CRTC Report to the Minister of Canadian Heritage on the Canadian Television Fund

Executive summary

Following an extensive process that included consultations with all sectors of the television broadcasting industry, as well as a public process that included a public hearing, the Commission affirms the important role that the Canadian Television Fund (CTF) and the independent production sector play in producing quality Canadian television programs.

However, given the increasingly competitive environment facing Canadian broadcasting, the Commission recommends that changes be made so that the CTF provides two distinct funding streams – a public sector stream and a private sector stream. Each stream would be managed by its own board of directors.

The public sector stream would rely on contributions from the Department of Canadian Heritage (DCH). It would concentrate on the production of the types of programming referred to in the contribution agreement between the DCH and the CTF – programming that contributes to the fulfillment of the cultural objectives set out in the *Broadcasting Act.* Access to the public sector stream would be provided to the Canadian Broadcasting Corporation, educational broadcasters and other not-for-profit broadcasters.

The private sector stream would be market-oriented and concentrate on the production of programming with broad popular appeal to Canadian audiences. It would rely on contributions by broadcasting distribution undertakings (BDUs), and access to the private sector stream would be provided to private commercial broadcasters. The Commission considers that it would be appropriate for Aboriginal Peoples Television Network (APTN) to receive its Broadcaster Performance Envelope (BPE) funding from the private sector fund for its English- and French-language programming, given that APTN is a commercial broadcaster that caters to the Canadian Aboriginal segment of the population. The Commission also recommends that TV5 and Vision TV be permitted to a make a one-time election with the CTF as to whether they would access the public or private sector stream.

The Commission recommends that the board of directors for the private sector funding stream be composed of 11 members, with majority representation from contributing BDUs as well as representatives of broadcasters and independent producers. Day-to-day administration would continue to be done through the CTF. Under this two board approach, BDU contributors and private sector broadcasters would now be part of the private sector board. It would therefore be appropriate that they be removed from the public sector board.

The Commission considers that audience success should be the most important factor in determining access to funding from the private sector stream. Accordingly, it sets out recommendations concerning how audiences should be measured for this purpose, as well as the extent to which other criteria should be used to determine the level of CTF funding that broadcasters receive. The Commission further recommends that programs obtaining CTF funding must continue to obtain 10 CAVCO points.

The Commission will not permit BDUs to opt out of their required contributions to the CTF. It is, however, willing to do all that it can to facilitate the conclusion of terms of trade agreements that will permit the acquisition of rights to many broadcasting platforms on terms that are fair to all.

Other recommendations include one for the establishment of a CTF new media stream based on incremental funding, and several related to the operations of the CTF.

The Commission itself undertakes to:

- amend the *Broadcasting Distribution Regulations* to require that BDUs make their contributions to the CTF on a monthly basis, once the DCH has addressed the major issues identified in this report;
- conduct ongoing regular reviews to ensure that the CTF implements a private sector funding stream;
- begin a process to amend its benefits policy, so that tangible benefits can be used to support the CTF; and
- begin a process to review its Certified Independent Production Funds Policy with a view to providing greater support for new media projects.

A proposed implementation schedule is set out in Appendix 1.

A dissenting opinion by Commissioner Michel Morin is attached as Appendix 2.

Introduction

1. The Commission submits this report in response to Order in Council P.C. 2008-289, 14 February 2008, which requested that the CRTC issue a report to the Minister of Canadian Heritage providing recommendations on the Canadian Television Fund (CTF).

Context of the report

2. In the winter of 2006/2007, the broadcasting distribution undertakings (BDUs) of two major broadcasting companies, Shaw Communications Inc. (Shaw) and Quebecor Media Inc. (QMi), withheld contributions to the CTF, questioning, variously, such things as the CTF's utility, efficiency, and governance structure. Given its mandate under the *Broadcasting Act* (the Act) to regulate and supervise all aspects of the Canadian broadcasting system, and given the letter and the spirit of section 3 of the Act, the Commission deemed it its responsibility to intervene in this dispute. With the agreement of the Department of Canadian Heritage (DCH), the Commission created a Task Force with a mandate to examine issues related to the funding of Canadian programming and the governance of the CTF. These issues included:

   - the most effective use of the required contributions from BDUs;
   - the most appropriate size and structure of the CTF Board; and
   - the most appropriate mechanisms to deal with real or perceived conflicts of interest at the CTF.

3. The Task Force held meetings with 61 groups and 144 individuals from different sectors of the television industry between 22 February and 8 May 2007. As a result, the Task Force produced a report (the Task Force Report), which was released on 29 June 2007. In its report, the Task Force made a number of recommendations intended, among other things, to increase the efficiency and effectiveness of the CTF, to encourage greater participation by BDU representatives, and to clarify the roles of the CTF Board and the CTF staff.

4. In its findings and conclusions, the Task Force affirmed the important role played by the CTF and the independent production sector in producing quality Canadian television programs. However, given the increasingly competitive environment facing Canadian broadcasting, the Task Force also recommended that the current objectives of the CTF be broadened to include more support for Canadian television programs that succeed with Canadian audiences.

5. To achieve this goal, the Task Force proposed, among other things, that the Commission amend its *Broadcasting Distribution Regulations* (BDU Regulations) so that the funds contributed by BDUs would be allocated to a more flexible and market-oriented private sector funding stream. All together, the Task Force Report set out 24 distinct recommendations.

6. In Broadcasting Public Notice 2007-70, the Commission stated its preliminary view that it was in agreement with the recommendations of the Task Force and that, accordingly, it intended to implement those recommendations that fell within its powers. However, in order to help ensure that the procedural and substantive steps needed to implement the recommendations were as effective as possible, the Commission invited comments from interested parties on the Task Force Report as a whole, as well as on a number of identified implementation issues.

7. One hundred and eighty-four parties submitted comments in response to Broadcasting Public Notice 2007-70. Some recommendations generated more comment than others. While many recommendations elicited mixed reviews, all sectors of the industry expressed significant opposition on various key issues. As a result, the Commission deemed it appropriate to hold an oral public hearing to continue the process.

8. In Broadcasting Notice of Public Hearing 2007-15, which initiated the hearing process, the Commission identified a number of matters on which it was particularly interested in seeking input at the hearing. These included:

- the measurement tools that may be most appropriate for the CTF to use to evaluate audience success;
- the measures, if any, that might need to be taken to reflect French-language market particularities, including the possibility of additional sources of funding for the CTF;
- the measures that should be taken to ensure appropriate support for programming licensed by educational broadcasters;
- the best ways to maximize input from the independent production sector; and
- how the special initiatives identified in the CTF Contribution Agreement should be applied in the context of a CTF that administers both government as well as BDU or other private sector funding.

Snapshot of the hearing

9. Forty-eight parties appeared at the hearing, which took place from 4 to 8 February 2008. These parties, including broadcasters, producers, writers, actors, directors and representatives of BDUs, appeared both individually and as part of industry organizations.

10. Although parties were free to discuss all of the Task Force recommendations and related issues, certain issues dominated the discussion, including:

- the proposal to create a private sector funding stream;
- the criteria and objectives for this new funding stream;

- the most appropriate audience measurement tools; and
- governance of the CTF Board.

11. Parties expressed various opinions regarding the creation of a market-oriented funding stream. Many in the creative community and production sector were highly critical of such an initiative, while it was largely well received by BDUs and certain broadcasters. Some parties, such as Rogers Communications Inc. (Rogers) and Astral Media Inc. (Astral) proposed different ways of structuring a private sector funding stream, while QMi proposed an "opting-out" option. Under this option, QMi's Canadian production spending would approximately double over a three-year period, but all of this spending would be directed through QMi's own Quebecor Fund exclusively for QMi programming purposes. The QMi proposal generated much debate and found little or no support from other parties. For its part, Shaw proposed the complete dismantling of the CTF, but failed to offer any plans for the continued support of Canadian programming as is required of each element of the Canadian broadcasting system under section 3 of the Act.

12. In terms of funding objectives, the Task Force's recommended rollback to 8 out of 10 Canadian Audio-Visual Certification Office of the DCH (CAVCO) points for productions that would qualify for CTF funding garnered much attention, most particularly from the creative community. Certain broadcasters as well as the creative community opposed such a move, stressing the current success of Canadian programming that obtains 10 CAVCO points.

13. With respect to governance, discussion took place on the merits of maintaining one board, as is currently the case, or of creating a second board for the administration of the private sector funding stream. Another issue was the Task Force proposal to remove just the producers from the CTF Board on the grounds that they are direct recipients. Most parties opposed this recommendation. Some pointed out that the present structure has worked quite well, while others were of the view that broadcasters were as much direct recipients as producers and should therefore not be differentiated on that basis. Others sought to be added to the existing CTF Board. The CTF, for its part, described various changes it had already implemented in terms of its governance, such as the development of guidelines on roles and responsibilities.

14. The hearing provided an opportunity for parties to present and further explain positions previously expressed in their written submissions and for the Commission panel to explore with parties the reasons for their differences on key issues. It was evident, throughout the hearing, that opinions were strongly sector based and varied greatly.

Background to the main issues

15. In the sections of the report that follow, the Commission discusses those recommendations of the Task Force Report that subsequently became the main subject matters at the February hearing. These include:

- whether a private sector funding stream should be created and, if so, how it should be implemented;

- the measurement tools that would be most appropriate to evaluate audience success;

- whether to reduce the CAVCO point requirement to 8 out of 10 points for the private sector stream; and

- the QMi opting out proposal.

16. All these key issues (and others that will be discussed below) are, of course, interrelated, but it is useful at this point to discuss the merits of each independently.

17. However, prior to discussing these fundamental issues in depth, the Commission will first comment on two related matters that, in its view, are not at stake in a discussion of whether a single or two-stream model is preferable.

18. First, all contributions to the CTF, a not-for-profit corporation, whether from the public or the private sector, are to be used for the public good. The development of a separate private sector stream does not change this fact. Such contributions are required under the provisions of the Commission's BDU Regulations in order to fulfil the objectives of the Act. Consistent with these objectives, each element of the Canadian broadcasting system must contribute appropriately to the creation of Canadian programming. The Commission, taking into account the characteristics of each sector, how each interacts with the other sectors, and the needs of the Canadian broadcasting system has determined that certain BDU contributions to programming should be made by way of the CTF. It is now reviewing those previous determinations to ascertain whether improvements can be made.

19. Secondly, the Task Force saw no need to suggest substantive changes to the Broadcaster Performance Envelope (BPE) structure introduced by the CTF some four years ago. With the exception of concerns raised by some parties as to how initial access to the envelope structure takes place, no one other than Shaw, which continued to express its desire to see the demise of the CTF, has questioned the continued utility of the BPE approach in allocating funding.

20. It is essential to include, for context, a summation of how the BPE approach functions within the CTF in order to fully understand the balance of the Commission's report. As described by the CTF at the hearing:

> First, the envelope system is a market-oriented funding mechanism with the broadcaster acting, in essence, as the proxy for Canadian audiences. The CTF does not choose individual projects for funding. It is the broadcaster whose business it is to closely track ratings and appeal to the Canadian market who makes that choice. This is as close to the market as one can get in programming choices.

Second, the envelope system promotes competition and rewards success. Due to the weight of the audience success factor, the CTF channels its funds through broadcasters with a proven track record in generating audiences to Canadian shows. When a broadcaster airs the CTF eligible show that does well in ratings, that success is reflected in envelope allocations in the following year. This provides an incentive for broadcasters to promote CTF-funded shows and increase their audience share.

Third, the envelope system facilitates better planning for the industry by informing broadcasters how much they can commit to projects in a given year, which facilitates their planning cycle, leading to greater stability for broadcasters and producers.

Fourth, the envelope system virtually eliminates the issue of oversubscription for the CTF. Producers are required to have a broadcast licence before they submit their application. Time and effort is not made to apply to the CTF for projects that have no chance of being supported.

Finally, as a requirement of funding, the broadcaster must commit to airing the program and must do so during prime time. This ensures that economically viable programs are supported and that CTF-funded shows are seen by Canadians when Canadians are watching.

21. The Commission sees no need for substantive change to the BPE approach at this time.

Issue: Private and public sector funding streams

22. The Task Force concluded that the achievement of broad public policy objectives would be enhanced if the funds contributed by BDUs were allocated to support Canadian programs within a separate, more market-oriented private sector funding stream that specifically includes the key criteria of audience success and investment return. These funds would be allocated using the BPE system and implemented by way of the simplest possible program guidelines. In order for the CTF to repurpose the use of BDU contributions to reflect such a market orientation, the Task Force noted that it would first be necessary for the CTF to receive clear objectives. The Task Force pointed out that the Commission itself could create such objectives by amending sections 29 and 44 of the BDU Regulations to include a description of the objectives of the private sector funding stream to which monies must be contributed.

23. In the Task Force's view, the key objectives to be contained in sections 29 and 44 of the BDU Regulations, when amended, would include the following:

- qualifying Canadian programming must meet a minimum of 8/10 points using the CAVCO scale, be broadcast in prime time and continue to fall within the CTF's traditional genres of drama, children's and youth, documentary and variety/performing arts programming;

- audience success must be the primary criterion for continued funding; and
- actual and potential return on investment must be a factor in allocating funding while taking into account the different realities of English- and French-language markets.

24. This central recommendation of the Task Force has undoubtedly been the most widely discussed matter since the report was issued. At the hearing, parties presented a number of variations concerning how best to configure a separate private sector funding stream. As well, some parties presented arguments as to why it would be best to maintain a single funding stream within the CTF.

Current CTF structure - One fund/one board/one administration

25. The following is a brief description of the current single stream CTF funding allocation structure to serve as counterpoint to the positions of those who advocated separate streams.

    - The current CTF model is based on the BPE system initiated some four years ago, with English drama being incorporated two years later. Ninety-four percent of CTF funding is distributed through this mechanism.
    - The BPE system operates through allocations of funding to Canadian broadcasters. Broadcasters then allocate CTF funds to projects on behalf of the CTF, subject to eligibility requirements and minimum broadcaster licence fee thresholds.
    - Once a broadcaster allocates funds in its envelope to a project that it believes will appeal to Canadian audiences, the producer of that project officially applies to the CTF for funding. The CTF determines if the project is eligible and then enters into a contract directly with that producer.
    - Broadcaster envelopes are calculated on the basis of four performance factors (audience success, regional licensing, above average licensing, and historic access) and broadcasters compete for those funds.
    - The audience success factor carries the greatest weight for English-language programming and significant weight for French-language programming. This factor is derived from the total hours tuned that each broadcaster achieves over the course of one broadcast year to programs supported by the CTF.
    - The regional licensing factor gives credit to broadcasters who license programs produced in the regions.

- The above average licensing factor gives credit to broadcasters who pay licence fees above historical averages.

- The historic access factor is derived based on multi-year levels of CTF funds that each broadcaster's licence fees has triggered, thus modulating the variations and envelope allocations from year to year.

- Each year, the CTF and the DCH enter into a Contribution Agreement that specifies the core objectives for use of both government- and BDU-originated funds in exchange for the government's commitment to provide funds.

- Envelopes are recalculated each fiscal year. This provides a regular rebalancing of the system except for the Canadian Broadcasting Corporation/Société Radio-Canada (CBC/SRC), which receives 37% of the total BPE allocation as a condition of the Contribution Agreement.

- A policy exists that allows broadcasters within a corporate group to transfer their BPE funds to each other. For instance, if one member of the corporate group has drama funds, it may transfer those drama funds to another broadcaster in that corporate group that has a drama envelope.

- Trades of monies are also allowed between broadcasters that provide programming in the same genre and language.

26. While the CTF advocated the retention of a single funding stream and thus proposed to continue to combine the streams of revenue coming from the DCH and the BDUs administered by the CTF, it indicated that it could introduce a more segregated reporting of those two streams of revenue. This would address to an extent the transparency concern raised by the Task Force. It is also apparent that the CTF's current BPE approach is, to a significant degree, audience-driven.

Two new possibilities for separating the streams

One fund, two streams

27. Astral presented a two-stream model in which one stream, funded primarily by the DCH, would be designated for public and not-for-profit broadcasters, while a second stream, accessible only by private, commercial broadcasters, would be funded by the regulated contributions of BDUs.

28. According to Astral, its proposed two-stream model would have the following characteristics and advantages:

    - This model would make it possible for BDUs not to specifically support public broadcasters, which already receive funding from the federal and provincial governments.

- It also makes it possible to recognize that the goals of public and not-for-profit broadcasters differ from those of private commercial broadcasters.

- The adjustment to a two-stream approach would be easy to accomplish and would not incur additional personnel or administrative costs on behalf of the CTF.

- The two-stream model would enable broadcasters to establish a weighting of the following factors, which correspond to a broadcaster's operating conditions: historical access, audience success, above average broadcasting rights and regional broadcasting rights.

- It would be easier to achieve consensus concerning equitable audience measurement among conventional television stations, specialty services and pay television broadcasters under the two-stream structure.

- Audience measurement instruments must be reviewed regularly to take into account new parallel modes of broadcasting programs, be they simultaneous webcasting, transactional and subscription video on demand (VOD), or mobile broadcasting. At the same time, measurement instruments must reflect the different paradigms followed by conventional television stations, specialty services and pay television broadcasters. This complex task demands constant monitoring, and the capacity of the CTF to effectively execute this task and to find fair and equitable solutions would be greatly enhanced in a two-stream structure.

29. Clearly, there is an attractive simplicity to a two-stream approach. As suggested by Astral, each funding stream could implement its own access rules and balance the various objectives to be reached. Methods of audience measurement could also be established that take into account the different characteristics of public and not-for-profit broadcasters and private broadcasters. The public sector funding stream could focus more on the goals of public policy inherent in the mandates of the services that would access it, without having to place increased emphasis on the size of the Canadian audiences that programs garner. The private sector stream could place increased emphasis on achieving a greater Canadian audience, as recommended by the Task Force.

30. However, the Astral two-stream proposal raises a number of inherent difficulties with respect to the adequacy of the funding that would be available for the public sector stream.

31. It is noteworthy that the size of funding commitments from the DCH has been static in recent years, whereas BDU contributions have grown significantly and may reasonably be anticipated to continue to do so. A simple separation as proposed by Astral could mean that the public sector programmers – the CBC/SRC, educational broadcasters, and other not-for-profit undertakings – would find themselves unable to maintain their current Canadian programming levels, absent an increase in government funding.

32. Based on the CTF's 2006/07 total revenues of $288 million, 52% or $150.6 million came from BDUs, 41% or $120 million from the DCH, 5% or $13 million from recoveries, and 2% or $4.4 million from interest earnings. The CTF indicated in its reply comment that, given that the BDU contributions have been rising by 7% annually and government contributions have been static, a separate BDU-sourced funding stream may, if the trend continues, lead to a situation where the public sector undertakings, without access to the private stream, could increasingly find themselves disadvantaged. In its written response of 27 July 2007, the CTF had pointed out that, if all funding currently allocated to the CBC/SRC, the CTF's special initiatives and support for educational broadcasters were derived solely from the public revenue stream, such funding would exceed the DCH contribution.

33. The Task Force's separate stream model, unlike the Astral model, did not propose to limit who could apply to either stream. Under the Task Force's model, the potential for a public sector funding shortfall that arises in the Astral model would therefore be significantly reduced. However, as suggested by a number of parties including the CTF, the Task Force approach could also be administratively more complex as producers may encounter greater difficulty in choosing the funding stream to which they should apply. The CTF argued that the determination of whether a program is cultural or commercial in nature is often an arbitrary distinction, and making such a distinction would raise the following questions:

- Would a program with both cultural and commercial characteristics be considered cultural or market driven?
- Would such a program be funded from both streams, requiring producers to submit two applications, doubling administrative requirements?
- If such a program were not eligible for both streams, who would decide which category it would fall under and why?

34. A further major point is that the single CTF Board, which would be required to make decisions appropriate for the differing objectives of the two streams, could be awkward or, possibly, dysfunctional. Effective and timely decision making could be put at risk, and the central objective of contributing to the production of Canadian programming with high levels of commercial and audience success might be threatened. Further discussion of the Board structure is set out later in this report.

Two funds

35. Rogers presented a different form of a two-stream model. Under its approach, the CTF would be restructured into two separate funds. One fund, relying primarily on contributions from the DCH, would be for public and not-for-profit broadcasters. A second fund, accessible only by private, commercial broadcasters, would rely on the regulated contributions of BDUs. Unlike Astral's model, the Rogers' approach would entail separate boards, as discussed below. It would, however, also leave intact the administrative end of the existing CTF structure. The result would be a two funds/two boards/one administration structure for the CTF.

36. According to Rogers, its proposed model would have the following characteristics and advantages:

- BDU monies would appropriately be directed to a separate fund rather than diverted to a separate funding stream within the CTF.

- Private sector funds would be used to finance Canadian hits by splitting the CTF into two separate and distinct funds. A private sector market-oriented fund with clearly defined objectives would help to achieve broad public policy objectives by building audiences for Canadian programs.

- Two separate funds would allow public funding to continue to be spent in the furtherance of government objectives. This would include the 37% dedicated funding envelope for the CBC/SRC and the financial support for provincial and educational networks.

- Public funds would continue to finance the special initiatives identified by the DCH in the Contribution Agreement.

- The private market-oriented fund would be financed by contributions from Canadian cable and satellite providers in accordance with the existing funding regime, and their regulatory obligations would be maintained.

- Under the Rogers proposal, 8 English-language and French-language public broadcasters and their related licensees would access the public fund, and 59 English-language and French-language private broadcasters would access the private fund.

- Both funds would continue to allocate the BPEs on a one-per-broadcaster basis.

- Drama (which would receive no less than 50% of funding from the private stream) would continue to be given the most weight. However, the programming categories would be expanded to include those that are eligible for support through a CRTC certified independent production fund that would include all Canadian programming with the exception of news, sports, reporting and actualities.

- Audience success should be the key factor when determining which projects would continue to receive funding.

- Audience-based measures should reward the delivery of mass audience Canadian programming in prime time. Such an approach would be consistent with the Commission’s regulatory framework and policy objectives for building audience for Canadian programming.

- Funding priority should be given to programs with broad appeal that attract the largest audience.

- One hundred percent equity investment rather than licence fee top-ups should provide a growth opportunity for the private sector fund.

- In order to minimize costs and maximize efficiencies, the day-to-day administration of the new private sector fund would rest with the CTF. The new board would enter into a contract with the CTF and a services agreement with Telefilm Canada for the management of all application processing would be established.

- The BPE system would continue, with three out of the four current performance factors phased out over the four years. By year four, audience success and return on investment would be the only two determinants in allocating the BPEs.

37. A dual fund approach has less of the attractive simplicity of either the Astral or the Task Force dual streams. It also poses the same problems with respect to the level of funding provided to public sector undertakings. While the end product — more programming oriented to audience success supported by funding from BDUs — is quite similar, and the announced intent is to continue to use both the CTF and Telefilm Canada to administer both funds, the Rogers proposal risks duplication of effort. In the Commission's view, while vigilance would be necessary, such duplication can be avoided.

Conclusion

38. The Commission is of the view that a clear-cut, definitive split between private funds and public funds as proposed in both the Astral and Rogers models is the most efficient way to achieve the objectives proposed for the new private sector stream. Hence this is the Commission's preferred option. Accordingly, the Commission endorses the Task Force recommendation of treating contributions from BDUs separate from those of the DCH. Contributions from BDUs should be aimed clearly at the production of Canadian programming that attracts large audiences and is commercially successful. The discussion leading to Recommendations 3 to 5 below addresses how audience success should be measured and how commercially successful programming should be determined.

39. The Commission is concerned, however, that a clear separation between public and private sector funding could lead to a situation where some public sector broadcasters could find themselves underfunded, absent an increase in contributions to the public stream. At present, based on the CTF's 2007/08 budget allocations, if one totals CTF allocations to the CBC/SRC, educational broadcasters, not-for-profit broadcasters, and special initiatives (considered for this purpose as all most likely falling within the ambit of the public stream), these currently exceed the $120 million DCH contribution by approximately $12 million. Given that the Contribution Agreement between the DCH

and the CTF requires that the CBC/SRC receive 37% of total contributions, it would appear that it is the other public and not-for-profit broadcasters that would be most likely to experience any shortfall.

40. To partially address this concern, and because Aboriginal Peoples Television Network (APTN) is a commercial broadcaster that caters to the Canadian Aboriginal segment of the population, the Commission suggests that APTN be permitted to obtain 1/3 of its funds from the public sector funding stream, for the purpose of its Aboriginal-language programming, and 2/3 of its funds from the private sector funding stream (approximately $2.4 million), for the purpose of its English- and French-language programming.

41. In the Commission's view, two of the other services that fall into the not-for-profit category, TV5 and Vision TV, have characteristics that do not neatly fall into either the public or private stream. While the programming of these services includes commercial components, it would be reasonable to conclude that these services would not necessarily achieve as high audience success as would purely commercial broadcasters. Accordingly, the Commission considers that it would be appropriate to permit these services, which are in the best position to ascertain what is in their best interests and plans in terms of the programming they will include in their schedules, to make a one-time election with the CTF as to which stream they wish to access. The Commission is of the view that it is the responsibility of the CTF and the DCH to consider how to address the remaining amount of any shortfall.

42. **Recommendation 1: The Commission recommends that the CTF establish a public sector funding stream based on contributions from the DCH and a market-oriented private sector funding stream based on contributions from BDUs. Access to the public sector funding stream should be provided to the CBC/SRC, including its specialty services, to educational broadcasters and to other not-for-profit broadcasters. Access to the private sector funding stream should be provided to private commercial broadcasters.**

43. **However, in order to reduce potential funding shortfalls to public broadcasters, the Commission further recommends that APTN be given access to the private sector funding stream for its English- and French-language programming.**

44. **The Commission also recommends that TV5 and Vision TV be permitted to a make a one-time election with the CTF as to whether they would access the public or private sector stream.**

Issue: Governance – Number of boards and composition

45. Currently, the CTF has a single Board which is composed of 20 seats. Some members are stakeholders and some are independent. The current member composition is broken down as follows:

- 1 Chair;
- 5 independent members nominated by the DCH;

- 1 member nominated by the CBC/SRC;
- 3 members, including one independent member, nominated by the Canadian Cable Telecommunications Association (CCTA);
- 2 members nominated by the Canadian Film and Television Production Association (CFTPA);
- 4 members nominated by the Canadian Association of Broadcasters (CAB);
- 1 member nominated by the Associations des producteurs de films et de télévision du Québec (APFTQ);
- 1 member nominated by the Association for Tele-Education of Canada (ATEC);
- 1 member nominated by the Canadian Association of Film Distributors and Exporters (CAFDE); and
- 1 member nominated by the Canadian direct-to-home (DTH) satellite industry (N.B. this seat is currently vacant).

46. In its report, the Task Force recommended the retention of a single board, but noted that the board should more effectively represent the BDU sector. While the CTF bylaws permitted four board members representing this sector, the Task Force was of the view that the number of BDU representatives should be increased to five in order to include two representatives from the DTH sector, thereby ensuring that BDU members adequately represent the DTH sector.

47. In response to the Task Force Report, the CTF stated that it has already implemented some changes, such as adding a seat for a second DTH representative as well as one for the creative community.

48. The number of boards, as well the board size and structure were discussed, generally briefly, by many parties in their written submissions and were also the subject of discussion at the hearing. These issues were important components in the various models proposed by certain parties.

Number of boards

49. While many parties, including the CFTPA, the CBC/SRC, the CAB and the creative community, essentially favoured the status quo, other parties such as Rogers and Bell ExpressVu, proposed a two-board approach. Within its two-stream proposal, Astral supported maintaining one board with representatives from all sectors, and also supported adding one seat for an additional DTH representative, as well as one seat for the creative community.

50. As part of its two-fund model, Rogers proposed the creation of two distinct and separate boards. For the private sector fund, Rogers proposed an 11-member board composed as follows: six members from the largest BDUs serving English- and French-language markets, one member from the Canadian Cable Systems Alliance (CCSA), two broadcasters (English- and French-language) and two independent producers (English- and French-language). In order to reduce the cost of having two boards, Rogers proposed

that the day-to-day administration continue to be done through the CTF.

51. For its part, Bell ExpressVu proposed the creation of a second smaller board within the context of the CTF for the oversight of the allocations of private sector funds. The second board would be composed of a balanced membership between BDUs and independent representatives. In Bell ExpressVu's opinion, this smaller size would be more suitable and would minimize potential conflicts of interest. Bell ExpressVu further suggested that CTF staff be shared by both boards for the purpose of administration, staff direction, operations, etc.

52. In response, the CTF maintained its support for only one board. The CTF was of the view that establishing a relationship with the Canadian Coalition for Canadian Expression (CCCE)[1] would be a much better option than creating a second board.

Discussion

One board

53. Certainly, maintaining one board has its appeal. It is consistent with the status quo and thus requires the fewest changes. In light of all the changes that the CTF is undergoing, and may need to further undergo, the retention of a single board may facilitate the transition.

54. Financial implications are another element. The CTF strives to keep administrative costs as low as possible. Keeping one board would assist the CTF in maintaining these lower costs, as well as potentially simplifying the management and administrative operations of the CTF.

55. On the other hand, under a two-fund scenario, maintaining only one board could create confusion for the members in trying to oversee the allocation of funds for streams that would have very distinct funding objectives. As well, as argued by parties such as Rogers, there is a certain logic in having private sector funds governed by the private sector, which can best represent their interests.

Two boards

56. Another option, with the creation of a private sector fund, is the creation of a separate board, as was proposed by Rogers. Many private contributors expressed concern that the current operation of the CTF does not provide them with sufficient control over how their contributions are being allocated and that there is insufficient transparency in the allocation process. Having two boards could provide increased control and transparency for both the public and private sectors. Rogers submitted that this could result in simpler, more efficient and cleaner management of the funds. It could also permit each board to

[1] The CCCE is an organization founded by Rogers, Cogeco Cable Inc., Bragg Communications Inc. and the CCSA to replace the CCTA as the nominating organization for the cable BDU contributors to the CTF. According to the CTF, the CCCE would contribute as many as five directors to the CTF Board. At the hearing Shaw indicated that neither it, nor the new DSL-based telecom BDUs, are members of the CCCE.

better focus on its respective funding objectives.

57. Conversely, creating two boards may have financial implications in that it could generate a greater administrative burden as well as increased administrative and operational costs.

Composition of the Board(s)

58. In its report, the Task Force made two recommendations with respect to the composition of the CTF Board. The first recommendation was the addition of a second DTH representative (which the CTF has agreed to implement). The other recommendation, which remains at issue, was a result of concerns raised by certain parties over potential conflicts of interest. The Task Force noted that it had received no evidence of specific instances of conflicts of interest since the new procedures had been put into effect. Nevertheless, it stated that it was unusual for an organization that allocates substantial sums to the independent production sector to have on its Board representatives of the recipients of those funds. In order to address this perception of conflict, the Task Force proposed to remove representatives of the independent production sector from the Board. Instead, a producer advisory committee would be established that would work through CTF staff to ensure that perspectives of the independent production sector would be brought to the Board and included in the development of program guidelines.

59. The CTF opposed this latter recommendation. It was of the view that maintaining the current mix of stakeholder and independent members is essential for assuring objectivity. The CTF submitted that its existing double majority decisional requirement properly addresses any potential perceptions of conflicts of interest. The CTF further considered that the mix of stakeholder and independent members is necessary for the Board to have proper industry expertise and opposed the removal of any “voices” from the Board.

60. Supporting CTF’s position were, notably, CTV, the CFTPA, the CAB, and the creative community, including the Alliance of Canadian Cinema, Television and Radio Artists (ACTRA). They were all of the view that representatives from all sectors are necessary to provide the expertise required and agreed that the double majority system now in place works effectively. Parties argued that referring to the services of a producer advisory committee as an answer to removing the independent producers from the board is inadequate as it would not replace the depth of knowledge and expertise brought by the producers.

61. Certain parties also submitted that broadcasters are as much recipients of CTF funds as independent producers and should, by the same logic, also be removed from the board, should the CTF proceed with removing the independent producers. MTS Allstream supported this argument, suggesting that broadcasters be removed unless they too become contributors. According to MTS Allstream, this would create a smaller board, prevent conflicts of interest and leave more seats on the board for economic contributors.

62. Some parties, including the Manitoba Motion Picture Industry Association, BCFilm, Comweb, the Shaw Rocket Fund and APTN, were in favour of a small, entirely independent board, believing that it would effectively solve conflicts of interest while not

favouring any particular sector.

Stakeholder board or fully independent board

63. The presence of stakeholders on the board, as was agreed by most parties, provides the board with valuable expertise from the industry and affords industry members some control over the allocation of their contributions.

64. However, the continuation of the stakeholders on the board results in a larger board and does not resolve the concern over potential perceived or actual conflicts of interest, which would be resolved with a fully independent board.

Combined - Stakeholders and independents, as today

65. The current board is composed of both stakeholders and independent members. This seems to be the preferred model by most parties and ensures that the point of view and interests of all sectors are represented on the board. The current double majority system offers significant protection regarding the issue of perceived or actual conflicts of interest.

Related issue: Removing producers only

66. The Task Force recommended that producers be removed from the board, given the perceived conflict of interest. While this could help to address the issues related to perceived or actual conflicts of interest, it could also result in the loss of important industry knowledge and expertise, which could be difficult to replace.

67. The use of an advisory committee could also have the potential to increase administrative costs, thereby annulling any savings that could have been achieved by resorting to a smaller board. Removing only the producers would also raise the issue of the difficult distinction to be made between producers and broadcasters in terms of being direct (or indirect) recipients.

Board size

68. Questions were considered as to the most appropriate size for the CTF Board: smaller, larger, or status quo. The CTF supported the current size, with the addition of a second DTH seat, as well as one for the creative community. In response to the proposal of reducing the board to a five-member independent board, the CTF was of the view that such a board would be too small and that seven independent members would be the best option. The CTF noted that when it had five independent members, it was ineffective, especially when one or two members were absent.

69. The CAB considered that continually adding “voices” to the table would not necessarily improve decision making or result in a better board.

70. Canwest and MTS Allstream both supported the establishment of a smaller board. While the CBC/SRC stated that it was not opposed to a smaller board, it questioned what problem it would address or solve. The creative community, including ACTRA, did not see the size of the board as a relevant issue. It was of the view that the issue was really board structure and effective management.

Conclusion

Removal of producers

71. As noted above, the Task Force recommended the removal of independent producers from the CTF Board, given that they were potential direct recipients of CTF funds. It appears, however, that a double majority voting system can effectively prevent actual conflicts of interest – a finding that is further supported by the fact that no evidence of actual conflicts of interest has been uncovered. That being said, the issue of perceived conflict of interest remains. From the statements of many parties, it is clear that value is added to board deliberations as a result of the breadth and depth of knowledge and expertise of all existing members. There also is merit in the suggestion that one effect of the BPE system is that broadcasters also receive CTF allocations and, hence, should be treated in the same way as producers. Accordingly, the Commission considers that the best resolution is to reject the Task Force’s recommendation with respect to the removal of independent producers. The Commission of course recognizes that the Ethics Commissioner is the final arbiter of all issues of conflict of interest.

Number of boards

72. Given the need for transparency in demonstrating how both the public and private sector funds are employed, the desire expressed by many private contributors to have an increased role in how their contributions are being allocated, and the inherent ability of separate boards to better focus on achieving their respective funding, the Commission finds a two-board approach, such as that suggested by Rogers, to be persuasive.

73. A two-board approach should result in simpler, more efficient and cleaner management of separate public and private sector funding. Accordingly, the Commission recommends a two-board structure based on the composition proposed by Rogers. This would result in an 11-member board to be responsible for the private sector funding stream composed of the following: six members from the largest BDUs serving English- and French-language markets, one member from the CCSA, two broadcasters (English- and French-language) and two independent producers (English- and French-language). In order to reduce the costs of having two boards, the Commission agrees that day-to-day administration should continue to be done through the CTF.

74. Under this two-board approach, BDU contributors and private sector broadcasters would now be part of the private sector board. It would therefore be appropriate that they be removed from the public sector board. While the actual structure of the public sector board should be determined by the DCH, the Commission considers it appropriate that the board include independent members, independent producers and members of the creative community.

75. **Recommendation 2: The Commission recommends the establishment of a two-board structure for the CTF. The private sector board would consist of the following: six members from the largest BDUs serving English- and French-language markets, one member from the CCSA, two broadcasters (English- and French-language) and two independent producers (English- and French-language). In order to reduce the costs of having two boards, day-to-day administration should continue to be done through the CTF.**

Applicability of the remaining recommendations

76. Recommendations 3 to 5 below relate to the proposed private sector funding stream. However, should the DCH reject the Commission's recommendations for separate public and private sector funding streams, these three recommendations would apply to the CTF as a whole.

Issue: Audience measurement

Background

77. The Task Force Report recommended that audience success be the primary criterion for access to a new market-oriented private sector funding stream. Many of the written comments filed with respect to the Task Force Report noted that no precise definitions were proposed concerning how audience success should be measured.

78. Accordingly, the Commission identified an exploration of specific measures to evaluate audience success as a primary objective for the public hearing.

Current CTF system

79. Audience success currently represents 40% of the weighting factor for establishing the BPE for English-language broadcasters and 30% for French-language broadcasters.

80. The CTF uses total viewing hours to assess a broadcaster's success in reaching an audience. Viewing hours are calculated by multiplying the average minute audience of a program by the duration of the program. Thus, a 30-minute program with an audience of 1 million would be credited with 500,000 viewing hours (1 million x .5 hours), and a 60-minute program with an audience of 750,000 would be credited with 750,000 viewing hours. These total viewing hours are then converted into percentages, which are used to calculate the BPE.

81. Under the current CTF system, significant viewing hours can be amassed either through the scheduling of large quantities of low-audience repeats or fewer broadcasts of original episodes that attract large audiences. Thus specialty services, such as Showcase and Space, receive relatively high allocations from the CTF even though their broadcast of original Canadian programs is relatively low.

82. The CTF measures all programs that it has funded, as well as up to 10 programs per broadcaster that did not apply for CTF funding but would have qualified under its criteria. These programs are sometimes referred to as “CTF-ables.”

83. Following the 4 February 2008 Public Hearing, the Commission contracted Canadian Market Research Inc. (CMRI) to analyze the current CTF methodology as well as alternative proposals for measuring audience success put forward as part of the public process. CMRI also proposed its own methodology which it considered could meet many of the objectives discussed at the public hearing. The CMRI report is available on the Commission’s website at www.crtc.gc.ca.

84. The following table, compiled by CMRI, demonstrates how services such as Showcase, Space and the A-Channel stations can amass very large viewing hours primarily through a heavy repeat schedule.

Program Hours of Funded and Non-Funded Canadian Drama/Comedy Series 2003/04 to 2006/07

Year

	2003-04 Program Hours	2004-05 Program Hours	2005-06 Program Hours	2006-07 Program Hours	Total Program Hours
A Channel	6,112	4,047	1,677	2,393	14,229
BRAVO!	550	568	795	905	2,819
CBC	451	343	514	273	1,581
CH	913	1,581	1,432	552	4,478
CITY	814	746	684	355	2,598
CMT	72	97	20	62	251
Comedy	758	770	841	1,044	3,413
CTV	246	233	178	656	1,313
Family	336	530	304	583	1,752
Global	441	201	139	152	933
History	118	373	528	320	1,339
Showcase	3,381	3,150	3,843	3,602	13,976
Space	3,065	3,145	2,736	2,732	11,678
The Movie Network			240	234	475
Tvtropolis		89	980	1,751	2,820
Vision	833	953	1,021	1,024	3,831
W Network	916	1,264	1,989	1,168	5,336
YTV	1,054	898	380	419	2,750
Average	1,254	1,117	1,017	1,012	4,198

Source: CMRI

Changes proposed

85. Several parties proposed modifications to the way that the CTF measures audience success. These proposals ranged from general acknowledgement that some changes need to be made to very specific suggestions. Others put forward radically different approaches.

86. For French-language broadcasters, the APFTQ submitted that no audience success factor was necessary. In its view, Francophone audiences are predisposed to view Canadian programming and, therefore, other criteria are more appropriate for use in the French-language markets. In its view, it would be appropriate for all Quebec broadcasters to sit down together to re-calibrate the other existing criteria and possibly add others.

87. Canwest made the most radical proposal for English-language broadcasters. It argued that the CTF should measure all viewing hours to a station – not just those to programs funded by the CTF or those that would qualify for CTF funding. Under Canwest's model, all Canadian and foreign programs would count toward the audience success factor. Canwest submitted that the success of the total broadcast environment has an impact on the success of the Canadian priority programs in the schedule. This implies that the audience tuning to a station for popular foreign programming will stay for the Canadian programming.

88. Canwest also suggested that audience success be given greater weight than at present and that the importance of "first window exhibition" be recognized.

89. Astral and Corus pointed out the current inequities in the potential audience reached by over-the-air (OTA) services as opposed to discretionary services carried by cable and/or DTH undertakings. In their view, a new approach to audience measurement should take this discrepancy into account. Corus also proposed a "momentum factor" that would give more weight to returning drama series. The CAB also addressed this issue and proposed that audience to OTA stations be measured by viewing hours, while specialty services be measured by cumulative audiences.

90. Rogers proposed that audience success account for 80% of the factors determining CTF allocations and suggested that all eligible genres of Canadian programming broadcast in prime time be measured.

91. A number of parties expressed concern about the inadequacy of existing tools in measuring small audience groups such as Francophones outside Quebec, Aboriginal people or other minorities. Others noted the increasing importance of new digital platforms and the difficulty in measuring audiences to these platforms. The Commission considers that these issues are beyond the scope of the current report but recommends that the government and the CTF explore better methods of measuring these audiences.

Discussion

92. The Commission considers that there are three major and inter-related issues with respect to audience measurement:

- weighting of audience success in any market-oriented funding stream;
- the most effective metric to be used in order to encourage popular, original Canadian programming; and
- the audience base to be used in order to minimize the disparities between OTA

and specialty services.

93. The Commission discusses each of these issues and provides a recommendation concerning each one in the following sections of this report.

Weighting of audience success in any market-oriented funding stream

94. In setting the annual BPE, the CTF currently uses the following weighting factors:

FACTOR	**ENGLISH**	**FRENCH**
Audience success	40%	30%
Historic access	30%	45%
Regional production	20%	10%
Above average licence fees	10%	15%

95. Currently, historic access carries a weight of 30% in determining the BPE for English-language broadcasters and 45% for French-language broadcasters. Each year the CTF calculates a broadcaster's cumulative use of the CTF for the previous three years. This figure is then used as the basis for the historic access factor. At the public hearing, the CTF indicated its intention to reduce, over time, the importance of the historic access factor in favour of a greater emphasis on audience success. The CTF suggested that such a reduction could be at a rate of 5% per year. At this rate, the historic access factor could be eliminated for English-language broadcasters within six years and the weighting for audience success could be increased accordingly.

French-language television

96. As noted above, the weighting factors for French-language television differ from those for English-language television. In some cases, such as the lower weight given to regional production, the differences relate to the differences in the markets. The difference in weight given to the above average licence fees may relate to the fact that the production costs and licence fees for French-language television have always been lower than those for English-language television.

97. The biggest difference between the factors for French- and English-language television is the much greater weight given to historic access relative to audience success for French-language television.

98. At the public hearing, the APFTQ submitted that audience success was not a relevant criterion since audiences to French-language broadcasters clearly favour Canadian programs and watch these programs in large numbers. This position, however, was not supported either by broadcasters or others familiar with the French-language market.

99. The Commission notes that the analysis prepared by CMRI shows that viewing to Canadian drama and movies, as a percent of total viewing to all French television, is 8.4% but viewing to foreign drama and movies represents 20% of all viewing. The

Commission considers, therefore, that continuing to reward broadcasters for building audiences to their Canadian programs remains a valid objective for French-language licensees.

100. The Commission also considers that parties presented no compelling evidence as to why the weighting factors for French-language television should be significantly different than those for English-language television.

English-language television

101. The Commission notes the CTF's intention to reduce the weight given to historic access and to increase the weight given to audience success. This approach was broadly supported by most parties in their comments. Clearly, historic access was a useful and valid criterion during the first few years of the BPE system. However, it is rapidly outliving its usefulness and, in some cases, may be responsible for perpetuating disparities that reflect past programming strategies that may no longer be valid.

102. Placing much greater emphasis on audience success is clearly in line with the Task Force recommendations and was supported by all the major players. The more difficult issues relate to the pace of the transition and whether any weight at all should be given to historic access in the future.

103. The CTF noted at the public hearing that the historic access factor is used to assist new entrants to the CTF funding system. In these cases, credit is given to the new entrant's participation as a co-licensee in CTF-funded programs. The Commission considers that the CTF can develop other mechanisms to fairly establish the BPE for a new entrant. In addition to giving credit for CTF productions that are co-funded, the CTF could measure the audience success of the new entrant's programs that were in categories normally funded by the CTF. It would not be necessary for the CTF to evaluate each program in detail in order to provide a valid measure for the audience success factor.

Conclusion

104. In the Commission's view, the CTF should move as quickly as possible to completely phase out the historic access factor and replace it with increased emphasis on audience success for both English- and French-language licensees. The Commission considers that this should be accomplished more swiftly than the 5% per year reduction proposed by CTF staff at the hearing.

105. With respect to the weighting factor for regional production, the Commission recognizes the value to the system of encouraging greater regional production. It therefore recommends that this factor remain in place and understands that the weight may logically be somewhat greater for English-language television as opposed to French-language television.

106. With respect to the factor for above average licence fees, the Commission also recognizes the value of encouraging broadcasters to risk more of their resources thus

allowing the CTF to make its annual allocations go further. Again, there may be valid reasons for a difference in weight between the two language markets.

107. **Recommendation 3: The Commission recommends that the CTF:**

- **move as quickly as possible to completely phase out the historic access factor and replace it with increased emphasis on audience success for both English- and French-language broadcasters;**

- **retain weighting factors for regional production and for above average licence fees, and that the total of these factors not exceed 30%; and**

- **ensure that the weighting factors for English-language and French-language broadcasters be similar though not necessarily identical.**

The most effective metric to be used to encourage popular, original Canadian programming

108. As noted above, the CTF currently uses total viewing hours as the metric on which it bases its audience success factor. Many of the comments at the public hearing, as well as the CMRI report, pointed out certain flaws and distortions related to the total viewing hours metric.

The CMRI proposal

109. The CMRI report proposed a revised metric aimed at addressing certain of these perceived flaws and distortions. It suggested the insertion of a “hit factor” into the calculation that would be comprised of a network’s average audience divided by the average audience of all networks. As an example, in the case of Global, the calculation would be 155,000 viewers/51,000 viewers = 3.1 in 2006/07. This factor would then be applied to Global’s total viewing hours. Accordingly, Global’s total viewing hours would be multiplied by the new factor.

110. If a network’s hit factor is less than 1.0, it would not be used to penalize a network; that is, it would only be used if the factor was greater than 1.0. This approach respects the specialty channel business model of repeating original series very frequently, which lowers the average audience. Similarly, so as not to over-compensate OTA broadcasters, which air mostly original programs and repeat them usually only once in a TV season, the maximum value of the hit factor could be set to 2.0.

111. The new factor would reward networks that attract mass or large average minute audiences and increase the total viewing hours of those networks. CTV, Global and CBC/SRC would all have a larger share of total viewing hours as a result. In the English-language market, applying the CMRI model’s calculations, CTV’s percentage viewing hours of Funded and Non-funded Drama/Comedy for 2003/04 to 2006/07 would rise from 20 to 30, the CBC’s from 4.4 to 6.6, and Global’s from 3.6 to 5.4. In the French-language market, TVA’s share would rise from 26.8 to 59.2 and SRC’s would decline

from 29.7 to 20.7. Many specialty services would also decline.

112. Under the CMRI model, a network's hit factor would be higher if it airs more original programming and if it promotes Canadian programming. The hit factor will naturally be higher if programs are aired in prime time and prime viewing seasons of the year. The inclusion of a hit factor would encourage both OTA and specialty networks to commission more original programming and to schedule and develop Canadian programming aggressively. Specialty channels might also be encouraged to air fewer repeats and to promote and schedule Canadian programs more effectively to increase average audiences.

Discussion

113. The Commission considers that any audience success metric should address the following concerns.

a) The current system fails to distinguish between the large audiences attracted to relatively few hours of original broadcasts and the small audiences attracted to multiple hours of repeats.

114. While repeats have a valuable place in the system, the Commission considers that a revised audience success metric should clearly reward the broadcast of original episodes. In this regard, the Commission is cognizant that specialty services have a very different business model from OTA stations – one that is largely premised on multiple repeats resulting in larger cumulative audiences. A fair audience success metric should reward the broadcast of original programming but also take the differing business models of specialty and pay services into account.

b) Audience success should be measured on a broader range of programming than is currently used.

115. In this regard, the Commission has examined the proposal put forward by Canwest that audience success measures should be applied to all the programs in the licensee's schedule. Canwest argued that a broadcaster that surrounds its Canadian priority programs with successful Canadian programming in other categories as well as successful foreign programs should be rewarded. The overall environment of success will benefit the CTF-funded programs. The Commission considers, however, that no hard evidence was provided in support of this proposal. Further, the Commission notes that it has been the recent practice of both Canwest and CTV to schedule CTF-supported programs on Friday or Saturday evenings – a time when they are least likely to benefit from popular U.S. programs. Finally, the Commission is concerned that a negative consequence of the Canwest proposal could be to encourage further competition for U.S. program rights, resulting in increased spending on foreign programming.

116. Nevertheless, the Commission considers that it is appropriate for a revised audience

metric to apply to a broader range of Canadian programming than is currently the case. In this regard, the Commission proposes that the base for measuring audience success should be all Canadian programs in categories normally supported by the CTF, broadcast during the peak viewing hours appropriate for the relevant audience.

c) A revised audience success metric should encourage licensees to promote their Canadian programs and to schedule them in a way that would maximize audiences.

117. The Commission is of the view that effective promotion and scheduling is integral to the success of Canadian programming.

d) In the French-language market, the revised audience success metric should ensure that original drama is adequately supported.

118. The current system is impairing the ability of OTA broadcasters, primarily SRC and TVA, to produce high-end drama. Both those broadcasters have limited their investments since they are unable to recover their initial investments in high-end drama. In the last three to four years, the Commission has noted a significant reduction in the production of this type of drama to the benefit of reality shows or forms of lighter drama production.

119. **Recommendation 4: The Commission recommends that:**

- **the CTF revise its audience success metric in order to incorporate a "hit factor" that appropriately takes into account the differing business models of OTA and specialty television;**
- **any revised audience success metric be based on all the Canadian programs that would normally be funded by the CTF;**
- **any revised audience success metric encourage the broadcast of original Canadian programs, the promotion of such programs, and the scheduling of those programs in a way that would maximize audiences; and**
- **any revised audience success metric ensure that original drama is adequately supported in the French-language market.**

The audience base to be used in order to minimize the disparities between OTA and specialty services

120. Several parties submitted that the current CTF audience measurement metric, which uses all households as its base, may favour OTA licensees in that they are able to reach a larger audience through their terrestrial transmitters than specialty services can through cable or satellite. The Commission considers that, as a matter of fairness, a revised audience success metric should measure all licensees using the same base. In this regard, the Commission notes that the contributions to the CTF by BDUs are based on the revenues they receive – revenues that do not include audiences to terrestrial transmitters.

121. **Recommendation 5: The Commission recommends that any revised audience success metric calculate the viewing hours, the average audience and any hit factor within the cable/DTH universe rather than among all households.**

Issue: Task Force recommendation to set the qualifying criteria at 8 out of 10 CAVCO points

Background

122. As noted above, the Task Force recommended that Canadian programming eligible for CTF funding must obtain a minimum of 8/10 points (down from 10/10) using the CAVCO scale, be broadcast in prime time and continue to fall within the CTF's traditional genres of drama, children's and youth, documentary and variety/performing arts programming.

Positions of parties

Against the reduction

123. The majority of parties who addressed this issue expressed a preference for maintaining a 10/10 points requirement rather than lowering it to 8/10.

124. Several pointed out that in 1998 the CTF had altered its own criteria so as to support productions that achieved 10/10 rather than 8/10 points on the CAVCO scale for determining Canadian content because the fund was oversubscribed. Parties therefore expressed concern about widening eligibility to 8/10 productions, given the limited resources of the CTF. Parties also noted that the financing of 10/10 productions is the most challenging for Canadian producers because foreign investors are generally not interested in these types of productions. Others argued that money that is in the public trust, even if it comes from the private sector, should not be used to support non-Canadian talent.

125. A number of parties also noted that flexibility currently exists when it comes to funding programming in certain genres. The CTF, for example, indicated that there is a provision that allows for exceptions with regard to the hiring of non-Canadian creative personnel. These exceptions are mostly for productions achieving 9 out of 10 points and are made primarily for children's programming, animation and some documentary programs. There have also been occasional exceptions for drama as well, with one point going to a non-Canadian actor. According to the CTF, in these exceptional cases, management decisions were made for individual projects.

126. Finally, most parties arguing against a reduction pointed out that there is no evidence that 8/10 productions are more successful with audiences than 10/10 productions.

For the reduction

127. Parties that supported an 8/10 requirement included Rogers, Corus and the CAB. Rogers

also submitted that, although drama programming should be given the most weight, the types of programming that are eligible for funding should be expanded to include all programming that is eligible for support through a CRTC-certified independent production fund, with the exception of news, sports, reporting and actualities. The CAB supported an 8/10 requirement as one of the new criteria within a separate private sector funding stream.

128. Rogers, in explaining why it was in favour of an 8/10 requirement, expressed a need to have the flexibility to cast non-Canadian talent that could appeal to both Canadian and international audiences. It was of the view that this would encourage the production of programming with broad appeal that is more likely to attract large audiences. Corus made a similar point and supported an 8/10 requirement on the grounds that it would lead to an enhanced opportunity for foreign sales, thereby helping to bridge the funding gap for Canadian programming.

Discussion of the merits of an 8/10 CAVCO points requirement

129. As many parties pointed out, the CTF itself moved to a 10/10 requirement in 1998 mainly to address an oversubscription problem. Since that time, the BPE system has been introduced, which is also an effective tool to address any oversubscription concern. Absent a compelling cultural policy rationale for the increase to 10/10 and given the fact that the oversubscription concern appears to be under control, a return to 8/10 – the level in existence prior to the increase to address the oversubscription issue – could be justified on that basis alone.

130. Others points in favour of an 8/10 requirement include:

- An 8/10 requirement would provide producers with more creative flexibility, which could in turn lead to the creation of programs with broad appeal that attract the largest audience.

- 8/10 projects are linked to success in sales to the U.S.

- Not all productions funded would necessarily be 8/10 projects. 10/10 projects would still be funded; the 8/10 threshold would be a minimum level and might just be an occasional occurrence.

131. The most vocal opposition to a reduction to 8/10 came from those whose livelihood could also then be jeopardized, that is, writers, directors, actors and their associations. These parties, collectively, advanced a number of considerations against a move to an 8/10 requirement. These included:

- An 8/10 point production could result in the loss of a Canadian writer (2 points), director (2 points) or 2 lead actors (1 point each).

- An 8/10 production will enable an American director or lead performer to work on a project funded with public money. This could be seen as contrary to the goal of fostering Canadian talent. Shows such as *Best Years* that would qualify as 8/10 productions have U.S. talent and can attract U.S. financing. They do not need the CTF.

- 10/10 point programming on television makes the stars who then go on to become cinema celebrities, such as Ellen Page who began her career on *Trailer Park Boys* and was nominated for an Oscar this year.

- A 10/10 requirement for a public fund is more appropriate because that is the most difficult type of program to finance with foreign partners.

- There is historical support for the position that, in fact, 10-point shows do better with Canadian audiences. For example, currently the most popular Canadian shows are 10-point shows: *Corner Gas*, *The Rick Mercer Report*, and *Little Mosque on the Prairie*.

- The occasional exceptions that allow a 9/10 production to receive funding protect the director and the writer while allowing producers to use a non-Canadian actor when necessary. This provides sufficient flexibility.

- An 8/10 requriement may send a message that the skills of Canadian talent (writers, directors and actors) are not valued. As a consequence, Canadian talent will leave Canada for a more stable environment with more reliable financing.

- The domestic production industry is facing severe competitive threats, and all efforts should be made to invest in 10/10 Canadian productions to better ensure that the domestic industry continues to thrive.

Conclusion

132. Neither the written nor the oral stages of this process have resulted in much in the way of hard evidence for or against an 8/10 CAVCO requirement. The Commission notes that the historical data that exists may mean little for the future popularity of programming driven by a much more audience-driven approach than has previously been the case. However, there is certainly nothing decisive that would lead to the conclusion that a 10/10 requirement would necessarily be harmful to an overall approach that stresses audience success, or that an 8/10 requirement would necessarily assist in obtaining greater audience success.

133. A number of producers and the creative community argued that 10/10 programming may be discernibly more Canadian than 8/10 programming and may be more popular with Canadian audiences. On the other hand, the Commission notes that the Task Force proposal, which was based on granting maximum flexibility in a more audience-based private sector funding stream, obtained support from the major broadcaster association, the CAB, as well as from major players like Corus and Rogers. The arguments for and

against a reduction to 8/10 CAVCO points appear to be fairly evenly balanced.

134. The Commission notes, however, that a reduction to an 8/10 requirement could result in the loss of valuable Canadian talent because an 8/10 point production could result in the loss of a Canadian writer (2 points), director (2 points) or 2 lead actors (1 point each). The Commission also notes that current CTF rules already permit exceptions to be granted for certain productions to achieve 9/10 points, or even 8/10 on occasion.

135. **Recommendation 6: The Commission recommends that the CTF retain the current 10/10 CAVCO points requirement and maintain its current policy of providing exceptions where warranted.**

Issue: Opting out

136. Two alternative proposals, one from QMi and one from Shaw, were also the subject of much written comment and discussion.

137. Briefly, QMi proposed an “opting out” approach whereby it would not contribute to the CTF, but rather to its own fund. All productions would be directed and managed through QMi’s production company, TVA Productions, and QMi would retain the majority, if not substantially all, of the rights to these productions.

138. Shaw’s alternative was to cease contributions entirely as it viewed its contribution to the CTF as the diversion of their subscribers’ money to an income redistribution system. Shaw proposed nothing in terms of how its BDUs would otherwise contribute to the production of Canadian programming as required by the Act.

139. Given the serious implications that opting out could have for the Canadian broadcasting system, this report will now examine the QMi proposal in depth. Nothing more can be said about the Shaw alternative, given that it fails to address the requirement that each element of the Canadian broadcasting system must contribute appropriately to the creation of Canadian programming.

Key elements of the QMi proposal

140. QMi stated that its model is not original, but rather one that is prevalent in the U.S and has proven to maximize profitability of vertically integrated media companies – that is, those media companies that combine their resources for the publishing of content across many platforms. In QMi’s view, its approach is a model for success, and if the Canadian broadcasting system does not adopt that model, it will collapse. QMi considered that broadcasting companies need to make higher profits to survive in the present multi-platform broadcasting system.

141. While QMi would opt out of involvement with the CTF, both to contribute or receive funds, it would at the same time commit to a total contribution to Canadian programming production of $108 million over three years, thereby providing a funding increase of more than $50 million to the Canadian broadcasting system.

142. QMi would establish its own private fund (Quebecor Fund) on the following terms:

- Videotron Ltd. (Videotron) and its BDU affiliates would contribute 5% of their revenues (approximately $19 million).
- QMi would add an additional $11 million to the fund, with an increase of 20% per year over three years.
- QMi would place the total monthly contributions in a fund linked to QMi with representation rules supervised by the Commission.
- Funding would be exclusively for QMi-owned or -affiliated companies.
- Eligible content would be programming to be broadcast on OTA, VOD, specialized and general programming channels, film, as well as audio-visual content intended for mobile phones and the Internet.
- TVA Productions, a "groupe TVA" (100% owned by QMi) company, would be responsible for all content production for QMi's various platforms. It would be responsible for the complete management (production and coordination) of the funds, including subcontracting.
- Governance would be by way of a five-person board of directors, of which three members would be nominated by QMi and two would be approved by the CRTC.
- Annual reports on the use of funds would be audited by an independent firm.

143. QMi indicated that TVA, its main OTA station, would continue to devote 33% of its operating expenses to the acquisition of new and original programming content, excluding investments made in daily information and public affairs programs. QMi confirmed that it does not now, and will not in the future, produce children's and youth programming. As for documentaries, QMi stated that, while its contribution to date has been minimal, it will not contribute less to such programming. It further noted that documentaries will be provided with higher visibility through cross-platform promotion and broadcasts.

144. QMi also noted that it currently makes the financial contribution to licence fees expected by the CTF for drama. It stated that, without changes to the CTF's current approach, it would stop producing drama series. On the other hand, if its opting out proposal were accepted, QMi indicated that it would maintain its contribution level to drama for the next three years.

145. Finally, QMi stated that it will need to, and will continue to, work with the independent production sector by sharing the risks (co-productions) with those who can and want to do so. It also stated that those not sharing in the financial risk would be welcome to work

for QMi as subcontractors.

Positions of parties

146. Parties operating in the Quebec French-language production sector generally opposed the QMi proposal. Principal among the reasons for opposition was the perception that the new fund would be self-serving, given that all funding would be dedicated to TVA and QMi specialty and VOD services. Some parties argued that implementation of the QMi proposal would destabilize the competitive marketplace and undermine competing services, thereby putting diversity in the broadcasting system at risk.

147. Some parties also expressed suspicion that QMi intended to dispense with using the independent production sector altogether. Others were of the view that QMi's commitment for additional funding might not be truly incremental and, more generally, that QMi's already strong negotiating leverage would become even stronger and might be misused.

148. More specifically, the CFTPA, the Writers Guild of Canada (Writers Guild), CTVglobemedia (CTVgm), and the CBC/SRC considered that QMi's opting out proposal was self-serving in that it would only benefit QMi and not the whole broadcasting system. CTVgm suggested that there are no conditions that could be imposed on QMi that would make its proposal more palatable. CTVgm submitted that the QMi proposal would negate the regulatory bargain that BDUs made with the Commission in 1993 when deregulation of basic cable rates was balanced by a contribution to the Cable Production Fund (predecessor of the CTF). Implementation of QMi's proposal would therefore undermine the very reason that deregulation of BDU basic cable rates was approved in the first place. CTVgm and Astral also submitted that acceptance of the QMi proposal would unduly disadvantage OTA stations, as well as specialty and VOD services that are not affiliated to a BDU.

149. CTVgm, TQS inc. (TQS) and the CBC/SRC suggested that no "new" money would actually be contributed to the production of Canadian content as a result of the new fund proposed by QMi. They argued that QMi would "be moving money from one pocket to another pocket within a corporation of affiliated companies." The CFTPA, the Writers Guild and CTVgm noted that nothing currently prevents QMi from contributing more to Canadian programming.

150. TQS stressed the importance of ensuring that the French-language market continues to receive 1/3 of the money available from the CTF. It suggested that this would be very complicated to calculate or to justify if QMi were permitted to opt out. TQS also suggested that, if the Commission were to accept QMi's proposal, it should be administered by a majority of independent administrators and that all French-language private broadcasters should have access to its funding.

151. TQS further noted the current concentration of players in the Quebec market and its own position as a smaller player in that market. TQS requested that rules be put in place to ensure that it is not unduly disadvantaged and its competitors unduly advantaged should

the QMi proposal be implemented. TQS also suggested that, once QMi controls what is produced with money from Videotron, more money will be spent on non-CTF admissible genres of programming. Finally, TQS suggested that by having its own fund, QMi would solve its problem with acquiring multi-platform rights, given that the QMi production group will agree to waive these rights.

152. The QMi proposal was also rejected by the creative community and the unions because QMi could control copyright in a QMi-controlled fund. The CFTPA also noted that QMi's request to acquire multi-platform rights for all productions is contrary to CTF rules. The CFTPA submitted that any ancillary rights must be negotiated at fair market value and separate from the broadcast licence.

153. Rogers stated that, should QMi be granted the right to opt out, this right should be provided to Rogers as well. CTVgm also submitted that other BDUs would request the same regulatory relief as Videotron, which would result in the CTF no longer being able to discharge its mandate. APTN echoed this point, also suggesting that, without the CTF and the DCH to implement cultural objectives such as regional representation and cultural diversity, those objectives would not be achieved.

Questions raised by the QMi proposal

154. The Commission considers that the QMi proposal raises the following five central questions, which are discussed below:

- QMi stated that its opting out proposal is essential if it is to face the production financing realities of its market today and in the future. Are its concerns valid?
- What is the likely impact of the QMi proposal on the independent production sector and the creative community in Quebec?
- To the extent that such impact may be negative, would the commitment for additional spending – assuming it is incremental – adequately compensate for any negative impact?
- To what extent can an approach such as the QMi opting out proposal be trialed and/or limited to the QMi situation?
- Are there alternatives to opting out that would still permit QMi to respond to some or all of its concerns?

QMi concerns about responding to the production market

155. QMi submitted that revenues generated from OTA sales (for TVA alone) are not sufficient to adequately fund high quality drama and variety programming and that its productions need access to other platforms as well. This has led QMi to import and adapt foreign production rather than creating and trying to export its own. QMi submitted that traditional revenue sources are increasingly threatened by other means of program

reception and, in any case, are insufficient, even in terms of potential to finance high quality drama and other programming due to the limited size of the Quebec market. QMi argued that it therefore needs to exploit its rights in a sequential manner over all broadcasting platforms in order to maintain its Canadian content levels. QMi submitted that the CTF is unwilling or unable to permit this to happen.

156. QMi, in its written submissions, expressed its wish to establish a new negotiation regime based on shared rights/shared risk with independent producers. It suggested, however, that this has been difficult or impossible to achieve because independent producers fear that their members will not be able to negotiate fair terms.

Discussion of QMi concerns

157. It is plausible for QMi to believe that it and other broadcasters need to secure cross-platform rights to fully exploit the value of the programming that they currently purchase for OTA exhibition (or specialty service exhibition, as the case may be) if they are to combat the erosion of the value of those rights as viewers migrate to other platforms. The issue, of course, is what is the appropriate sum to be paid for those rights.

158. As noted above, negotiations have reportedly been unsuccessful to date. The QMi opting out proposal would represent, among other things, an additional advantage to QMi in the rights negotiation process, perhaps determinative for French-language programming where QMi already is the main customer for producers. It may thus prove difficult to accept a proposition that would place more power in its hands but, at the same time, it may be equally impossible to leave indefinitely a blockage in the production funding cycle that precludes the sought-after multi-platform use. It is obvious that the issue of multi-platform use must be addressed.

Impact on the independent production sector

159. The record of the CTF process includes much discussion that centres on the argument that there is a continuing need to maintain a healthy independent production sector as an essential pre-requisite to a healthy Canadian creative community that is willing and able to create identifiably Canadian programming. Perhaps coincidentally, those arguing the case are generally from that same community, and the result, predictably, is a desire to essentially maintain the status quo on how CTF support flows ultimately to the independent production sector. While this argument was advanced as being applicable throughout Canada, it was very strenuously advanced in relation to the QMi opting out proposal.

Discussion of the role of the independent production sector

160. QMi proposed to enter into negotiations with those in the independent production sector that are prepared to share the risks. However, it said nothing about how such negotiations would transpire or about the anticipated terms. There is therefore no way of knowing how many producers would actually have the monetary ability to enter into such shared risk production agreements with QMi. Furthermore, since the economies of scale

available to QMi to handle failed or less than completely successful productions are much greater than for the independent production sector, it is likely that the long-term continued existence of shared risk production agreements could be in jeopardy. The new manner of doing business also does not address the potential impact on the rest of the creative community, such as writers, concept creators and actors.

161. Under the QMi proposal, TVA Productions is to be responsible for all content production for QMi's various platforms. It would be responsible for the complete management (production and coordination) of the Quebecor Fund, including subcontracting. If TVA Productions also operates on the premise that it acquires a majority of the relevant rights attached to the content with which the new fund will be involved, it will also presumably have most of the direction and control of that content. Depending on how the negotiation process evolves and, particularly if the independent production sector does not have the financial wherewithal to consistently share the risk, QMi or TVA Productions could own most if not all of the rights for productions funded by the Quebecor Fund. This could mean that the creative and production community would be paid only as subcontractors and would have no rights to its work.

162. Workers hired outside of TVA Productions, such as creative staff, would most likely serve only as subcontractors and be paid a service fee. These workers would not receive any other money or recognition for the possible popularity of the productions on which they have worked. This does not seem to be an effective way to build a creative production community.

163. It is well known that the Commission has long recognized the important role of the independent production sector. In both its OTA policy statement (Broadcasting Public Notice 2007-53) and its more recent Diversity of Voices Policy (Broadcasting Public Notice 2008-4), the Commission has stated that it strongly encourages broadcasters to negotiate terms of trade agreements with the independent production industry.

164. In paragraph 150 of its Diversity of Voices Policy, the Commission stated its expectation

> … that licensees provide draft or signed terms of trade agreements with independent producers as part of their upcoming licence renewal applications. If, at licence renewal time, this expectation has not been fulfilled, the Commission may choose to arbitrate the negotiations to develop terms of trade agreements with independent producers.

165. The record reveals that QMi has not yet succeeded in breaking the negotiation impasse. The Commission also notes that, while QMi has stated that it needs the independent production sector, its plans for a negotiation process based on a presumption of investment suggest that this need may turn out to be one whereby the only role for the independent production sector might be that of subcontractor. Such a role may be inconsistent with the expectation the Commission has of the major OTA stations that an average of 75% of all of their priority programs be produced by independent production companies. In the case of TVA, according to Decision 2001-385, the monetary amount

for the year 2007-2008 was to be $20 million. While the expectation does not currently speak to licensing fees, terms of trade, or rights, it has been the Commission's main mechanism to ensure a diversity of voices in programming on OTA stations.

QMi's commitment for additional spending

166. As part of its opting out proposal, QMi has placed considerable emphasis on its commitment to increase spending on Canadian programming over a three-year period. Some parties suggested that no new money would actually be contributed to the production of Canadian content as a result of this new fund. They argued that QMi would be moving money from one pocket to another within a corporation of affiliated companies. However, it is difficult to establish definitively whether or not this is true. Other parties suggested that nothing would stop QMi from allocating additional monies to its existing fund or making additional expenditures for programming services without changing the amount of money that it provides to the CTF.

167. The Commission notes that QMi could be required to submit its various broadcasting licences for the attachment of new, specific, relevant and enforceable conditions of licence as a precondition for approval of its opting out proposal. At that time, the Commission could put measures in place to ensure that QMi's spending is indeed incremental, perhaps by establishing baseline spending levels derived from the previous three years' spending. This does not, however, address the concerns of parties that such additional spending may take place in any case, without discontinuing contributions to the CTF.

A trial of the opting out approach

168. At the hearing, QMi indicated that it was prepared to have its proposal launched for a three-year trial period. QMi was confident that this timeframe would be sufficient both for it to demonstrate that it would live up to its spending commitments and that its approach would successfully lead to the production of Canadian content in all the areas of traditional Commission and CTF concern in amounts consistent with that spending.

169. In the context of whether a QMi trial is a real option, the Commission notes that Rogers, for one, stated at the hearing that it would also request authorization to re-direct its contributions if the Commission were to accept QMi's proposal. It may therefore be difficult to limit an opting out trial only to QMi.

Discussion of a trial of the opting out approach

170. The Commission has much experience in the difficulty of turning back the clock to situations as they existed at some previous time. Although not questioning the good faith of QMi in suggesting its willingness for a trial of its opting out proposal, it is not clear that returning to a pre-existing state of affairs in this instance is feasible, should the trial not be successful. Its impact on program production and the creative community in Quebec over a three-year period appears likely to be so significant that it would not be realistic to think that a return to the situation that existed before the trial would be

possible.

171. For example, there would be an inherent difficulty if the Commission were to attempt to contain the impact of the trial by requiring QMi's various broadcasting undertakings to apply for appropriate conditions of licence (e.g. imposing total funding commitments over three years, as presently prescribed plus the incremental commitment, based on spending levels derived from the previous three years of spending). If, in fact, the conditions of licence set out were for any reason not adhered to, or if those conditions failed to anticipate all eventualities, the damage done to the production sector by a trial could be irreparable.

Possible alternatives to opting out that might also permit QMi to address some or all of its concerns

172. QMi submitted that it needs to exploit its rights in a sequential manner over all the broadcasting platforms in order to maintain its Canadian content levels – something which the CTF requirements currently prevent. QMi has therefore proposed its opting out approach as the method to achieve this goal. It is, however, not clear that the stated goal can only be met by way of opting out. The means seem out of proportion to the goal. If obtaining rights is the goal, setting in motion a rights negotiation process, with the possible assistance of the Commission, seems the more obvious answer. The result of such a process would be terms of trade agreements that establish fair compensation across all platforms.

Discussion of the merits of approving the QMi opting out proposal

General

173. Certainly, the QMi proposal has some appeal. This U.S.-style approach to programming production could be more conducive to international financing and sales, whatever the distribution platform. It could also provide a significant boost to spending and television production in Quebec, supporting both production and the development of expertise, provided that suitable conditions of licence can be created. The approach could also contribute to the further development of the Quebec star system. As well, this structure would place the ownership of Canadian rights firmly in the hands of a strong Canadian player.

174. However, while all of the aforementioned advantages are significant and should be considered, the QMi proposal has its disadvantages. Except for SRC programming, QMi admits that there would be no real option apart from its fund for the funding of high quality French-language Canadian content. The large majority of private productions would be produced at QMi with little certainty that independent producers could afford to enter into shared risk production agreements with QMi. Were this to be the case, they could become, in effect, subcontractors only, with serious potential effects on the vibrancy, independence and diversity of programming in Quebec.

175. QMi's stated intention is to make its fund available only to its affiliated companies. This

would have the inherent related impact of placing those affiliated undertakings in a position of possible competitive advantage vis-à-vis other content providers in the markets in which QMi competes. The combined QMi undertakings may have the increased ability and incentive to discriminate with respect to access to its cable systems, specialty channels and OTA stations, or with respect to the terms and conditions of such access, in favour of its affiliated content providers and against unaffiliated content providers. This situation could place a non-affiliate such as TQS at a disadvantage.

176. QMi has stated that it is prepared to provide the Commission with all the guarantees necessary to ensure that it meets all of its commitments. However, as noted above, it may be difficult, if not impossible, to undo such a trial or, in the absence of administrative penalties, to effectively reprimand non-compliance. Furthermore, QMi's commitment is for three years only. Nothing has been offered up for future years even by way of broad intentions. Accordingly, no guarantees were offered with respect to QMi's commitment to the fund, should the trial period prove unsuccessful.

177. QMi has a quasi-monopoly over the broadcasting system in Quebec. Should its proposal be accepted, the position of this already dominant player in the French-language market would be strengthened. QMi already owns the leading news service (Canoe), major French-language on-line sites, the main Quebec search engine, BDUs, music stores, and a major film production house and distributor. It also owns OTA stations in Montréal, Québec, Sherbrooke, Trois-Rivières and Saguenay, and is a minority partner in an affiliated station serving Rivière-du-Loup and Rimouski. In addition, QMi is part owner of four French-language specialty channels. QMi also owns one major newspaper in most Quebec communities. This increased dominance would also further contribute to QMi's power over the Quebec star system.

178. Acceptance of the QMi proposal could also favour the development of productions that are creatively conservative and cost efficient or profitable rather than culturally significant; such as productions with international appeal or already proven concepts (e.g. Star Académie). Buying concepts from outside Quebec and Canada cuts out part of the creative industry.

179. Acceptance of the QMi proposal could also result in an advertising monopoly. Since QMi would be able to offer packaged multi-platform advertising rates that could not be matched, it could dominate the advertising market leaving all other French-language broadcasters to small scale advertising campaigns. It is much easier for an advertising company to develop an advertising campaign with one person and one company. Under such an arrangement it could control such elements as product placements and promotions with characters of television series across many platforms.

180. The QMi proposal, as a minimum, would weaken the CTF to the extent that it benefits by economies of scale and would entail a larger risk of the fund not achieving its cultural objectives overall. All things considered, accepting the QMi proposal could be an unnecessary risk given that nothing prevents QMi from creating its own private fund while continuing to make its monthly contributions to the CTF.

Rights and related financing

Background

181. The rights issues that were centrally discussed in this process focused mainly on the difficulties experienced in negotiating multi-platform use. For example, the CAB submitted that broadcasters need the ability to invest in and control broadcasting rights across all platforms in order to compete with the high production values of foreign programming in English markets. This is difficult to do with productions that receive CTF funding.

182. As noted above, CTF rules do not permit producers to sell new media rights to broadcasters at the present time, possibly because the splits for such rights have not been determined. QMi stated that revenues generated from OTA sales (for TVA alone) are not sufficient to adequately fund drama and high quality variety.

183. The Commission notes that the application of a revised audience success metric such as that proposed in the CMRI report would most likely be positive to TVA and partially address this shortfall in revenues. The CMRI report suggested that the insertion of a “hit factor” into the calculation for the percentage of viewing hours of Funded and Non-funded Drama/Comedy hours for the 2003/04 to 2006/07 years would have seen TVA’s share rise from 26.8 to 59.2 in the French-language market.

184. As mentioned above, QMi also expressed its intent to establish a new negotiation regime across all platforms based on shared rights/shared risk with independent producers but suggested that this has been difficult or impossible because independent producers fear that their members will not be able to negotiate fair terms.

Discussion

185. Clearly, fair compensation for programming rights is a central issue in the financing of Canadian programming. The QMi opting out proposal, coupled with its expressed desire for a new negotiation regime, is a concrete example of a current and future pressure point in how to set fair compensation in the complex, and increasingly international, rights markets.

186. It is reasonable to conclude that, as argued by the CAB and QMi, broadcasters need to secure cross-platform rights to fully exploit the value of the programming that they currently purchase for OTA or specialty exhibition only. This is necessary if they are to combat the erosion of the value of those rights as viewers migrate to other platforms.

187. The issue is, of course, what is the appropriate sum to be paid for those rights. Should, for example, the producer have to essentially give up the non-traditional platform rights for little or nothing simply because their value has not yet been monetized effectively? Should the producer not accept what is offered, how can he/she exploit these rights on his/her own? As BDUs currently control most pipelines to the home (cable, DTH, VOD), how can the producer exploit the rights barring conclusion of terms of trade negotiations?

188. If the producer elects to retain those rights for the time-being, broadcasters rightly fear that they are being exposed to possible significant future devaluation of the traditional platform rights that they presently buy.

189. The nascent multi-platform broadcasting environment appears to have created a need for new licensing models (terms of trade agreements) that are proving difficult to implement. Traditionally agreements could be made on a one-to-one basis between broadcaster and producer and deal with established windows on easily defined platforms with some certainty of revenue potential. Because there is no sure revenue stream model for the programming offered on non-traditional platforms, it is especially hard for all parties involved (rights holders, creative talent, financiers and broadcasters) to negotiate multi-platform agreements. At the onset, multi-platform rights and agreements could be determined for each media company, but it is difficult to project the life of content and the new forms that a media company may want the content to take in the future. Every time a non-owner of content wants to change or rebroadcast content, it must negotiate a new agreement with the rights holders.

190. In the case of an integrated entity like QMi, less so for many broadcasters, it would likely be most administratively simple and cost effective to own all the rights at the onset since it also owns all the distribution platforms it may need to use. The QMi opting out proposal would give an additional advantage to QMi in the rights negotiation process as it would become, except for the SRC, even more than today, the main customer for producers of French-language programming. It may be undesirable to place even more power in its hands but, at the same time, it seems equally impractical to leave indefinitely a blockage in the production funding cycle that precludes the multi-platform use that is being sought.

191. An alternative approach with less immediate risk to the Canadian broadcasting system could be for QMi and its production partners to conclude terms of trade negotiations that establish fair compensation across all platforms. This may depend to a significant extent on the conclusion of similar negotiations in other jurisdictions, particularly the U.S. However, it may be that the particular Canadian financing reality and the near-term challenge of restructuring the CTF provide an opportunity for industry players, the CTF, the Commission, and the DCH to work cooperatively towards this end.

192. QMi and the CAB have specifically expressed a desire to secure multi-platform rights. Producers within Canada have been understandably reluctant to conclude deals that may be prejudicial to them later. It is the Commission’s view that the conclusion of negotiations that will arrive at equitable terms of trade (with the Commission and others present as umpires at the negotiations if necessary) is in the best interests of all parties and the Canadian broadcasting system.

Conclusion

193. **The Commission finds that the QMi opting out proposal cannot be safely contained and therefore should be rejected. The Commission is willing to do all that it can to**

facilitate the conclusion of terms of trade agreements that will permit multi-platform rights acquisition on terms fair to all.

Other recommendations

194. In its report, the Task Force made a total of 24 recommendations. In this section, the Commission sets out its recommendations and conclusions for areas that have not already been discussed in this report.

BPEs and self-administered benefits, and the percentage of contributions to Canadian programming that must go to the CTF

BPEs and self-administered benefits

195. In recent years, the Commisson has approved programming benefits that are administered solely by licensees rather than by a third party. In the case of self-administered benefits money, the licensee has the privilege of ensuring that the resulting programs are available only to its own services. As a consequence, the Task Force recommended that it would be appropriate for the CTF to take self-administered funds into consideration when establishing the annual BPE, with a view to reducing the BPE during the life of any self-administered benefits.

196. At the initial written submission stage, major stakeholders in various sectors of the industry submitted opposing comments. Some broadcasters, for instance, were of the general view that the implementation of this Task Force recommendation would involve the use of different calibration formulae for each BPE stream, thereby adding another layer of complexity to the administration of this funding stream. In their view, this would undermine the other important objective of simplifying the allocation and administration of CTF funding.

197. At the hearing, the CTF submitted that self-administered benefits lead to an increase in the production of Canadian programming. It argued that the BPE system was not designed to detract or take away from a broadcaster envelope if that broadcaster happens to be administering a benefits program at that time.

198. In light of the above, the Commission is now of the view that self-administered programming benefits should not be taken into account by the CTF in the BPE calculations.

Percentage of contributions to Canadian programming that must go to the CTF

199. The Commission has taken note of the suggestion, by the Shaw Rocket Fund for example, that the Commission permit the redirection to independent funds of BDU contributions beyond the currently permitted maximum of 20% of each BDU contribution requirement. In view of the demand for CTF funds and the arguments by many parties against measures that would reduce the availability of CTF funding for support of traditional programming initiatives, the Commission considers it inappropriate to increase the 20% of BDU funding that may be directed to independent funds as this

necessarily reduces the 80% contribution requirement to the CTF itself.

Conclusion

200. **The Commission considers that self-administered benefits should not be taken into account in the calculation of the BPE. It further considers that the maximum level of contributions to Canadian programming that BDUs may direct to one or more independent funds should remain at 20%.**

Increased minimum licence fees and tax credits

201. Recognizing that additional resources would benefit the broadcasting system as a whole, the Task Force considered it appropriate for broadcasters to assume greater risk and support for CTF projects. It considered that that this could be done by increasing the minimum licence fee required to trigger CTF funding.

202. The Task Force also observed that the CTF policy of permitting up to 90% of federal tax credits to be included in the financial structure of the project meant that these funds were not being used for their original purpose. The Task Force therefore suggested that the CTF consider reducing the amount to a maximum of 50%.

203. With respect to the increase in licence fees, at the written stage, opposing positions (largely from broadcasters) were based on two points. First, they argued that, if this change were coupled with a reduction in allowable tax credits, broadcasters would be assuming most of the risk without potential for return. They also argued that, as producers exploit new platform rights, the value of the rights acquired are actually diminishing.

204. Others added that broadcasters are already making significant investments and assuming considerable risks and that, taken together, private and public broadcaster licence fees account for the largest portion (34%) of Canadian television production financing.

205. Parties from other sectors raised the concern that broadcasters would be reluctant to increase their licence fees at a time when they must make expenditures on the transition to digital and high definition broadcasting and production. These parties were also concerned over the impact that such an increase would have on French-language broadcasters such as TFO and Télé-Québec.

206. Of the supporting comments, some noted that this recommendation and the recommendation related to the reduced use of federal tax credits should be implemented together to make up the difference in the financing structure.

207. At the written stage, supporting comments with respect to the allowable tax credit reduction largely came from the independent production sector. The key concern for opposing parties was the gap in the production financing structure that this tax credit reduction would create. Some, notably broadcasters, were also concerned that broadcasters would be expected to make up for this difference in the financing structure,

while others, such as producers, expressed concern that it would result in a decrease in production volume. Some remained unconvinced that even an increase in licence fees would be sufficient to effectively fill the financing gap. It was also suggested that an initial drop from 90% to 75% would be more appropriate.

208. At the hearing, few parties commented on these recommendations. The CFTPA welcomed the Task Force recommendations and discussed these issues in some detail. Notably, the CFTPA highlighted that licence fees in Canada are much lower than in countries such as the U.S. and the U.K. It further stated that, in its view, tax credits should be treated as producer equity. The CFTPA supported the establishment of a benchmark that would allow producers to effectively retain a portion of their tax credits because the current approach defeats the point of the program, which is to generate capital for small companies.

209. Certain parties, including the Directors Guild, reiterated their position that the decrease in allowable tax credits must be coupled with an increase in licence fees in order to compensate for the financial shortfall. Shaw noted that federal and provincial tax credits were intended to build strong production companies, but that the credits were instead diverted to financing one-off projects along with the CTF and other private funds. As a result, producers use subsidies and incentives as a means to finance the majority of CTF-funded drama rather than to build sustainable businesses.

210. With respect to the allowable tax credit, in light of the support by certain parties and the absence of any opposition, the Commission is of the view that tax credits should be used for their original intended purpose and, therefore, endorses the Task Force recommendation. However, the Commission is of the view that a staged gradual decrease is more appropriate to allow parties to adjust to this change in the production financing structure and thus considers the initial drop should be to 75% rather than immediately to 50% as proposed by the Task Force. This gradual decrease to 50% should be accomplished within, and no later than, a three-year timeframe.

211. Regarding the increase in licence fees, the Commission endorses the Task Force recommendation to increase the minimum licence fees required to trigger CTF funding.

212. **Recommendation 7: The Commission recommends that the CTF reduce the amount of federal tax credits that may be included in the financing structure of a production to 75% immediately, and then to 50% no later than three years from the date of this report. The Commission further recommends that the CTF increase the minimum licence fees paid by broadcasters for CTF-supported productions.**

Funding for new media platforms

213. The majority of parties from all sectors of the industry were clear that, while they may support the concept of a new funding stream for new media, they did not want any of the current CTF funds to be used for that purpose. Several parties, including Rogers, the CFTPA and Corus, submitted that the CTF is already oversubscribed and its funding should therefore be directed to television programming only and not to new media

content.

214. Parties also considered that there must be a direct link connecting the use of CTF funds to the creation of Canadian content for the regulated sector. Others, including the CAB, submitted that, since new media providers (e.g., Internet service providers, wireless telecommunications) do not remit a percentage of their gross revenue to the CTF as is the case for BDUs, they should not be able to access CTF funding.

215. Several parties, such as the Shaw Rocket Fund and QMi, supported the funding of VOD programming within a proposed new media funding stream.

216. The CTF has signalled its intention to launch a modest new media pilot program. According to the CTF, this program will assist Canadian content in reaching additional viewers on new platforms. It will allow all parts of the industry to gain first-hand knowledge of prevailing business models and the market value of non-broadcast rights.

217. In its submission, the CTF stated that it has conducted research and put forth a resulting working paper that outlines the parameters of such a program. It stated that the working paper proposes that the triggering parties (those parties eligible to draw from a CTF new media fund) continue to be CRTC licensees, and expands the definition to include all licensees. In this way, contributions from the regulated sector would be allocated to uses within the regulated environment and would benefit those who participate in the regulated system.

218. The CTF working paper identifies possible new sources of funding for Canadian new media content. In this respect, it further foresees that the CTF can be a useful catalyst, as a trusted public-private infrastructure with a natural administrative forum suitable for new or incremental sources of funding, and by being a central reference for best practices and terms of trade in this emerging sector.

219. The CTF’s proposed new media fund has a number of attractive elements in that:

- it would permit funds to be accessed by BDUs;
- it would provide much needed public funding for new media projects; and
- it would be a pilot project, and as such can work out the many difficult issues as they develop.

220. The CTF has the experience and infrastructure to create and administer this fund.

221. The Commission agrees that current levels of funding are already limited and that drawing from this funding to support new media would exacerbate this situation. However, it also considers that action should be taken to recognize the advent of programming primarily aimed at new media aplatforms. The Commission recognizes the recent efforts made by the CTF to find a suitable system to address new media funding and sees merit in the project proposed by the CTF. In the Commission’s view, it is appropriate that the CTF carry on with its new media fund pilot project.

222. The Commission, however, recommends against the use of part of current contributions for new media projects and recommends that funding for new media projects employ only incremental revenues. The Commission considers that revenues from equity investments, contributions by way of benefits packages or dedicated government funding initiatives could be suitable sources of incremental funding. Consistent with its first and second recommendations, wherein it supports the creation of a separate fund with a separate board for contributions from private sector stakeholders, the Commission considers it appropriate that any incremental funds originating from private sector stakeholders or related investments should be administered by the private sector board and applied against new media projects related to private sector stakeholders. Public sector incremental funds would be allocated for public sector use.

223. The Commission further notes that, during the course of the hearing, parties discussed the concept of using “flex funds”, which is an amount of up to 15% per broadcaster envelope that can be devoted to other uses. The Commission considers that it would be appropriate to permit the use of flex funds by a CRTC licensee, at the broadcaster’s discretion, for multi-platform new media purposes, including VOD applications.

224. Finally, the Commission notes that the Telefilm New Media Fund could, in the interim, receive funds intended for new media use, should the CTF not be in a position to administer the new media fund.

225. **Recommendation 8: The Commission recommends that the CTF establish a new funding stream to support Canadian programs designed for new media platforms. The money for this stream should come entirely from new funding sources such as equity investments, benefits packages or dedicated government contributions. The 15% of the BPE that may be devoted to other uses (flex funds) could also be directed to multi-platform new media purposes, including VOD applications.**

Rights and revenues for new media platforms

226. Parties were generally of the view that revenue arrangements with respect to new media platforms should be set out in fair and equitable terms of trade agreements and that exploration of new approaches must be undertaken in consultation with stakeholders.

227. Although most parties from all sectors generally agreed that it is important to establish an arrangement for broadcasters and producers to exploit the potential revenue from new media platforms, they did not support the methods recommended in the Task Force Report. The Task Force recommended an interim 50/50 sharing of net revenues between broadcasters and producers.

228. The Commission is actively encouraging broadcasters and producers to sign terms of trade agreements that will include a sharing of new media rights and revenues. These agreements are expected to be made available at the time of the OTA licence renewals next year. The Commission further strongly encourages the CTF to use its influence to bring the parties together on this matter as quickly as possible. The Commission is

willing to provide assistance in resolving disputes in this area, if necessary.

Conclusion

229. **In light of the opposition to an interim split, the Commission rejects the Task Force suggestion for an interim 50/50 net revenue share agreement for new media platforms, and stresses instead its willingness to involve itself, if necessary, in assisting parties to conclude negotiations aimed at entering into terms of trade agreements**.

Reporting mechanism and communications strategy

230. The Task Force recommended that, with the establishment of a private sector funding stream, the CTF provide an accounting of the use of BDU contributions and the performance of the programs funded through this stream. The Task Force was of the view that the CTF Board should meet at least once per year with senior representatives of the DCH and the major contributing BDUs in order to solicit feedback on the way the CTF is achieving the objectives set out by the DCH and the Commission.

231. The Task Force also suggested that the CTF assign a senior staff member with the responsibility of implementing a communications strategy so that goals, activities and successes of the CTF are well known by decision makers and the Canadian public.

232. These recommendations did not generate many comments and were, for the most part, well received by those parties that did comment. The CTF described the reports it currently issues to its members, its contributors and other parties. It then listed the different measures it intends to take to meet the objectives of this recommendation, including its intention to publish its annual reports in a more timely fashion. The CTF further supported the general view of the importance of effective communication and increased accountability. The CTF noted that it has already begun to implement these recommendations, notably by launching a government relations, public relations and communications campaign.

233. During the hearing, various parties highlighted the importance of better communication, accountability and transparency. MTS Allstream suggested that every contributor should have access to a quarterly report that sets out the following information about all applications received by the CTF: justification for the CTF’s financial support or denial of support for each program, whether each program was broadcast, and if so, the relative success of each program – including financial benefit and viewership.

234. The Writers Guild submitted that the issue that prompted the proposal for two streams is based on reporting practices and that, accordingly, rather than trying to change the structure of the CTF, efforts should be concentrated on better reporting and accountability.

Conclusion

235. **The Commission endorses the Task Force recommendations on the CTF reporting mechanism and communication strategy, in light of the wide support for those recommendations and their evident benefits. However, given the extensive efforts already initiated by the CTF in this regard – notably by launching its government relations, public relations and communications campaign – the Commission considers that, while vigilance should continue to be applied, these recommendations have already been fulfilled.**

Other governance issues

Nominating committee and nomination of the Chair and the President and CEO

236. If the DCH accepts the Commission's recommendations related to the establishment of separate public and private sector funding streams, with separate boards of directors (Recommendations 1 and 2), Recommendation 9 below would apply only to the public sector funding stream. If the DCH rejects this approach, Recommendation 9 would apply generally.

237. The Task Force examined the process by which Board members were elected and noted that, in fact, directors were appointed for a one-year term by the member organizations. This method, according to the Task Force, could result in a lack of continuity.

238. The Task Force also noted that certain associations rotate CTF Board membership among major companies, which could lead to under-representation of smaller companies.

239. The Task Force considered that the CTF Board should appoint a nominating committee whose role would be to identify members eligible to serve on the Board. It recommended that the nominating committee be made up of the contributing members (i.e., representatives of BDUs and the DCH) in proportion to their financial contributions, and that member associations provide the nominating committee with a list of potential candidates for Board membership.

240. The Task Force also expressed concerns about the CTF's decision to move to a paid Chair. The Task Force noted that administrative expenses could be reduced by reverting to the long-time practice of maintaining a Chair who is unpaid (save for such reimbursements as may be authorized for any board member) and who focuses on the typical functions of a board Chair. The nominating committee would then recommend for ratification at the annual general meeting the names of the new board members (other than the five members appointed by the DCH) and the names of the Chair and other members of the Executive Committee (two Vice-Chairpersons, Treasurer).

241. At the written stage, certain parties opposed the establishment of a nominating committee as proposed by the Task Force. They argued that such a committee would give undue power and control to the BDUs, potentially creating conflicts of interest. Some parties also submitted that each sector was in the best position to determine who would best represent its own interests. Rather than creating a nominating committee that would be responsible for nominating individual members as suggested by the Task Force, the CTF

suggested that the nominating committee be responsible for developing guidelines for selecting individuals for nomination to the Board.

242. Supporting parties agreed that the Chair and the President and CEO of the Board should be nominated from the independent board members but disagreed with the Task Force that they could also be nominated from the members representing contributors. Few comments were received with respect to the remuneration of the Chair.

243. At the hearing, very few parties provided comments on these Task Force recommendations. The CTF noted that its Board had put together a nominating committee structure that would include three independent members, one BDU representative and one DTH representative. It further noted that this committee had already had its first meeting and that its first task is to confirm its mandate. This mandate would consist of recommending nominees for the position of President, managing the succession process, and recommending nominees to the executive committee and the finance and audit committee. The CTF hopes to have this accomplished in time for its annual meeting in June.

244. The Commission accepts the proposition that each sector is in a better position than the nominating committee to determine who would best represent its interests. Therefore, the Commission does not consider that the nominating committee should be responsible for nominating board members.

245. In light of the potential for conflict of interest, the Commission shares the Task Force view that only independent members should be responsible for nominating the Chair.

246. With respect to nominations for the President and Executive Committee, the Commission also agrees that this should be part of the nominating committee's mandate. In light of the changes made by the CTF, the Commission is of the view that this recommendation has been fulfilled appropriately.

247. Further, noting the benefits of reduced administrative expenses, the Commission also endorses the recommendation that the CTF revert to its long-time practice of maintaining the Chair as an unpaid position.

248. **Recommendation 9: The Commission recommends that the CTF Board form a nominating committee consisting of contributing members. The nominating committee would propose, for ratification at the annual general meeting, the names of the President and other members of the Executive Committee.**

249. **The Chair and the President and CEO of the CTF Board should be nominated from independent board members or from those members representing contributors. The Chair should be remunerated on the same basis as the other directors.**

CTF bylaws and the roles of the Chair and of the President and CEO

250. If the DCH accepts Recommendations 1 and 2 set out above, Recommendations 10 and

11 below would apply to each of the two boards of directors that will be established. If not, they will apply to the single CTF Board.

251. In its report, the Task Force noted a lack of clarity with respect to the roles of the Chair and the President of the CTF. The Task Force pointed out that neither position appeared to have responsibility for the functions of a CEO. In the view of the Task Force, the role of the CEO should properly be undertaken by the President of the CTF and the roles of the Chair, and of the President and CEO should be clearly identified. The Commission concurs.

252. At the written stage, the CTF noted that, although it supported all four points of the Task Force's recommendation on the role of the President and CEO, it did not agree that those points should necessarily be implemented as bylaw amendments. According to the CTF, the relevant corporate law contemplates that the CTF's bylaws will deal with specific subject matters that do not generally include details of the type set out in the recommendation. Accordingly, the CTF was of the view that, aside from the bylaw amendment that would require the President to be an ex officio board member, the three other points would be more appropriately dealt with in its Roles and Responsibilities document.

253. With respect to Task Force recommendations 16 and 17, which dealt with defining the roles of the Chair, the President and CEO, and the complementary roles of the Board and staff, the CTF specified that it was already in the process of developing a document that delineates the role of the Chair and of the President. The CTF also indicated that its Independent Committee developed a Board Charter that the Board approved at its 12 June 2007 meeting. This Board Charter sets out, among other things, the duties and responsibilities of the Board and the Board's view of its role.

254. All three recommendations were minimally discussed at the hearing. The CTF confirmed that the Board Charter, the defined the roles and responsibilities of the Chair and President, as well as the internal communications protocol had been finalized and were on the public record of the proceeding.

255. **Recommendation 10: The Commission recommends that the CTF amend its bylaws to specify that:**

- **the title and functions of the President be changed to "President and CEO";**
- **the President and CEO be hired by the Board and report to it;**
- **the President and CEO be an ex officio member of the Board, without voting privilege; and**
- **the President and CEO hire the CTF's staff, which will report to the President and CEO.**

256. **Recommendation 11: The Commission also recommends that the CTF Board:**

- **clearly define the respective roles of the Chair and of the President and**

CEO; and

- **develop and implement a policy identifying the different and complementary roles of the Board and staff.**

257. **The Commission notes that the CTF has taken a number of positive actions, short of amending its bylaws, to fulfil these recommendatons. It considers that the CTF should ensure that it has taken or will take all steps necessary to give full and binding effect to the Commission's recommendations in these matters.**

Membership and reviews

258. The Task Force strongly recommended that BDU licensees that contribute to the CTF (cable, DTH and wireline telcos) enter into an arrangement that would permit them to equitably nominate the sector representatives to the Board. The Task Force noted that absent taking appropriate steps to cooperate to ensure a strong voice, individual licensees had no cause to complain about a lack of influence over the direction of the CTF. A number of BDU licensees have since established the CCCE for this purpose.

259. The Task Force also recommended that the Commission conduct reviews on a regular basis to ensure that the CTF implements this private sector funding stream.

260. Neither recommendation generated significant comment either during the written stage or at the hearing.

261. The Commission endorses both recommendations given their obvious benefits and the absence of any opposition.

Conclusion

262. **The Commission considers that BDU contributors should organize themselves for the purpose of membership in the CTF and of proposing directors. In this regard, it notes the establishment of the CCCE and encourages all BDUs to participate in that organization.**

263. **The Commission intends to conduct reviews on a regular basis to ensure that the CTF implements a private sector funding stream.**

Monthly BDU contributions to the CTF

264. The Task Force recommended that the Commission take action to ensure the financial stability of the CTF and amend the BDU Regulations to ensure that BDUs are required to remit their contributions on a monthly basis.

265. This recommendation was well received at the written stage, with 16 supporting comments and no opposing comments, and was not discussed by many parties at the hearing. The CTF noted that it was in full support of this recommendation, as it would ensure greater stability for both the CTF and the industry as a whole.

Conclusion

266. **The Task Force recommendation regarding the requirement for monthly contributions by BDUs to the CTF garnered very broad support for the evident reason that it would ensure the financial stability of the CTF. Accordingly, the Commission will proceed with an amendment to the BDU Regulations to make mandatory the monthly contributions by BDUs to the CTF, once the DCH has addressed the major issues identified in this report.**

Amending the CRTC benefits policy

267. The Task Force recommended that the Commission take action to ensure the financial stability of the CTF. The Commission was to consider proposals to amend its benefits policy in the context of its Diversity of Voices proceeding, and the Task Force recommended that the revised policy be amended so that a portion of future television benefits be directed to the CTF.

268. In its Diversity of Voices policy, the Commission indicated that it had decided to make no changes to the benefits policy at that time.

Conclusion

269. **The Commission is now prepared to amend its benefits policy so that tangible benefits can be directed to the CTF, and it will begin a written process by way of a public notice.**

Amending the Certified Independent Production Funds Policy

270. The Task Force considered that the CTF must play a more active role in supporting Canadian programming that will be distributed on various new media platforms. New media projects related to television programs can also be supported by the independent production funds that are overseen by the Commission. These funds use contributions from BDUs as permitted by the Commission’s regulations. The Task Force considered it appropriate to recommend that the Commission amend its policies governing these funds so that they have greater flexibility to invest in new media projects.

271. Few parties commented on this recommendation and the majority were in support. Some supported this recommendation but believed that the majority of eligible new media funding should be tied to support for content produced for the regulated sector. Others submitted that better support for new media projects should not be accomplished at the expense of supporting Canadian television programming and recommended that the Commission examine options for raising new sources of funding to support the development and creation of interactive media content destined for new media platforms.

Conclusion

272. **Given the support expressed by some parties and absent any arguments to the**

contrary, the Commission will proceed immediately to issue a public notice to amend its Certified Independent Production Funds Policy.

Related CRTC documents

- *Diversity of voices* – Regulatory Policy, Broadcasting Public Notice CRTC 2008-4, 15 January 2008

- *Proceeding on the Canadian Televison Fund (CTF) Task Force Report*, Broadcasting Notice of Public Hearing CRTC 2007-15, 5 November 2007

- *Call for comments on the Canadian Television Fund (CTF) Task Force Report*, Broadcasting Public Notice CRTC 2007-70, 29 June 2007

- *Report of the CRTC Task Force on the Canadian Television Fund*, 29 June 2007

- *Determinations regarding certain aspects of the regulatory framework for over-the-air television*, Broadcasting Public Notice CRTC 2007-53, 17 May 2007

- *Licence renewals for the French-language national television network TVA and for the French-language television programming undertaking CFTM-TV Montréal*, Decision CRTC 2001-385, 5 July 2001

Appendix 1

Proposed implementation schedule

Steps for the CTF

The CTF should provide by November 2008 its detailed plans for the earliest possible implementation of the following:

- The creation of the private sector funding stream consistent with Recommendations 1 and 2.

- The revision of its audience succes metric consistent with Recommendations 3, 4 and 5.

- The reduction of the amount of federal tax credits that may be included in the production financing structure and the increase to the minimum licence fee paid by broadcasters consistent with Recommendation 7.

- The establishment of a new media funding stream consistent with Recommendation 8.

- The establishment of a nominating committee, the changes to the Chair remuneration and the bylaw and guideline amendments with respect to the roles of the President and CEO, the Chair and Board and staff, consistent with Recommendations 9, 10 and 11.

Steps for the CRTC

By 1 July 2008

- Issue a public notice launching a written public process to amend its benefits policy.

- Issue a public notice launching a written public process to amend its Certified Independent Production Funds Policy.

To be determined

- Amend the *Broadcasting Distribution Regulations* to make mandatory the monthly contributions by BDUs to the CTF**,** once the DCH has addressed the major issues identified in this report.

Appendix 2

Dissenting opinion by Commissioner Michel Morin

Preamble

I would like to begin by stating that my dissenting opinion pertains only to the Commission's refusal to allow Quebecor Media Inc. (QMi) to opt out of its contribution to and participation in the Canadian Television Fund (CTF) for a period of three years.

If, in the context of this decision, the Commission's recommendation is accepted by the Department of Canadian Heritage (the Department) and subsequently by the CTF, TVA (of Groupe Quebecor) will see its audience share adjusted for the purpose of obtaining production funds from the CTF envelope. Consequently, TVA would see its envelope increase from 26.8 to 59.2% for drama productions.

That is no small thing! It is a definite breakthrough and a step in the right direction. In fact, if this recommendation is adopted, TVA will receive more than $10 million in additional funding for its dramas. No over-the-air broadcaster in Canada will benefit as much as TVA from the adjustment in the budget envelopes devoted to dramas.

Thanks to this "hit factor" (see paragraphs 109 to 119), the CTF will be able to better reflect the reality of the French-language market and to do justice in the allocation of funds to the biggest private over-the-air broadcaster in Quebec. It's about time!

If this "hit factor" were to be not only recognized as a CRTC proposal but also confirmed by the Department and the CTF, QMi's TVA group should normally, to quote the Commission, "commission more original programming and…schedule and develop Canadian programming aggressively."

This brings me to my dissenting opinion, which, I repeat, pertains only to the opting-out proposal put forward by QMi during the hearing on the CTF held last February.

A thunderbolt for the broadcasting system

At the hearing, which ran for five days last February, I referred to the QMi proposal as a "thunderbolt."

In effect, was the aim of the proposal not to enable QMi to get out of the CTF in the same way that the Caisse de dépôt et placement du Québec got out of the Canada Pension Plan forty years ago? The thunderbolt struck. QMi came charging back not once, but twice, yet the Commission chose to go the safe route.

An initiative that I believe could have further stimulated the Canadian system is now ancient history, at least if the Department endorses the Commission's recommendations.

Difficulty funding drama series

As early as June 2007, the president and chief executive officer of TVA, Pierre Dion, sent a four-page letter to our colleague Michel Arpin, the CRTC's vice-chairman of broadcasting. The letter underscored the "structural" difficulty that general interest television networks have financing high-quality drama series in Quebec.

Last February, during the CTF hearing, Sylvain Lafrance, vice-president of the CBC's French-language network, expressed a similar view regarding the Quebec market and even suggested that the problem of funding for drama series would eventually extend to the English-language market.

Star pupil

TVA can be considered a star pupil in the Canadian broadcasting system. TVA devotes more than 90% of its programming budget to Canadian content, which exceeds by far the roughly 40% share allocated by over-the-air broadcasters in the English-language market. Unlike CTVglobemedia (CTV) or Canwest Global (Canwest), TVA does not have to rely on American series to generate 90% of its revenues. Unlike the CBC/SRC, TVA cannot count on more than one billion dollars from Parliament to produce Canadian content. At the end of the day, TVA manages to be number one in the Quebec market seven days a week and to obtain audience shares almost double those of the SRC.

Independently of its newspapers, QMi contributes up to $330 million a year to Canadian culture through its various companies: Videotron Ltd. – $168 million in royalties, various rights and funds; TVA Group – $133 million, of which $123 million is spent on Canadian programming; TVA Films – more than $7.3 million in contributions, promotion and advertising of Quebec content; Groupe Livre Quebecor Media – over $11 million, including more than $3 million for the promotion of Quebec books; and Groupe Archambault – more than $3 million in artist promotion and recognition, royalties and film rights. It is probably fair to say then that QMi is the biggest producer of Canadian cultural products. The bottom line is that we have in QMi a true champion of the Canadian content that the CRTC is looking to develop under the *Broadcasting Act* (the Act).

The model

Drawing on this vast experience and its many achievements, QMi proposed to the Commission a model for the Canadian broadcasting system that no other Canadian stakeholder had dared put forward up to that point.

Operating in a constantly evolving market, QMi proposed to increase the range of products by creating its own fund. A portion of its total funding would have to come from the total current contributions to the CTF of Videotron, its distribution company.

QMi did not ask for a subsidy or simultaneous substitution in order to carry out its plans. That is a radical departure from the requests of other over-the-air broadcasters in Canada!

QMi's proposal was neutral in terms of current CTF funding.

As the table below shows, in the past three years for which data are available, QMi withdrew more from the CTF ($9 million in total) than it contributed through Videotron's monthly contributions.

Videotron Ltd. Contribution to CTF & TVA BPE Allotment from CTF
(2005 to 2007)
CTF BPE Allotments

	TVA	SunTV	Total
2004/05	$15,180,231	n/a (owned by Craig Media in 04/05)	
2005/06	$19,614,326	$111,791	**$19,726,117**
2006/07	$18,449,171	$278,125	**$18,727,296**
2007/08	$16,366,300	$100,712	**$16,467,012**
2008/09	$17,605,442	$30,300	**$17,635,742**

	Contributions			Net
	Videotron	CF Cable	**Total**	(allot. – contr.)
2005	$11 497 824	$2 100 000	**$13 597 824**	*$6 128 293*
2006	$11 838 306	$3 317 387	**$15 155 693**	*$3 571 603*
2007	$13 008 930	$3 770 289	**$16 779 219**	*-$312 207*
2008	Not available			

<u>Notes:</u>

1) TVA also has part ownership of Men TV but those figures are not included.
2) LCN has never earned a BPE – likely because it is an all news channel.
3) Videotron contributions include CF Cable TV Inc.

In short, as QMi wrote in its final reply of 4 February last, "[translation QMi will be able to do more and do it better, but other broadcasters and distributors will not lose anything."

The situation in Quebec and the 75% rule

In contrast to companies such as CTV and Canwest, for whom the drop in profitability in recent years is mainly attributable to the rising cost of the American series on which their business model is based, the decrease in profitability of TVA Group is attributable to the small size of the French-language market as well as the splitting of the audience and advertising market with specialty networks.

To meet the challenge, this champion of Canadian content proposed a more flexible model coupled with new leeway that would have allowed it to negotiate agreements with independent producers.

In the proposed model, QMi would refrain from applying the strict rules of the CTF under which 75% of the priority programming identified by the CTF, such as documentaries, children's programs and dramas, must be produced by independent producers.

The Act states that it is important to "include a significant contribution from the Canadian independent production sector," but a significant contribution does not necessarily mean that 75% of priority programming eligible for CTF funding must be given to independent producers, as is currently the case. The QMi request compelled the CRTC to revisit the model, which it had always refused to do up to that point.

This incentive model for independent production, which was systematically adopted in 1999 by way of a generally applicable standard (the 75/25 rule; before then, commitments were on a case-by-case basis), came from the American policy that was abandoned in 1996. Until 1996, our neighbours prohibited common ownership of production studios and broadcasting networks. How things have changed since then! After that model was abandoned, acquisitions created a number of common ownership groups: Disney-ABC, CBS-Viacom (Paramount), Twentieth Century Fox-Fox and NBC-Universal.

Do we need to point out that it is now the CRTC that oversees the application of the Act in connection with licence renewals and ensures that 75% of programs identified as priority programming are entrusted to independent producers? To my mind, 25% could also be considered a "significant contribution," and I challenge anyone to prove the contrary.

In the proposed model, QMi did not eliminate independent producers altogether. Not only did it recognize their presence, but it admitted from the outset that it would have to use their services because it did not have the capacity to handle all the production itself. A similar point of view was expressed at the hearing by Corus Entertainment, which also argued the case for in-house productions.

In other words, through the creation of its own fund, QMi was seeking to transcend the CTF rules and produce more programming in its own studios.

As far as external production is concerned, in the model proposed by QMi, the financial risks were shared between the undertaking and the independent production company. Anyone reluctant to go down that road could have been asked to work as a subcontractor for the entire group.

Current situation decried

After the Auditor General of Canada, Mrs. Sheila Fraser, found in November 2005 that [translation] "the application of controls is not sufficiently rigorous" with respect to the cultural industries, the Auditor General of Quebec, Renaud Lachance, drew a similar conclusion during the March 2008 review of the activities of the Société de développement des entreprises culturelles (SODEC).

In point of fact, the Auditor General put in words what everyone had known for more than a decade: the famous 75% quota allocated to independent producers has not lived up to expectations, as they have invested next to nothing while production costs are more often than not on the rise.

It is important to note that this industry – that of independent producers – excels at cultivating its public image as a fragile industry that needs full government support and does not have the means to invest! What a success, what an example, what a demonstration of cultural leadership after a decade and a half of investment of public funds!

Add to that the fact that most of these "independent" companies do not report on their activities, even though they are largely funded with public money.

Be that as it may, the Auditor concluded that "[translation] producers sometimes assume almost no financial risk." Clearly, the mass was over for the Quebec Auditor General.

Marc Cassivi, a journalist with the daily newspaper *La Presse*, put it this way: "[translation] we are entitled to ask how a producer can get rich without assuming any risk."

In that context, do we need to recall that independent producers are not compelled to report to the CRTC, even though the CRTC, as a regulatory body, has to ensure that they are able to access 75% of the funding for priority programming.

With respect to independent production, licence fees are pegged to production costs. Thus the higher the production costs, the larger the quota of independent producers. The result? Their licence fees are increasing, while broadcasters' audiences are fragmenting.

It is that model, rooted in the rules of the CTF, that QMi wants to replace in order to produce Canadian content at a lower cost by extending its broadcast to all the platforms at its disposal, thanks to an agreement on sequential rights still lacking in the Canadian landscape. The model has incidentally been put to the test by American networks, as I stated earlier.

The new challenge for the Canadian system consists in building audiences by taking advantage of new distribution windows. Only broadcasters and production companies have that capacity. QMi can tie the two together.

Independent producers were bound to object to QMi's opting out of the CTF. They are sitting pretty with their near-monopoly of 75%. The status quo is still on the agenda. It's a godsend. Only a new relationship could encourage them to seriously consider the Montreal company's proposal and share production risks and profits.

As QMi wrote in its final rebuttal, "[translation] We cannot offer any guarantees against the fear of being afraid. The independent representatives of the Conseil du Fonds

Quebecor will be able to check our practices and bear witness, as need be, to any breaches of the rule of equity we will want to apply."

Even though the Department dismissed the Commission's recommendation and decided to proceed with the QMi model, it bears repeating that the 75% rule would continue to apply to the four major players in broadcasting in the province, that is, Radio-Canada, Groupe Astral Media, TéléQuébec and perhaps TQS, if the new owner were to obtain a licence transfer. QMi is not alone in Quebec.

There is therefore no immediate danger for the independent production sector as a whole even if the new model should become a reality for the dominant player QMi.

I will leave it to the reader to deal with the arguments raised by CBC/SRC, CTV, TQS and the Writers' Guild of Canada. Those arguments are an integral part of the Commission's decision and can be found at paragraph 148ff.

QMi is not alone

In Quebec, unions would welcome more in-house productions, which is exactly what QMi proposed.

Among these, the Fédération nationale des communications, the Public Service Alliance of Canada (PSAC) and the Syndicat des journalistes de Radio-Canada feel that changing the rules is in the interest of their members, not only for QMi, but also for other over-the-air broadcasters. For those unions, it is important that the 75% rule – which favours independent producers at the expense of the in-house production of undertakings – be revised downward and a larger percentage of production be made directly by the undertaking itself, namely Groupe Quebecor-TVA, with its unionized employees for in-house productions.

Already in 2005, a professor at the Université du Québec à Montréal (an institution that is not known as a big supporter of the private sector), Mr. Ahmed Naciri, wrote in a study commissioned by PSAC that "[translation] Quebec television production is very dependent, far more than in the rest of Canada, on public funding for its film and television production. Quebec is the Canadian province in which the CTF invested the most in 2002-2003. Alternatives to public support must be identified as quickly as possible."[2]

The most credible alternative to public funds presented to date was, in fact, QMi's opting-out proposal. The word says it all: opting out of public funds.

And Professor Naciri concluded: "[translation] Undeniably, the creation of a viable independent industry has not come to pass. The industry is still increasingly dependent on regulatory public support, public financial support, participation by broadcasters and even investment from foreign co-producers."

[2] Ahmed Naciri, Ph.D., *L'appui à la production indépendante : une retrospective*, February 2005, p. 29.

You read it right. You will have noticed that the comments were from a consultant whose services were retained by a union, not QMi.

And in the end, this takes nothing away from the fact that independent producers have to be given credit for undeniable successes. Behind all that, however, were that regulatory support and public financial assistance that are always artificial in nature, whereas market forces are proposing for us a new model free of bureaucracy and support from public funds.

Need for a new model

After more than 15 years, with investments of approximately 3 to 5%, independent producers have nothing to crow about. It was time to undertake cautiously and under the Commission's watchful eye the development of a new model, as proposed by QMi.

By refusing to take this necessary and promising step, the Commission is simply reinforcing the near monopoly of independent producers at the expense of in-house productions, which create permanent well-paying jobs for technicians, producers and support staff.

Funding for Canadian priority production remains in the hands of private producers who, year in and year out, refuse to invest and come to terms with broadcasters on sequential rights.

Back to the model…

If the Commission had moved forward, the issue of sequential rights might have been resolved, the proportion of in-house productions might have been bigger, independent producers would have been forced to sit down and share risks and profits with broadcasters, and unions would have been able to get new members, so much so that production costs might have been significantly reduced and the distribution of content might have been made available on several platforms. That was the QMi model that the Commission rejected, a model that even *prima facie* increased Canadian programming budgets by $50 million over 36 months.

More specifically, QMi undertook to contribute $30 million in the first year or $108 million over three years.

Not only would Videotron and its distribution affiliates allocate 5% of their revenues (roughly $19 million) as they currently do with the CTF, but they would inject another $11 million that they would increase by 20% annually over three years.

A new model based on wider access to Canadian content on all platforms and a new division of sequential rights based on shared risk between QMi and producers would have increased profitability for the company without relying, it bears repeating, on grants, as the public broadcaster does, or on simultaneous substitution of the American signal, as private broadcasters in the English-language market do.

The ball was in QMi's court, which, like independent producers, would have been forced to sit down and negotiate with those producers in a whole new context, without making hard and fast use of the 75% rule and knowing that the Commission has always felt – and this is an opinion I share – that broadcasters have to negotiate in good faith appropriate business agreements with the independent production industry.

Why penalize QMi?

What is the rationale for the Commission's decision to prevent one of the best players in the industry from using for a three-year trial period a new formula that could enhance the Canadian broadcasting system as a whole?

The QMi proposal not only left more money for the other CTF beneficiaries but also represented a firm commitment to allocate more money than it allocates under the current CTF rules to the production of Canadian content, including notably a guaranteed amount for the production of dramas.

Everyone came out a winner. There was more money for other broadcasters in the system and more Canadian content for TVA network viewers.

During the CRTC hearing last February, the president of Groupe Quebecor Media, Mr. Pierre-Karl Péladeau, gladly accepted a three-year trial period. He was confident that his model would work.

In other words, after three years, the model proposed by QMi could have become permanent and been imitated by other players in the Canadian system. However, it would have to have been done on the same terms as those put forward by QMi, that is, a substantial increase – double, in fact – in spending on Canadian programming!

Under which principle could unions and artists in other Canadian provinces have thought differently than unions and journalists in Quebec?

We had reason to be reassured

According to QMi's own proposal, two of the five administrators of the Fund would have been independent and subject to approval by the CRTC. Annual reports on the use of the Fund would have been audited by a recognized independent firm.

From a regulatory perspective, the proposed model would already have been subject to a great degree of oversight, even if contrary to other private funds, the majority of administrators were not independent.

It would have been clear whether or not it was new money! The CRTC would then have been free to force the undertaking to rejoin the CTF if it failed to deliver the goods.

To get final approval, QMi would have been forced to reach a compromise with independent producers and the Commission could have eventually reproduced the model with other players in the system.

This decision by the Commission bears witness to a skittishness that I am at a loss to explain. Does the CRTC not have more than 400 employees? Has the current government not already forced us to deregulate more than 70% of the telephone services market? In that context, do we not have all the useful resources and new skills available to refocus our efforts and work toward increasing Canadian content off the well-trodden paths we have been on for the past decade and a half?

DVD, video-on-demand (VOD) and the Internet are opportunities which over-the-air broadcasters can use to improve their business plans and invest in more expensive productions. Again, the CRTC had to turn it into a project with promise and make a recommendation to the Department.

We had the right candidate. TVA offers more Canadian programming than any other private network in the country.

That is one of the reasons that could have been invoked by the Commission.

This is not the first time I have observed that when a project is fresh and ambitious, the CRTC is guided more by prudence than a sense of innovation in its decisions.

That is one of the reasons that led me to express a dissenting opinion at the hearing in Kelowna, British Columbia, last fall.[3]

For those who were afraid that undertakings like Rogers Communications or Shaw Communications would suddenly demand the creation of a fund patterned after QMi's fund, the Commission had good reason to put off studying such proposals for three years, since Rogers and Shaw had never formally submitted proposals like QMi and the QMi project had to be allowed to run its course.

In other words, QMi's experiment could have been largely monitored by the CRTC in order to ensure that it ran smoothly on a trial basis for three years. All the CRTC had to do was play its role properly during a trial period.

I challenge the Commission's view that the "impact on program production and the creative community in Quebec over a three-year period appears likely to be so significant that it would not be realistic to think that a return to the situation that existed before the trial would be possible."

Like the old adage, "give your dog a bad name and hang him," I would say that when people do not want to be part of a project, they engage in speculation about the future. In

[3] *CIGR-FM Sherbrooke – Acquisition of assets*, Broadcasting Decision CRTC 2007-435, 24 December 2007, http://www.crtc.gc.ca/archive/ENG/Decisions/2007/db2007-435.htm.

that case, they can say what they like and spare themselves the trouble of proving it.

Instead of relying on the structures and rules of the CTF, the Commission could have given even more thought to Canadian content and offered QMi the choice of opting out of the CTF.

The project was well circumscribed and the collateral damage was limited to a single market. It was a transitional project, the success of which had yet to be proven, but it had the potential to be reproduced by other players in the Canadian broadcasting system.

We would then have seen if other players in the Canadian system could have proposed as much as QMi to move ahead under their own steam.

In its final rebuttal, QMi wrote, "[translation] We agree with Mr. Morin's suggestion that we go through a trial period to evaluate the results of the opting out we are proposing. Three years seems sufficient to us. It will allow us to illustrate the results we are projecting. And we are committing, if necessary, to undergo any evaluations the CRTC feels it needs to do at the end of the three-year period."

And QMi added, "[translation] Should the commitments made by QMi be imposed on any other stakeholder that wishes to opt out? That will be for the CRTC to decide. However, having read the interventions made before the CRTC, we doubt that there have been any expressions of interest in exercising this option. The three-year trial with a renewal date after 24 months suggested by Commissioner Morin could be used to evaluate any other request."

The Commission should not be afraid of its best-performing players. In the age of globalization, particularly in the cultural sphere, the diversity we all hold dear in the French-language market has to be considered on a level with a population more or less comparable to the population of San Francisco. With its six million Francophones, Quebec – whose advertising market is nowhere near as strong as that of Toronto, for example – is already fortunate to have a player with the size and expertise of QMi.

An example I can cite here is Power Corporation, which is still reluctant to release figures that would confirm the profitability of Groupe Gesca, which controls a half-dozen daily newspapers, including *La Presse*, *Le Soleil*, *La Tribune*, *Le Nouvelliste*, *Le Quotidien* and *La Voix de l'Est*. QMi can certainly be envied, but not to the point of refusing to recognize the fragile nature of the Quebec commercial market as a whole in comparison to other markets.

QMi also said in its rebuttal, "[translation] The QMi model is not original. It is actually the predominant model in the United States, where original programming is king and it determines the organizational integration models used by undertakings in order to better adapt to maximum use of original content. It is disappointing that non-integrated Canadian broadcasters are lining up to oppose QMi's opting-out proposal, and the broadcasting system will ultimately crumble instead of letting those who have come up with a plan achieve success."

If it had accepted QMi's proposal, the CRTC would have freed a private undertaking from the assistance provided by the government and its "affiliates" and allowed them to focus on the real battle, which is to promote Canadian content at home and abroad.

Ottawa-born singer Alanis Morissette, who has been living in California for 14 years, recently said, "In Canada, people are very wary of success. Someone is always saying to me, 'You shouldn't write that or talk about that.' People are not open-minded. When I came to Los Angeles, I felt invigorated. I was looking at people who encouraged me and listened to my ideas. That is how I managed to become as successful as I have." Does the Commission's decision not reflect the very attitude Alanis Morissette laments?

My view is that the Commission rejected Quebecor Media's request because it considers that it is too strong, because it occupies a dominant position in its market.

Is it possible to be too strong for Canadian content? How can TVA be criticized for being part of a company that has ties to Videotron or Canoe? How can anyone doubt QMi, which is now able to offer all its content on all available platforms? Why not recognize Canoe.TV, which last November became the first Canadian webcaster to offer a wide range of over-the-air and VOD content from Quebecor, Jump.tv, IDI, Nexzo and Juste pour rire?

Who in Canada made us a similar offer? Where are the rest of the Canadian over-the-air broadcasters? What have they done to develop a new model in tune with the times when they received federal grants or were able to use the policy of simultaneous substitution to purchase huge blocks of foreign programming in order to generate the bulk of their revenues?

Finally, I am at a loss to understand how the Commission could say:

- QMi has a near monopoly on Quebec's broadcasting system.
- Accepting QMi proposal would also have created a monopoly on advertising.
- QMi's proposal would at a minimum weaken the CTF in the sense that the CTF would lose its economies of scale and run the risk of not meeting its cultural objectives.

I cannot support these assertions. Did we not clearly establish after the hearings on diversity of voices in September 2007 that QMi can no longer purchase radio stations in markets where it already operates, can no longer own more than one television station in any given market and can no longer acquire a television station that would give it access to more than 45% of the audience? With an audience share of 32%, we are a long way from the monopoly referred to in the Commission's decision.

Why this almost disproportionate attack against the proposal model in the Commission's final decision? Fourteen of the sixty-seven pages of the report are essentially devoted to demolishing the proposal! No other recommendation was given so much attention. What message are we sending to other players who might be tempted to seek bold solutions to advance the broadcasting system as a whole?

How can this attitude be reconciled with section 3(1)(*d*)(iv) of the Act, which states that the Canadian broadcasting should “be readily adaptable to scientific and technological change”?

According to the model proposed by QMi, it was clear that there might be more Canadian programming in VOD, digital IP, Internet, DVD and mobile platforms, live and pre-recorded.

In this era of Facebook, My Space, YouTube, Google and iPod, no undertaking in Quebec has yet seized the opportunity to devise a real multi-platform strategy.

We are looking at a star pupil, an adult in the broadcasting system we have known for 40 years, ever since the CRTC was created in 1968. QMi deserves a three-year licence amendment, not a slap in the face.

Now, more than ever, the French-language market needs a lead player capable of competing on all platforms, both fixed and mobile.

Historically, the CRTC – and for this I give full credit – has always taken pains to treat the French-language market as being separate from the markets in the other provinces, which are mostly Anglophone, when the circumstances warranted. Why should it be any different for the CTF? Why this new sacred cow?

In light of all this, I voice my dissent regarding the Commission’s refusal to allow Groupe QMi to opt out of the Canadian Television Fund so that it can create the Fonds Quebecor monitored by the CRTC for a period of three years.

Michel Morin
Commissioner
May 2008