



December 18, 2006

Mr. Michel Arpin
Vice-Chairman
CRTC
Central Building
Les Terrasses de la Chaudière
1 Promenade du Portage
Gatineau, Quebec K1A 0N2

By e-mail and by regular mail

Dear Mr. Arpin,

RE: PUBLIC NOTICE CRTC 2006-5

- 1 The CCA has appreciated the opportunity to present its views about the CRTC's television policy both in writing and in person, in response to Public Notice CRTC 2006-5. This letter represents our final written comments with respect to this proceeding. References to paragraph numbers in the CRTC's hearing transcripts from November 27, 2006 to December 6, 2006 are indicated by the "¶" symbol following each reference. Unless otherwise indicated, the CCA maintains the positions it expressed in its written submission in response to the CRTC's questions in Public Notice CRTC 2006-5.
- 2 We welcomed the CRTC's public notice and the chance to engage with you and your colleagues on the panel about the many important issues involving over-the-air television in Canada, and in particular that of Canadian drama. In what is the fifty-fourth anniversary of the launch of Canadian over-the-air television broadcasting, we strongly support the Commission's restated objective of ensuring that "over the [air] television licensees contribute in the most effective manner possible to the production,

acquisition and broadcast of high quality Canadian programming that attracts increasing numbers of viewers.” (¶20)

- 3 The main argument that OTA television broadcasters have made in this proceeding is that they face a dim future because their financial capacity is weakening due to increased competition for advertising revenues and rising costs of new technology. To alleviate the effects of this allegedly dim future, they seek either deregulatory initiatives by the CRTC or additional income from BDU subscribers, or both.

- 4 The CCA submits that arguments by Canada’s largest, privately owned OTA television broadcasters that their financial capacity is threatened ignore the highly-concentrated structure of broadcasting in Canada (¶10207). The CRTC’s own published data show that the five largest of Canada’s sixteen, privately-owned conventional OTA television broadcast groups (among them, CTV, Quebecor and CanWest Global) obtained 91% of this sector’s revenues in 2005, and 65% of the revenues of conventional television, pay television and specialty television combined (¶¶8550, ¶10208). Many of Canada’s largest privately-owned, over-the-air television broadcasters are part of larger companies that actively engage in distribution and other communications media (through ownership interests, for instance, in BDU undertakings, internet service providers, print media and/or by offering telephone subscribers access through wireless telephones to broadcast content) (¶¶3373, ¶4808, ¶5474, ¶6275, ¶6289, ¶6292). These broadcasters achieve a variety of financial benefits from their parent companies’ cross-media ownership (¶¶3795, ¶¶4806-4807, ¶4809). The result is that, if anything, competition for advertising revenues has been reduced thanks to increasingly consolidated ownership and increasing cross-media ownership (¶5767, ¶10210). Since each major broadcasting group is now to a great extent competing

against itself, arguments regarding fragmentation and competition for scarce advertising income are incomplete and consequently lack evidentiary support.

5 To the extent that Canada's privately-owned, over-the-air television broadcasters have argued that declining local advertising revenues requires them to abandon local programming, particularly non-news local programming, the CCA submits that no quantitative evidence has been placed on the record of this proceeding to support this argument. Although CanWest, for instance, asserted several of its local stations were losing money on local programming, it failed to adduce any financial data to support this claim (¶¶1594-1602, ¶1616, ¶1619, ¶1630, ¶3563, ¶10190). Overall, there is remarkably little evidence on the record of this proceeding even to establish current weekly hours of local programming of each of Canada's more than one hundred and twenty OTA television broadcasting stations (¶2346). Nor is it clear from the record just how many hours of original, non-news local programming are now being broadcast each week: some suggest the figure is zero or close to it (¶6063, ¶10191). Others suggest that local programming content is declining (¶¶8055-8060, ¶8301, ¶8303, ¶¶10181-10188, ¶10324). It has been acknowledged that neither community television stations nor the internet are substitutes for the local programming of conventional OTA television broadcasting stations (¶1612, ¶3625, ¶10267). As a result, the CCA believes that it would inaccurate to conclude that that Canada's privately-owned, over-the-air television broadcasters should be allowed to reduce or eliminate local programming.

6 The CCA also submits that arguments that OTA television broadcasters face increased costs due to new technology are incomplete because they are being submitted without necessary historical context. Their arguments surely raise many questions. Did Canada's OTA television broadcasters not participate in the CRTC's

1993 proceeding that dealt with the structure of Canadian broadcasting in light of the advent of digital technology? Have these broadcasters not been aware of the need to plan for the transition from analog to digital broadcasting for many years? (¶278, ¶1514) Have costs for this technology not declined over time? (¶1519, ¶2895, ¶4842, ¶¶5228-5229, ¶7090, ¶7385) Must the normal depreciation and replacement cycle of broadcasters' hardware not be considered? (¶279, ¶¶1518-1521, ¶3682-3684, ¶7385) Have privately-owned broadcasters not earned just over two billion dollars in profits before interest and taxes since 1994? (¶8559)

7 With the exception of the Canadian Broadcasting Corporation – Canada's publicly-funded national broadcaster – whose transition to digital broadcasting should be funded by Parliament as in the past (¶77) – the CCA believes that Canada's OTA television broadcasters and their parent companies must themselves be accountable for their apparent failure to plan for the future with respect to technology (¶¶4803-4805, ¶4814, ¶4817). Although it would obviously benefit privately-owned broadcasters to reduce expenditures on Canadian programming to finance the transition from analog to digital transmission, the CCA believes this would be contrary to Parliament's objectives for broadcasting in Canada, and would unfairly require Canadian actors, directors, producers and others in the cultural sector to now remedy the private sector's past failure to plan ahead.

8 To prevent the situation in which Canada's cultural workers effectively subsidize Canada's privately-owned, over-the-air television broadcasters, the CCA has argued that the CRTC must intervene by regulation and/or by conditions of licence. Regulatory intervention is required in part because the granting of broadcasting licences constitutes a privilege, rather than a right; this privilege is attended by concomitant obligations to Parliament, and in a larger sense, to Canadians (¶2526).

Little or no empirical evidence has been submitted in this proceeding which would support arguments that regulatory intervention would impose excessive or onerous burdens on licensees. Rather, regulatory intervention in this sector is required because, as the CCA's uncontradicted written submission pointed out, Canadian broadcasting is demonstrably not a competitive marketplace but rather an oligopoly whose constituent businesses have as their sole, legitimate object the need to maintain and preferably increase returns to shareholders. The absence of a competitive marketplace in Canada's privately-owned, over-the-air television broadcasting sector has meant that the CRTC's 1999 television policy did not achieve its many intended benefits. In particular, and as currently structured, Canada's privately-owned, over-the-air television broadcasting groups have not strengthened Canadian programming financially (¶1828) and have reduced the hours of original Canadian drama available to Canadians (¶9775, ¶¶10097-10098, ¶11256, ¶11804) at times when they are most likely to be available to watch these programs (¶11257). As the Commission's own uncontested data have indicated, spending by Canada's privately-owned, over-the-air television broadcasters on foreign programming now exceeds spending on Canadian programming (¶5551).

- 9 To remedy the current situation in which Canada's privately-owned, over-the-air television broadcasters spend more on non-Canadian programming than on Canadian programming (¶5551), and hours of original Canadian drama constitute a rare exception (¶9572) in the 8 pm to 11 pm schedules of Canada's privately-owned, over-the-air television broadcasters (¶¶8557-8558, ¶9802), the CCA strongly supports the parties in this proceeding who urged the CRTC to re-establish an enforceable and enforced regulatory regime that establishes basic *minima* for expenditures on and the exhibition of original Canadian programming, and in particular drama, during the period

when Canadians are, for the foreseeable future, most likely to be available to watch television (¶4157, ¶11324).

- 10 Arguing that regulatory requirements for expenditures and exhibition are unusually “intrusive” – in the face of both industry-wide empirical data and anecdotal evidence demonstrating the marked decline in the expenditures on and exhibition of Canadian drama – is to ignore the Commission’s past success in establishing such minimal regulatory requirements in the late 1980s, the demonstrated ability of Canada’s television broadcasters to meet this challenge in the past and, perhaps most importantly of all, Parliament’s expressly-stated goals for Canada’s broadcasting system. Suggestions that regulatory requirements regarding the exhibition of and expenditures on Canadian content are so excessive as to be intrusive implies that certain of Parliament’s objectives in the *Broadcasting Act, 1991* may simply be ignored. To accept the unsubstantiated idea that minimum exhibition and expenditure requirements are intrusive would effectively mean that section 3 of this legislation may be read as follows:

- (d) the Canadian broadcasting system ~~should~~ **[need not]**
 - (i) **serve to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada,**
 - (ii) **encourage the development of Canadian expression by providing 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,
 - (iii) **through its programming and the employment opportunities arising out of its operations, serve the needs and interests, and reflect the circumstances and aspirations, of Canadian men, women and children,** including equal rights, the linguistic duality and

multicultural and multiracial nature of Canadian society and the special place of aboriginal peoples within that society, and

- (iv) be readily adaptable to scientific and technological change;
- (e) each element of the Canadian broadcasting system ~~shall~~ **[need not] contribute in an appropriate manner to the creation and presentation of Canadian programming;**
- (f) *each broadcasting undertaking shall* **[need not] make maximum use, and in no case less than predominant use, of Canadian creative and other resources in the creation and presentation of programming,** unless the nature of the service provided by the undertaking, such as specialized content or format or the use of languages other than French and English, renders that use impracticable, in which case the undertaking shall make the greatest practicable use of those resources;

The CCA does not, however, believe it has been the intent of Canada's legislators since the 1930s to encourage, facilitate and support a broadcasting system solely to ensure that a limited number of broadcasting licensees are financially successful by importing and airing programs from other countries. Rather, the language chosen, accepted and adopted by Parliament has clearly focussed on the need for Canada's broadcasting system to inform, to enlighten, to entertain and – yes – to employ Canadians to present Canadian audiences with programming that reflects our Canadian society. The CRTC itself, the CBC as well as the CTF, are but a few of the mechanisms Parliament has chosen to meet this need.

- 11 The CCA therefore also supports those parties who advocated adding any new, CRTC-imposed BDU subscriber fee revenues to existing programming funds, particularly the CTF, and in its oral presentation supported an amount of \$3.00 per subscriber per month. The CCA notes that some empirical evidence presented in this proceeding supports BDU subscribers' willingness to pay additional amounts, within

limits, through their subscriber fees (¶¶1058-1059, ¶1373, ¶1381, ¶10766). The CCA agrees with parties who argued that the CRTC has jurisdiction with respect to such fees (¶¶495-497 and ¶¶2371-2374, ¶2377, ¶¶2426-2430, ¶¶2442-2450).

- 12 Once more, thank you again for the chance to discuss the Commission's policy for conventional, over-the-air television services with you and your colleagues. We very much appreciate the CRTC's solicitation and welcome of ideas about the future of this vital sector of Canadian culture (¶¶3694-3695), and would like to take this opportunity to thank the panel and the Commission's staff for their time and dedication to this hearing. We look forward to the publication of the Commission's deliberations about this proceeding.

Sincerely yours,



Alain Pineau
National Director