



26 June 2014

Mr. John Traversy
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario K1A 0N2

Filed Electronically

Dear Mr. Traversy:

Re: Broadcasting Public Notice CRTC 2014-190: Let's Talk TV

1. These are the comments of the Canadian Media Production Association (the CMPA)¹ in response to the above-noted Broadcasting Notice of Consultation ("the Notice").
2. The CMPA wishes to appear at the public hearing scheduled to commence 8 September 2014.
3. The primary interest of the CMPA in this proceeding is to ensure that Canadians will still have the opportunity to choose to watch new, original, high-quality and diverse Canadian programs as the Canadian broadcasting system and the way it is regulated evolve to respond to increased competition, new technologies and changing consumer behaviour and demands.
4. The CMPA appreciates and supports the fact that, in this process, the Commission is seeking to establish a holistic approach to benefit the whole Canadian broadcasting *system*, including consumers, creators and citizens. We are particularly heartened by the Commission's clear recognition that ensuring the system supports the continued production, availability and promotion of high-quality, compelling and diverse Canadian programming is central to its legislative mandate and is essential to providing Canadian consumers with the breadth of programming choices they want and deserve.

¹ The CMPA represents the interests of screen-based media companies engaged in the production and distribution of English-language television programs, feature films, and new media content in all regions of Canada. The CMPA's member companies are significant employers of Canadian creative talent and assume the financial and creative risk of developing original content for Canadian and international audiences.

5. To that end, and consistent with the shared objective of the Government and the Commission to provide Canadians with more programming choice, we recommend that, as part of this proceeding, the Commission, amongst other things:

- **Require broadcasters to maintain the percentage of their CPE they have historically spent on new, original Canadian programs, and to allocate minimum set percentages of their PNI spending to support at-risk genres, specifically new, original children’s programming, Canadian theatrical feature films, and documentaries;**
- **Require exempt “new media” broadcasters to spend on Canadian programming and to include Canadian programs in their inventory; and**
- **Require that foreign services authorized for distribution in Canada contribute to funding the production of Canadian programming.**

6. We have set out our answers to the questions in the Notice in the attached document. In formulating these answers, we were guided by the Commission’s stated objectives for this proceeding and by the Commission’s own associated guiding principles, which we wholeheartedly support. Given the importance of this proceeding for the future of the Canadian broadcasting system, we believe those objectives and associated guiding principles bear repeating:

Objective I: A Canadian television system that fosters choice and flexibility in selecting programming services

Associated Guiding Principles:

- The distribution and packaging of television services should maximize choice and flexibility.
- Canadians should continue to have access to the best of what Canada and the world have to offer.

Objective II: A Canadian television system that encourages the creation of compelling and diverse Canadian programming

Associated Guiding Principles:

- The broadcasting system should focus primarily on the production and availability of high quality Canadian programming, including local programming.

- The broadcasting system should promote the production of diverse programming that not only appeals to large audiences but also meets the needs of niche and underserved audiences.
- The broadcasting system should encourage the promotion of Canadian programming in Canada and abroad.
- Barriers within the broadcasting system should be removed to allow a diversity of programming from a variety of sources—big or small, integrated or independent, established or new.

Objective III: A Canadian television system that empowers Canadians to make informed choices and provides recourse mechanisms in the case of disputes

Associated Guiding Principles:

- Canadians have the greatest possible level of flexibility and choice, both in the platforms and services through which they access programming.
 - Canadians can make choices that are affordable to them.
 - Canadians can knowledgeably choose and change program providers and platforms.
7. As we repeatedly advise throughout this submission, the Commission must balance its efforts to provide consumers with more choice and control over the BDU-delivered programming services they receive and pay for with its fundamental obligation to regulate and supervise the Canadian broadcasting system with a view to implementing Canada’s broadcasting policy. We caution the Commission against eliminating rules, which have clearly and historically served to achieve broadcasting policy objectives, in order to achieve more consumer choice and control, without ensuring the objectives will still be met.
8. In the answers in the attached document, we detail our positions with respect to each of the proposals the Commission has advanced. In summary, our positions are:

Consumer Choice and Pick and Pay

- While we share the concerns of many regarding the potential impact of the Commission’s proposed new Pick and Pay (“PnP”) regime, we submit that if were to provide the “right” mix of choice, affordability and flexibility in packaging options, it could be important for promoting consumer satisfaction with the Canadian broadcasting system and reducing churn (cord cutting). If done wrong, however, we fear it would not deliver as much choice and value for money as consumers hope for, and would undermine support for Canadian programming and jeopardize jobs in the industry.

- We are concerned that the proposed obligation to offer a skinny basic could lead to increasing cord-shaving and thus lower BDU revenues. This is because consumers might choose to subscribe simply to the skinny basic to access their local services and then turn to currently non-contributing, exempt broadcasting services like Netflix to fill out their programming choices.
- The CMPA strongly believe that “consumer choice” must include the continued opportunity to choose *Canadian* broadcasting services and to view a broad range of great Canadian programs. For that *Canadian* choice to exist, the system must support the maintenance of healthy and attractive Canadian broadcasting services in order to ensure the creation and presentation of new, attractive, interesting, entertaining and well-made Canadian programs.

Support for Original Canadian Programming

- Ensuring an adequate and diverse supply of new, original content, both domestic and foreign, is key to a healthy system: thus it would be counter-productive if the model adopted to provide “more choice” were simply to create more choice of repeated rather than original programming. Accordingly, we propose that broadcasters’ Canadian programming support obligations include specific requirements to spend on new, original Canadian programs, including on the following at-risk categories of programming:
 - original children’s programming;
 - new theatrical feature films; and
 - original, long-form documentaries.
- We submit that those Canadian programming services which commit to broadcasting a high level of original Canadian programming should be added to the skinny basic service.

Adapting the Regulatory Framework to Technology and Consumer Behaviour

- Although PnP is expected to result in reduced broadcaster revenues, the total amount of money in the system may be maintained or even increase over time if revenues from all “broadcasting” services are counted.
- To that end, we submit that the funding mechanisms for Canadian programming should take into account the additional ways in which broadcast programming is delivered and watched, by extending Canadian program spending and “library” obligations to broadcasting services which, to this point, have been exempt from such obligations under the New Media Exemption Order but which have increased in their importance and impact.

Beyond PnP: the Commission's Other Proposed Regulatory Changes

- As identified in evidence we have jointly commissioned for this proceeding (and attached with this submission), there are varying best to worse case scenarios which would arise should the Commission adopt some or all of its proposed regulatory changes. We note, respectfully, that the worst case scenarios tend to arise where there would be a high degree of regulatory disruption in a market already subject to disruption due to new technologies.
- In our view, to minimize the likelihood the worst case scenarios will materialize, while still increasing consumer choice, the Commission should focus on the central issue in this proceeding – finding a means to provide Canadians with more control over what broadcasting services they can choose and pay for in a manner that will minimize any negative impact on jobs within the industry – and abandon other harmful and disruptive proposals such as eliminating the preponderance rule, simultaneous substitution, exhibition requirements and current restrictions on foreign entry.

Preponderance

- We submit that the preponderance rule remains the most effective and appropriate means of meeting the *Broadcasting Act* requirement that BDUs give priority to the carriage of Canadian programming services. Moreover, it is not administratively complex to maintain the current preponderance rule regardless of the manner in which BDUs package and market their services.

Simultaneous Substitution

- We submit that simultaneous substitution must be maintained to protect legitimate territorial rights and avoid material damage to the system. The CMPA sees no net benefit to consumers by eliminating it but very real harm to Canadian broadcasters and Canadian programming.

Exhibition

- We oppose eliminating or significantly reducing exhibition obligations, particularly in Prime Time, as such obligations make an important contribution to consumer choice by ensuring that Canadians who continue to turn to linear, scheduled services as the primary source for their television programming can still choose to watch Canadian programming.

Non-Canadian Services

- We oppose relaxing the entry rules for non-Canadian services. As our evidence suggests, this is potentially one of the most damaging proposals the Commission could adopt (along with eliminating simultaneous substitution). First, it could have a devastating impact on Canadian broadcasters' revenues, Canadian content production and industry jobs; second, it is unnecessary as the vast majority of the most popular foreign services and shows are already available in Canada.
- We submit that any non-Canadian service authorized for distribution here must agree to be offered on a PnP basis before PnP is implemented for Canadian services. Alternatively, if any of them do not accept PnP status, we submit the Commission must revoke their distribution authorization.
- We also submit that the time has come for the Commission to require that all foreign services authorized for distribution in Canada contribute to funding the production of Canadian programming at a level commensurate with the contributions made by Canadian services.

Genre Exclusivity

- We appreciate that elimination of genre exclusivity would give services more flexibility to program whatever shows will best serve their business needs, thus potentially helping them to generate increased revenues, which would benefit both the services and the production of Canadian programming. That being said, we are concerned that elimination of the genre rules could lead to a loss of diversity in the system through the disappearance of existing niche services and at-risk categories of programming, more repurposing of content and less original production.
- For this reason, we submit that the elimination of the genre rules would provide further justification for our proposal that broadcasters' Canadian programming support obligations include specific requirements to spend on new, original Canadian programs, including on the at-risk categories of original children's programming, new theatrical feature films and original, long-form documentaries.

Standardized Licence Obligations

- We appreciate the Commission's desire to simplify the licensing process for discretionary programming services through standardizing programming support obligations, but could only support associated measures that would not result in reduced overall support in the system for the creation and presentation of Canadian programming, including support for Canadian independently-produced programming.

Terms of Trade

- The Commission should refuse to allow PnP to be used as an excuse to undermine the safeguards for independent producers created by Terms of Trade: those safeguards will take on even greater importance in a PnP world to ensure fair treatment for producers and their opportunity to exploit the intellectual property in the productions they develop and deliver to broadcasters and sell to the world in analog and digital formats.
9. The CMPA submits that Canadian broadcasting system has never provided Canadians with higher quality programming, both Canadian and foreign, than it does now. Therefore, it would be an unnecessary risk to jeopardize the opportunities the Commission and the industry now have to build on our recent programming successes by attempting too much and moving too fast. In our view, PnP in itself would represent a significant change to the broadcasting system, and would achieve the Government's objective, as identified in the Throne Speech, of providing Canadians with more control over what broadcasting services they can choose and pay for. There is therefore no need to introduce further changes that may lead to unintended, negative consequences for the system. We submit that it would be more prudent, and in the end more constructive, to pursue a series of incremental changes, which are regularly assessed, than to attempt a singular, dramatic system overhaul.

Sincerely,

[original signed by]

Michael Hennessy
President & CEO

Attach.