competes for the attention of their prospective audiences, and for the financial support necessary to produce new content. The highly competitive nature of this sector is evidenced by the fact that no one in the cultural sector enjoys the dominant position enjoyed by just a few of Canada's large communications companies. Four companies (Bell Globemedia, CanWest, CHUM and Quebecor) currently control 85 of the country's 106 conventional, over-the-air television stations and in 2005 earned 86% of Canada's privately-owned, over-the-air television total broadcasting revenue.

Another characteristic shared by privately-controlled broadcasters and cultural workers, is the legitimate desire to earn a profitable income. Those who own and/or control Canada's over-the-air television broadcasters operate businesses with the reasonable expectation of earning income, not charitable enterprises where non-profitability and volunteerism are expected. Broadcasters do not operate as charities – and neither do Canada's cultural workers. Those who work in private television broadcasting seek employment by broadcasters, or business for their own companies.

It has become somewhat trite to note that change is occurring in this sector of the economy (see Appendix 1). At times, it seems that 'change' is a mantra that one can find behind almost every major regulatory intervention to support Canadian broadcasters since the 1930s. In the past, for instance, changes in technology have been repeatedly highlighted at the detriment of programming content:

1965: "Today,... 94% [of the population of Canada] can receive television signals. Steady advance is being made each year in the extension of television and radio coverage, not only to remote areas but also to those Canadians whose principal language is English or French

and for whom broadcast services are not available in the language they use for everyday purposes and understand best. The closing of these gaps in the national broadcasting system is of an urgency and importance second only to improvements in programming.” Committee on Broadcasting, *Report*, (Ottawa: Queen’s Printer, 1965) at 67.

1967: “... within five years CTV may be out of business and the CBC reduced to the status of educational television in the United States. This is the threat from new horizons opening to cable TV and the imminent arrival of domestic satellite broadcasting. These fears were expressed openly ... by [the] president of CTV and [the] general manager of the private network.” *House of Commons Debates* (3 November 1967) at 3860-3861 (Mr. Prittie), citing an article from 21 October 1967. [According to Mr. Prittie, *The Globe and Mail* expressed similar views.]

1982: “... the CAB and CCTA were of one opinion in urging that cultural objectives be looked at in broader terms than just those of Canadian program content. One of the objectives mentioned most often was the progressive extension of more and more complete broadcasting services to all parts of Canada. ...” Cultural Policy Review Committee, *Summary of briefs and Hearings* (Ottawa: January 1982) at 221.

1983 “Technological change represents perhaps the most important element of uncertainty in the broadcasting environment of the 1980’s as it relates to the programming and financial position of conventional television broadcasters. Satellite-to-cable delivery systems and the future development of direct-to-home broadcast satellites will make possible a very large expansion in programming alternatives The effect on conventional television broadcasting of these and other developments, such as videocassettes, is uncertain.” CRTC (31 January 1983) *Notice CRTC 83-18, Policy Statement on Canadian Content in Television*, p. 10.

Faced with apparently imminent and dire consequences absent intervention, there can be little wonder that Canada’s regulatory authorities have consistently taken change very seriously. They have responded to ensure that Canada’s over-the-air television services are able to work from a strong financial base. The effect is that Canadian public policy has supported Canada’s privately-owned, over-the-air television broadcasters’ financial base for decades, not only by granting applications that result in more concentrated ownership, but also through more ‘streamlined’ regulation and incentive programs that grant broadcasters more advertising time (see Appendix 2).

The apparent *quid pro quo* offered by licensees that obtain this support has been high-quality Canadian content. “More Canadian content”, “improved Canadian programs”, “higher-quality Canadian programming” are seasonal phrases with which keen CRTC observers will be most familiar at the time of broadcasters’ licence applications, licence renewals and licence transfer proceedings.

In fact, despite many promises that the strength of privately-owned broadcasters would trickle downhill to support Canadian cultural content, Canada’s cultural sector has yet to benefit from years of regulatory flexibility and consolidated ownership granted to Canada’s privately-owned, over-the-air television broadcasters in the name of ‘change’.

It is noteworthy that from 2001 to 2005 privately-owned television broadcasters' gross revenues increased by over 15%.² Meanwhile, average weekly earnings in the arts, entertainment and recreation sector decreased from \$429 in 2001, to \$421 in 2005.³ The number of dramatic program hours purchased by and broadcast by Canada's privately-owned, over-the-air television broadcasters has also decreased.

There is little question that true financial weakness in privately-owned, over-the-air television weakens and harms the financial situation of those in the cultural sector who create, develop, write, produce, direct and act in the programming aired by this medium. Unfortunately, based on the empirical evidence of the past, there is doubt as to whether financial strength in the private broadcasting sector improves the production of elusive Canadian content or the economic position of artists and cultural workers.

The CCA therefore noted with some interest – and some disappointment – the Commission's preliminary question at paragraphs 17 and 18 concerning Canada's privately-owned, over-the-air television broadcasters:

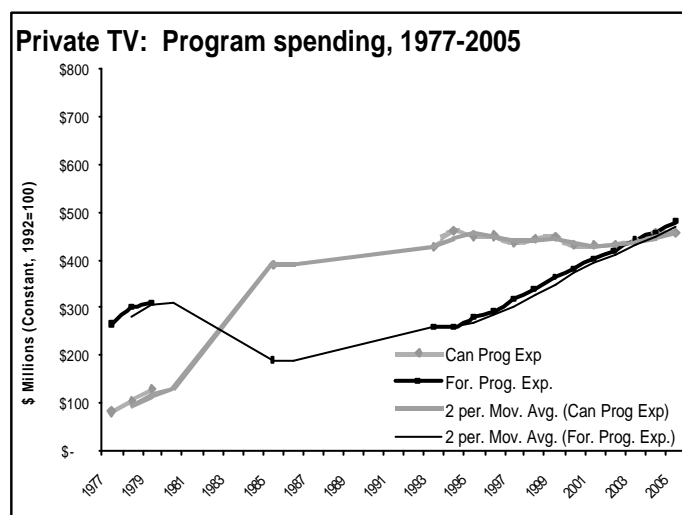
“How will broadcasters react to evolving consumer requirements for programming services that deliver content anytime, anywhere and on multiple platforms?”

“... how [should] Canadian television ... respond to the pressures for change?”

Like the commitments at CRTC hearings, the warnings about change are familiar, and drive the CCA to ask, admittedly somewhat bluntly: **however interesting broadcasters' reactions to change in the future may be in discussing Canadian broadcasting, how relevant are these questions in this hearing, at this time?**

After all, the CRTC's mandate under section 5.(1) of the *Broadcasting Act, 1991* is not to predict broadcasters' reactions to change, but to “regulate and supervise all aspects of the Canadian broadcasting system with a view to implementing the broadcasting policy ... and ... the regulatory policy” of this legislation. Unlike the recession period of the very early 1990s, Canada's privately-owned, over-the-air television broadcasters have been and continue to enjoy healthy revenues and profits. Have they not had at least a decade and a half⁴ to respond to the shift from analog to digital broadcasting?

Indeed, based on the available empirical evidence, Canada's privately-owned over-the-air television broadcasters' response to stable or growing profitability levels and the shift from analog to digital broadcasting, appears



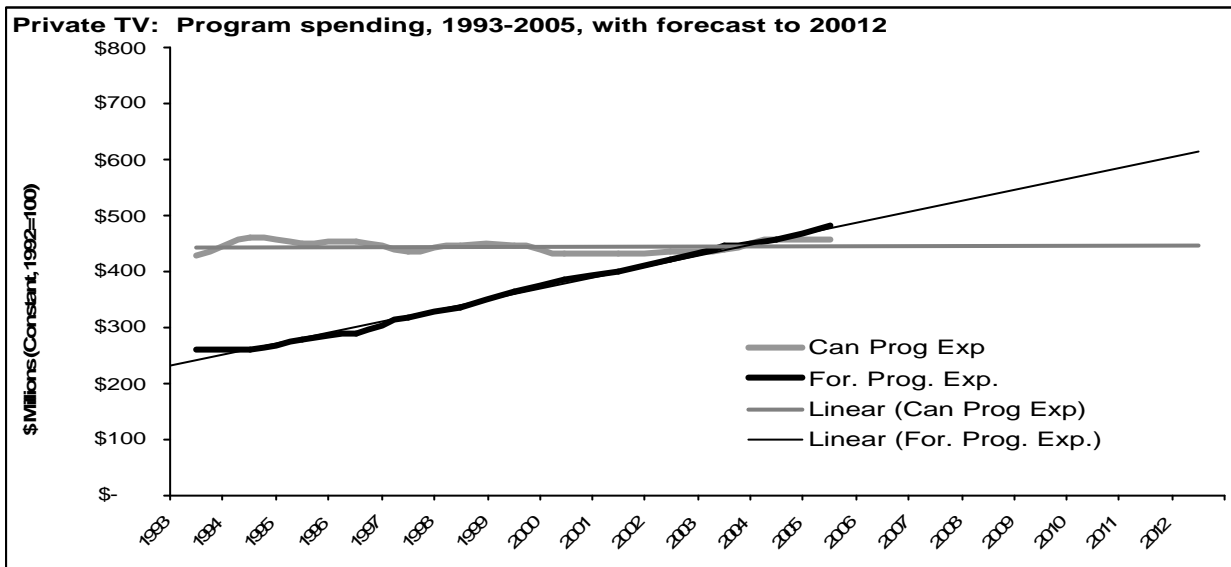
² From \$1.903 billion in 2001, to \$2.198 billion in 2005 (current dollars). CRTC, *Television: Statistical and Financial Summaries, 2001-2005* <<http://www.crtc.gc.ca/eng/publications/reports/BrAnalysis/tv2005/tv2005.pdf>> at 1.

³ Statistics Canada, “Earnings, average weekly, by industry” CANSIM, table 281-027 and *Competition Act*, no. 72-002-X.

⁴ In 1993 the CRTC held its ‘Structural Hearing’, to consider the future of the broadcasting system in the face of new changes in broadcast distribution technology, including the shift to digital content.

to have been to spend more money on foreign programming, and less on Canadian programming.⁵

Without intervention by the CRTC, what will stop current spending patterns of Canada's privately-owned, over-the-air television broadcasters from continuing?



The CCA estimates that in the three areas of specific concern to the CCA – script and concept development, Canadian drama and local programming – decisions to move away from the status quo in 1994 have resulted in the re-allocation of \$808 million away from these areas, presumably to serve interests other than those of Canadians and Canada's cultural sector.

One is left to wonder what empirical evidence supports arguments that more consolidation, more deregulation and more incentives will result in more and better Canadian programming being made available to millions of Canadians by Canada's privately-owned, over-the-air television broadcasters?

Since spending on foreign programming now exceeds spending on Canadian programming, and Canada's privately-owned, over-the-air television broadcasters are airing far fewer hours of original Canadian drama than in the last decade – is it not appropriate to ask what has led the CRTC to foreclose debate on its current regulatory framework for Canada's privately-owned, over-the-air television broadcasters?:

The Commission considers that those aspects of the 1999 Policy not identified for review in this notice remain appropriate.⁶

⁵ Spending data from 1977-1979 in Raymond, Cabot, Martin, ParSource:e & cie, *Private Canadian Television Stations: Selected Financial Data, 1972-1980* (November 1981); from 1985 in Task Force on Broadcasting Policy, *Report*, at 436; and from 1993-2005 in CRTC, *Television: Statistical and Financial Summaries* (various years). CPI deflator data from Statistics Canada.

⁶ Broadcasting Notice of Public Hearing CRTC 2006-5 at para. 19.

The CCA suggests that by closing the door on debate, the CRTC has also closed the door on discussions about the fundamental assumptions on which its television policy is now based. For instance:

- Why does the CRTC continue to assume that technological change necessarily requires regulatory reaction and flexibility even though Canada's broadcasting legislation was specifically designed to be technologically neutral?
- Why does the CRTC continue to assume that standard competitively marketplace economic theory applies to the oligopoly that is Canadian broadcasting?
- Does the CRTC itself buy into the view that Canadian programming constitutes quasi-charitable "contributions" from the private sector in its never ending quest for profits?
- Does the CRTC continue to believe, in the face of evidence to the contrary, that aggregated concentration of ownership and resources serves the public interest?
- Are the interests of Canadians and those in the cultural sector well-served by working so carefully to tailor a regulatory framework to meet the self-professed needs and interests of 16 companies?
- What has led the CRTC to hold yet another proceeding to determine how best to support 16 companies operating at a profitable level, perhaps by granting yet more regulatory flexibility or relieving this sector of its existing transmission and/or programming obligations, while simultaneously closing the door on debate and failing to give participants in this proceeding useful, empirical data on which to base their assessments and recommendations?

We do not know the answers to these questions, but we think it is appropriate we take the opportunity of this process to ask them.

In this intervention, the CCA asks the CRTC, the federal government and Parliament to implement quantitative, well-financed and verifiable programs that express the principles of Canada's broadcast policy and serve the interests of millions of Canadians.

These principles involve

1. a stable financial relationship with Canada's cultural sector, based on enforceable *and enforced* spending requirements, and increased resources for Canadian programming through a rationalization of licence fee levels;
2. opportunities for access to Canadian audiences by Canada's cultural sector, based on enforceable and enforced programming requirements;
3. rational regulation to ensure Parliament's objects are met through enforceable *and enforced* requirements, and competitive licensing when licensees breach these requirements;
4. jurisdictional sovereignty that maximizes Canadians' access to Canadian programming about Canadian ideas, stories and values.

The CCA's comments on Broadcasting Notice of Public Hearing 2006-5 address these four principles in greater detail.

We anticipate the opportunity to review others' comments, and would like to appear at the CRTC's hearing in November, to continue the dialogue between Canada's federal broadcast and telecommunications regulatory authority, and Canada's cultural sector. We may take advantage of the CRTC's offer to allow interested parties to file brief, final, written comments after the hearing. Should the Commission specifically request additional information before, during or following the hearing, the CCA also requests the opportunity to review and reply to new submissions, arguments or information.

Sincerely,

Alain Pineau
National Director
Canadian Conference of the Arts

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APPENDIX 1: THE TIMES, THEY ARE A-CHANGIN'

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APPENDIX 2: THE CRTC AND PRIVATE BROADCASTERS' REQUESTS ERROR! BOOKMARK NOT DEFINED.

Executive Summary

Response to CRTC's specific questions about 'appropriate aspects' of its television policy

1. The CCA has noted the CRTC's emphasis on receiving submissions about the four areas of specific interest to the Commission. A summary of the CCA's responses to the CRTC's questions appears in the table below.

Response regarding other aspects of the CRTC's television policy

2. At the same time, the CCA has concerns that the CRTC has foreclosed debate on important questions of public policy concerning its regulation of the sixteen companies that own or control Canada's privately-owned, over-the-air television broadcasters.
 - a. The CRTC has explicitly told the public that it considers that the aspects of its 1999 *Television Policy* that it does not itself raise "remain appropriate" and does not seek comment on these aspects. If aspects of the CRTC's 1999 *Television Policy* which are not raised in the CRTC's notice are demonstrably appropriate, no harm would ensue if participants were allowed to comment on them. It is a well-known aphorism that the answer is in the question: the CRTC's limited questions therefore greatly reduce the scope for a real debate about the Television Policy. It is CCA's position that administrative agencies charged to serve Parliament and the public interest should not arbitrarily restrain public comment and debate in proceedings dealing with such fundamental issues as providing Canadian programming to Canadians.
 - b. The CRTC has provided inadequate documentary support to enable the public to participate effectively in this proceeding. It has asked questions, for instance, about measures to maintain and improve local programming in 'small markets', but has not offered the public any empirical information necessary for an informed discussion about this issue. Yet it is difficult for participants outside Canada's privately-owned, over-the-air television broadcasters to answer questions such as this without financial and programming data about past and current levels of local programming offered by those 'small market broadcasters'. The activities of administrative agencies charged to serve Parliament and the public interest should be sufficiently transparent to ensure that the public interest is demonstrably being served.
3. Two areas that the CRTC's notice does not specifically address but that the CCA believes warrant serious discussion and consideration are script and concept development, and dramatic program production.
 - a. It is trite to point out that script and concept development are the 'research and development' expenditures necessary to create high-quality, high-audience programming.

The data published annually by the CRTC suggest that Canada's privately-owned, over-the-air television broadcasters' script and concept development expenditures decreased from \$59 million in 1994, to two hundred thousand dollars in 2005.

The CCA estimates that if Canada's privately-owned, over-the-air television broadcasters had continued to spend from 1995 to 2005 only the same amount they spent in 1994 (i.e. without increasing spending to account for inflation), they would have spent approximately \$442 million more on script and concept development than the CRTC's data now show for that period.

If this is the case, then is it not legitimate to ask if it has been in the interests of Canadian audiences or Canada's cultural sector to have these \$442 million allocated on something other than script and concept development?

The CCA notes that it may be that Canada's privately-owned, over-the-air television broadcasters have continued to spend money on scripts and concept development, but no longer report these expenditures to the CRTC. Since script and concept development are critical to Canadian television drama and other programs – based on the US experience, for every ten programs that are developed, only one succeeds – the CCA believes it is important to know just how much has been allocated to script and concept development, and what funds will be allocated to this area during the course of the CRTC's next television policy initiative and consequent to Canada's privately-owned, over-the-air television broadcasters' licence renewals.

Whose interests are served when key data about this fundamental aspect of Canadian broadcasting are not disclosed?

- b. Canadians like to watch programs in the drama category – fictional television programs that may be dramatic or comedic in nature. From 1995 to 2006, Canada's privately-owned, over-the-air television broadcasters' foreign dramatic program spending increased by an average of 7% per year – and by 110% or \$3,560 million for the entire decade. Over the same period, Canadian dramatic spending increased by an average of 4.6% per year – and by a total of 24% or \$781 million over the entire decade.

The CCA estimates that if Canada's privately-owned, over-the-air television broadcasters had increased their spending on Canadian dramatic production only by the same rate by which they increased their spending on foreign dramatic productions, they would have spent an additional \$178 million on Canadian drama.

Has it been in the interests of Canadians or Canada's cultural sector for these \$178 million to be allocated outside of Canadian dramatic program production?

4. The CCA also comments about local programming. Parliament requires, and the CRTC has traditionally encouraged, local programming that reflects non-news community programming. Local programming provides communities' cultural participants with an opportunity to engage with their neighbours, as well as valuable opportunities to develop in a professional broadcast medium.

Between 1995 and 2005, Canada's privately-owned, over-the-air television broadcasters allocated \$4,583 million to local programming. Yet community program spending is declining. A decade ago, local program spending increased by 7.3% between 1994 and 1995. Between 2004 and 2005, however, it decreased by 1%.

The CCA estimates that if spending on local programming by Canada's privately-owned, over-the-air television broadcasters increased from 1995 to 2005, at the 1994-1995 growth rate of a decade ago, local program spending would have been \$188 million higher.

Impact of the CRTC's regulatory approach to Canada's privately-owned, over-the-air television broadcasters since 1995

5. The CCA's analysis of these three issues suggests that over all, decisions about re-allocating resources have left the Canadian broadcasting system \$808 million poorer. Neither Canadian audiences nor Canada's cultural participants have been well-served by this re-allocation of broadcast resources: Canadian drama programming has decreased, more money is now being spent on foreign programming than on programs for, by and about Canadians, and the currently free, over-the-air local programming now available to Canadians may soon be replaced by local programming produced by and available only to those subscribing to broadcast distribution undertakings.

Program spending decisions			
1995-2005	Actual expenditures	Expenditures revisited	Difference
Script and concept development	\$97 million	\$539 million If spent the 1995 amount (no inflation)	\$442 million
Canadian drama	\$781 million	\$959 million If grew at same rate as non-Canadian drama	\$178 million
Local programming	\$3,705 million	\$3,893 million If grew at the same rate as 1994 to 1995	\$188 million
Total	\$4,583 million	\$5,391	\$808million

6. HOW HAS THIS HAPPENED?

Five flawed assumptions appear to guide the CRTC's decision-making:

7. The CCA's comments are prefaced with a review of five assumptions that appear to underlie the CRTC's approach to broadcast regulation, but also appear to lack the empirical support valid assumptions typically enjoy. These assumptions appear to underlie the implicit and sometimes explicit promise that if Canada's privately-owned, over-the-air television broadcasters thrive economically, so too will Canadian audiences, Canadian programming and those who create, write, produce and direct this programming content.
- a. *"Technological change automatically requires regulatory reaction"*: Change does not necessarily require regulatory reaction. Yet 'change' has been used to justify regulatory shifts and particularly regulatory "streamlining", for decades. The assumption that technological change justifies deregulation and the non-enforcement of existing regulations is not supported in law. Parliament explicitly designed the *Broadcasting Act, 1991* to be neutral with respect to technology. The shift from analog to digital does not require development and imposition of a new regulatory framework. A new regulatory approach is required, however, to address the current framework's inability to achieve Parliament's objects for broadcasting – and in particular, to address the current reality of reduced levels of new, well-financed Canadian programs.
 - b. *"Canadian broadcasting operates in a competitive environment"*: The 'invisible hand' of the competitive marketplace really is invisible in Canadian broadcasting. A competitive marketplace has large numbers of suppliers selling products or services to large numbers of buyers, at the marginal cost of production. Canada's conventional, privately-owned broadcasting system is not a competitive marketplace: there are only 16 suppliers (Canada's privately-owned, over-the-air television broadcasters), of which 4 own 86% of the revenue; Canadian audiences are not 'buyers', and it is unclear whether marginal pricing applies to the sale of advertising time or opportunities. Misconstruing the basic nature of Canada's privately-owned broadcasting system is to misconstrue the true nature of Canada's privately-owned, over-the-air television broadcasters. Their proper role is to maximize returns to their shareholders or owners; the CRTC's proper role is to implement Parliament's objectives for the broadcasting system. Deregulation in a non-competitive marketplace means that private interests will be maximized, at the expense of all other interests.
 - c. *"Broadcasters must make a contribution to Canadian programming"*: Parliament requires that each element of the broadcasting system "contribute in an appropriate manner" to creating and presenting Canadian programming. The CRTC's notice for this proceeding refers sixteen times to the "contributions" made by Canada's privately-owned, over-the-air television broadcasters to Canadian programming. Constant reference to 'contributions' mischaracterizes what is essentially a standard business expense: unless privately-owned broadcasters are computing their taxable income by deducting their Canadian programming expenditures as provided for by section 110.1 ("Deduction

for gifts [by corporation]”) of the *Income Tax Act*,⁷ Canadian programming is neither a gift, nor a donation or a ‘contribution’. The effect of mischaracterizing business expenses as ‘contributions’ is to give credence to the notion that when revenues decline, fail to grow, or fail to grow to a desirable level, such expenditures are discretionary and dispensable.

- d. *“Business consolidation will automatically lead to high quality Canadian programming”*: No evidence supports the assumption that aggregated resources serve the public interest by maximizing expenditures and scheduling of high-quality Canadian programming. Although ownership of Canada’s privately-owned, over-the-air television broadcasters is now more highly concentrated than at any other time in the CRTC’s history, Canada’s privately-owned, over-the-air television broadcasters in 2005 spent more on foreign programming than on Canadian programming. The negative effects of the ‘benefits policy’ established by the CRTC outweigh its financial impact: the ‘benefits’ are unpredictable and do not provide the production of Canadian programming with the business-like stable financing necessary to any business’ success; the ‘benefits’ principle creates conflicts of interest for those in the cultural sector and for the CRTC; and a ‘benefits policy’ reinforces the incorrect idea that Canadian programming constitutes quasi-charitable beneficence on the part of Canada’s privately-owned, over-the-air television broadcasters.
- e. *“The best regulation is no regulation”*: Excessively-detailed regulation is wasteful and inefficient when it fails to generate expected outcomes. Inadequate regulation is, however, just as wasteful and inefficient when expected outcomes are still not achieved. The same is true for regulations and conditions of licence that are clear, but not enforced. Notwithstanding the colourful *Broadcast Policy Monitoring Reports* now being issued annually by the CRTC, what evidence exists to demonstrate that the Commission’s regulatory framework for Canada’s privately-owned, over-the-air television broadcasters is achieving Parliament’s objects for the broadcasting system, particularly in light of Canada’s privately-owned, over-the-air television broadcasters’ decisions to spend more money on foreign programming than on Canadian programming? After two decades of deregulation, is Canada’s cultural sector better off – or not?
8. Relying once again on assumptions that lack empirical support would appear to be either naïve, or cynical.

Recommendations by the CCA

9. Culture enhances our lives and defines our national identity. It also gives many Canadians a living. Those in Canada’s cultural sector require the same businesslike treatment that Canada’s privately-owned, over-the-air television broadcasters desire from the CRTC. Accordingly, **the CCA recommends:**

⁷ R.S.C. 1985, c. 1(5th Suppl.), as am. to 2004, cc. 26.

- a. that the CRTC adopt a streamlined regulatory approach to Canadian content and Canadian drama which would focus on simple and straightforward quantitative funding and scheduling commitments – not the continuation of a detailed, complicated, difficult-to-monitor incentives-based approach that is neither businesslike nor effective;
 - b. that the CRTC ensure that Canada's 16 privately-owned, over-the-air television broadcast groups allocate more financial resources to Canadian script and concept development, Canadian programs and Canadian drama, than to their foreign equivalents;
 - c. that the CRTC initiate a public proceeding to consider how telecommunications service providers that offer audio-visual programming content to their clientele and subscribers should contribute to the objects set out for Parliament in the *Broadcasting Act, 1991*;
 - d. that the licence fees now paid by telecommunications companies to exploit the communications spectrum owned by Canadians, be raised to provide a base of stable and predictable financial backing for Canada's cultural businesses.
10. In addition to stable funding, Canadians and Canada's creators, writers, producers, directors and actors require 'shelf space' to access and present Canadian programs. Therefore, **the CCA recommends:**
- a) that the CRTC increase the 'shelf space' available for the products of Canada's cultural sector;
 - b) that Canada's privately-owned, over-the-air television broadcasters that seek to profit from local communities be required to provide local news, information and entertainment programs. Reducing the existing local programming requirements of Canada's licensed broadcasters effectively requires local communities to subsidize privately-owned broadcasters' profitability;
 - c) that if the CRTC allows Canada's privately-owned, over-the-air television broadcasters to cease their over-the-air transmissions in favour of carriage by broadcast distribution undertakings, effective means be found to compensate those Canadians who do not want, cannot obtain or cannot afford to subscribe to these services. In particular, **the CCA recommends** that a 'lifeline' tier consisting of all publicly-funded programming services be made available to all subscribers without charge.
11. An inadequate or unenforced regulatory framework is as wasteful and inefficient as an excessively-detailed framework. **The CCA recommends:**
- a. that the CRTC ensure that its regulations and conditions of licence are met;
 - b. that the CRTC apply a competitive marketplace approach to Canada's privately-owned, over-the-air television broadcasters: if a broadcaster breaches the CRTC's regulations or its own conditions of licence, that

licence should not be renewed automatically or renewed for a shorter-than-normal licence term. Rather, the licensee and any other party interested in the licence should be invited to apply to the use the licence.

12. Parliament enacted a single policy for broadcasting in Canada. In the last several years the CRTC's decisions to forbear from regulating new media have created several parallel broadcasting systems. Insufficient data exists to demonstrate whether these new media could contribute to Parliament's objects for its broadcasting policy. **The CCA recommends:**
 - a. that the CRTC revisit its decisions to forbear from regulating new media, and other elements of the broadcasting system that use the spectrum owned by all Canadians as a natural resource.

13. Canadians require and want a broadcasting system that serves their needs and interests. Parliament has established a broadcasting policy to meet Canadians' public interest. Establishing regulatory frameworks that simply mimic regulatory action or inaction of other countries constitutes the abandonment of sovereign jurisdiction over a natural resource whose value has grown, is growing and will only continue to grow in the future. **The CCA recommends:**
 - a. that the CRTC's regulatory framework for Canada's 16 privately-owned, over-the-air television broadcasters serve Parliament and the public interest by focussing on the issues of concern to this country.