

CMPA

Canadian Media
Production Association



Screen-based entrepreneurs

Oral Remarks by:

The Canadian Media Production Association (CMPA)

Broadcasting Notice of Consultation CRTC 2013-19

Applications for mandatory distribution on cable and satellite distribution systems pursuant to section 9(1)(h) of the *Broadcasting Act* and applications for the licence renewal of independent conventional, pay and specialty television services

April 30, 2013

Check against delivery



1. Good morning, Mr. Chairman, Commissioners. My name is Michael Hennessy and I am the President and CEO of the Canadian Media Production Association.

2. Please let me introduce my colleagues. On my immediate left is Marla Boltman, the CMPA's General Counsel. To Marla's left is Marc Séguin, our Senior Vice President, Policy. On my right is Jay Thomson, our VP Regulatory.

3. I'd like to begin by offering these general observations about the issues you are considering in this proceeding and the challenge before you.

4. In a marketplace where digital has empowered consumers as never before and enabled increased competition and choice within the Canadian broadcasting system, it is increasingly hard to find the right balance between the interests of consumers generally and the achievement of the objectives of the *Broadcasting Act*.

5. In seeking that balance, our view is that the over-arching objective for the CRTC must be to ensure a significant opportunity for Canadians to benefit from the development, production and exhibition of Canadian programming within the system.

6. Let me be clear. We do not oppose more choice or packaging options because that is where the market has moved. But you can make great programming and still fail to connect with audiences if that programming is underfunded or not exhibited, scheduled or promoted properly.
7. The issue of the negative impact on affordability if certain 9(1)(h) services are approved has been a central issue in this proceeding. We believe that the impact of 9(1)(h) services on “affordability” is a red herring that threatens to overshadow the achievement of more significant objectives under the Act.
8. The CMPA is not blind to the fact that, by using section 9(1)(h) to add services to the basic package, the Commission may trigger BDU rate increases.
9. But it would be a stretch to blame consumer dissatisfaction with the price of their BDU service on your rare decisions to add new, exceptional Canadian services to basic. That may be the spin, but the reality is that the cost of basic is already heavily inflated by inclusion of the BDUs’ own services, including their high-cost sports services.

10. Even if the Commission were to mandate additional services like Starlight on basic, or increase APTN's rate, it would still amount to a fraction of the total cost of basic service which is often above \$30. And arguably if past is prologue, rates (because they are unregulated) will go up even if no services are added. So from a pure cost/affordability question we need to ask whether the basic service needs to be as "fat" as it is today.
11. The idea of basic service has morphed into something much more than what the Commission has deemed mandatory to achieve its objectives under the Act. It serves commercial interests in attracting consumers to subscribe and it serves corporate interest by providing advantageous placement and reach to affiliated services.
12. Remember that from a consumer perspective, services placed on basic for commercial reasons or because they are affiliated are just as mandatory as those classified 9(1)(h) by the Commission. And arguably a lot more expensive on a per channel basis.

APTN

13. The Commission originally licensed APTN as a 9(1)(h) service so that Canada's Aboriginal Peoples would have access to a national television service to exchange information, ideas, entertainment and cultural perspectives. Those reasons are still valid and still apply.
14. However, Aboriginal producers have raised a number of concerns about APTN. In particular, they question whether APTN's public commitment to licensing projects from a diverse range of independent Aboriginal producers is reflected in its actual practices. You heard Delores Smith yesterday express concerns about how "Aboriginal control" should be defined for APTN. Many Aboriginal producers share those and related concerns, which we see as needing to be addressed through Terms of Trade.
15. Aboriginal producers also have real concerns about APTN's dealings with its affiliated for-profit production company – Animiki See.
16. The Aboriginal producers have told us that APTN utilizes Animiki See to fulfill part of its 80% independent production obligation.

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17. One way it does this, they tell us, is that it requires Aboriginal producers to partner with Animiki See as a condition of renewing their programs. So an Aboriginal Producer who would have had control (financially and otherwise) on the first year of their program, would then have to share or even relinquish that control once partnered with Animiki See and, more importantly, would be required to split their fees with APTN's affiliate.
 18. The Aboriginal producers have also told us that APTN's written reply on this issue did not tell the whole story. For example, while APTN stated that it has allocated 98 percent or more of its funding to Aboriginal-owned productions, what we don't know is how much of that funding is flowing to Animiki See and how much is flowing to independent Aboriginal producers. We are told that APTN spends the majority of its licensing dollars on shows that Animiki See is a partner on, leaving whatever money is left over for the independent Aboriginal producers.
 19. Mr. Chairman, Commissioners, we cannot underscore enough the importance of APTN for Aboriginal producers. The sad reality is that APTN is their only real program buyer. That is why many of them are not speaking out in this proceeding on the issues we have raised on their behalf.

20. That is why we continue to submit that, without your investigation of these allegations, these issues will remain unresolved. There is a real need for transparency here regarding the role of Animiki See, particularly given APTN's special 9(1)(h) status.
21. We therefore ask the Commission to pursue the Animikee See matter in depth with APTN during its reply. This issue goes to the heart of APTN's mandate; hence our call for APTN to be required to file transparent and comprehensive annual independent production reports.

Starlight

22. Let me now turn to the Starlight application.
23. The Commission will know from our interventions in this process and in many others that we are deeply concerned about the future of Canadian English-language feature films in this country. You will also know that we strongly believe that Canadian feature films are and remain an important component of PNI in the Canadian broadcasting system.
24. And that is why we believe the Commission should play a critical role in supporting the development, production, promotion and exhibition of Canadian feature films.

25. Last fall the Department of Canadian Heritage released the results of its public opinion survey on Canadians' attitudes and opinions towards Canadian feature films. Those results confirmed what our film members already knew: that Canadians want access to Canadian films on television.
26. As the Starlight panel noted, television is the only place where many Canadians will ever get the chance to see Canadian films. Insofar as arguments about over-the-top alternatives, the reality remains that linear television is still the number one place to consume content. The internet is a critical element of any broadcast strategy but the argument that the internet is a substitute for TV carriage is still a long way from reality.
27. The important role television plays for Canadian films also goes beyond just broadcasting them. Through their licence fees, television broadcasters have played a critical part in the creation of Canadian films too. But broadcasters have not only pulled back from promoting Canadian films, they've also dropped the fees they're prepared to pay for the few films they still license.
28. This is where Starlight fits in. It has the real potential to play a big part in addressing Canada's feature film crisis. It has the real potential to make a special and unique contribution to the Canadian broadcasting system.

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29. And, in doing so, Starlight has the real potential to *increase* consumer choice, by giving Canadians in all parts of this country regular access to Canadian films for a very reasonable price.
 30. One thing we believe Starlight still needs to do, however, is to allocate a substantial part of its programming budget to licensing new Canadian films. This is in addition to its plan, through its Starlight Fund, to fully finance new films by emerging film-makers. It is what we have called the critical third-leg in the Starlight business model.
 31. A defined and well-funded plan to license new films through this traditional broadcast licensing model will ensure the creation and presentation of the kinds of films that are now receiving critical acclaim in Canada and around the world.
 32. We are pleased that Starlight is on the record as recognizing the importance of licensing to increase its stock of new films. It's fair to say, though, that we're still waiting to hear how significant its commitment might be. In our view, the Commission should require Starlight, by condition of licence, to allocate to the licensing of new films an amount that is at least equal to the amount it allocates to the licensing of old ones.

Terms of Trade

33. Mr. Chairman, Commissioners, I'd like to conclude my remarks by highlighting once again how important it is that the applicants in this proceeding agree to Terms of Trade. As the Commission has noted Terms of Trade are in the best interest of the Canadian broadcasting system because of the stability and clarity they ensure for producers and broadcasters.
34. To us, this means all broadcasters – not just the large vertically-integrated ones, but also the independent ones and those who benefit from special 9(1)(h) status. Without Terms of Trade, true independence and the principle of fair dealing in the system are severely threatened.
35. This proceeding is your chance to exercise your jurisdiction to build adherence to Terms of Trade into the new licences you may issue and the ones you will renew, in the best interest of the system.
36. Thank you and we would be pleased to respond to your questions.



Remarks by the Canadian Media Production Association to the CRTC
pursuant to Broadcasting Notice of Consultation CRTC 2013-19

CMPA Panel

Jay Thomson	Michael Hennessy	Marla Boltman	Marc Seguin
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