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Coalition of Canadian Audio-visual Unions

June 21, 2004

Ms. Diane Rhéaume
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario
K1A 0N2

Dear Ms. Rhéaume:

Re: Public Notice CRTC 2004-32 - Call for comments on proposed Incentives for English-language Canadian television drama - Submission of the Coalition of Canadian Audio-Visual Unions

Please find attached the submission of the Coalition of Canadian Audio-visual Unions (CCAU) concerning the Commission's call for comments regarding its proposed incentive package in support of English-language television drama set out in Public Notice CRTC 2004-32. The CCAU is pleased that the Commission is holding a public process in order to establish ways in which to assist the development and broadcast of Canadian dramatic productions.

As we state in our submission, however, the CCAU is of the view that the crisis in Canadian drama cannot be addressed solely by incentives. Regulatory requirements must also be introduced in order to require broadcasters to meet their fundamental obligations of supporting Canadian dramatic programming on Canadian television. Nonetheless, as we outline in detail in our submission, the CCAU does support the Commission's proposed incentive package, subject to the recommendations that we make in our submission.

We thank you for the opportunity to provide you with our comments.

Yours very truly,

COALITION OF CANADIAN AUDIO-VISUAL UNIONS



**Proposed Incentives for
English-language Canadian television drama –
Call for Comments**

**Submission of the
Coalition of Canadian Audio-visual Unions (CCAUA)
to the CRTC re Public Notice CRTC 2004-32**

June 21, 2004

A. Introduction

1. This is the submission of the Coalition of Canadian Audio-visual Unions (CCAUA) with respect to the CRTC's call for comments on proposed Incentives for English-language Canadian television drama set out in the Public Notice CRTC 2004-32 (the "Public Notice").
2. The CCAUA is a coalition of ten Canadian audio-visual unions. The members of the CCAUA include the following organizations that financed the preparation of this submission: the Alliance of Canadian Cinema Television and Radio Artists ("ACTRA"), the Directors Guild of Canada ("DGC"), the National Association of Broadcast Employees and Technicians, Local 700 CEP ("NABET"), and the Writers Guild of Canada ("WGC"). The other members of the CCAUA are the American Federation of Musicians – Canada ("AFM-Canada"), Union des artistes ("UdA"), the Communications, Energy and Paperworkers Union of Canada ("CEP"), Association des réalisateurs et réalisatrices du Québec ("ARRQ"), Syndicat des techniciennes et techniciens du cinéma et de la vidéo du Québec ("STCVQ"), and Société des auteurs de radio, télévision et cinéma ("SARTEC").
3. This submission focuses only on English-language Canadian drama and the proposals set out in the Public Notice. We do not comment here on issues relating to French-language drama, other than to note that the environment for French-language drama in Canada is entirely different and calls for different approaches. Accordingly, references to "Canadian drama" in this submission relate only to English-language Canadian drama unless otherwise specified.
4. The CCAUA is keenly interested in the presence a broad range of high quality Canadian dramatic programming within our broadcasting system. To that end, we have taken an active role in CRTC proceedings relating to Canadian drama. Specifically, the CCAUA filed a comprehensive brief with Ms. Trina McQueen in late 2002 within the context of her review of the state of English-language drama in Canada for the Commission and Canada. An updated version of that brief was made public in March 2003. The CCAUA also filed a detailed submission with the CRTC on November 28, 2003 in response to the Commission's call for comments on mechanisms to support Canadian dramatic productions set out in Public Notice CRTC 2003-54. Both of these CCAUA submissions include a broad range of recommendations on mechanisms to support English language Canadian drama.



5. In the Public Notice, the Commission has proposed a package of incentives to help improve the development and availability of Canadian drama productions. The Commission also seeks public comments with respect to a number of regulatory issues related to Canadian drama.
6. In addressing this matter, we should begin by registering our strong objection to the notion that the crisis in Canadian drama production can be addressed solely by incentives. The CRTC has a broad tool kit of regulatory powers to address this crisis. The airing of Canadian drama must be seen as a fundamental obligation of all free-to-air television broadcasters, and not simply something that they should be lured into doing. Regulation is by far the most effective tool to achieve results and the CCAU will continue to press vigorously in this connection.
7. As stated in previous submissions to Ms. McQueen and the CRTC on the issue of drama, the CCAU strongly favours the introduction of measures that require broadcasters to spend a portion of their gross revenues on original Canadian drama productions, written, directed and performed by Canadians, as well as measures that require broadcasters to air a certain number of original dramatic programs throughout the broadcast year. It is our view that clear regulatory requirements of this kind are the most effective means to achieve the objective of strengthening the presence of Canadian drama in Canada.
8. That being said, the CCAU does not necessarily oppose incentives as such. In our earlier submissions, we have expressed support for a balanced package of measures that includes incentives as well as regulatory requirements. Provided that they supplement and do not replace clear regulatory requirements, the Commission's proposed package of incentives set out in the Public Notice, subject to a number of recommendations that we make below, may be able to play a useful role. With this in mind, we have provided specific comments on those incentives further below.
9. However, the adoption of incentives of this kind should not be seen as representing any kind of total solution to the crisis in Canadian drama problem. The crisis can only be properly addressed by a combination of regulatory measures and incentives. To the extent that the CRTC focuses on incentives at this time, therefore, *they should only be implemented as part of a more comprehensive plan to introduce regulatory requirements as soon as practicable to ensure that all conventional television broadcasters focus on this issue and fully discharge their obligation to support Canadian drama that is written, directed and performed by Canadians.* These regulatory requirements, *which should be imposed no later than the time of the next regulatory review of the conventional TV licences*, should include a steadily increasing proportion of revenue devoted to expenditures on Canadian drama and a requirement for a minimum number of original hours per year of Canadian drama. More specifics on these requirements are provided in the CCAU's earlier submissions to the CRTC, as noted above at paragraph 4.
10. Within that context, the following are the CCAU's comments regarding the Public Notice.

B. Executive Summary

11. The following is a summary of the CCAU's recommendations set out in this submission.



- (a) To the extent that the CRTC focuses on incentives at this time, they should only be implemented as part of a more comprehensive plan to introduce regulatory requirements as soon as practicable to ensure that all conventional television broadcasters focus on this issue and fully discharge their obligation to support Canadian drama that is written, directed and performed by Canadians. These regulatory requirements, which should be imposed no later than the time of the next regulatory review of the conventional TV licences, should include a steadily increasing proportion of revenue devoted to expenditures on Canadian drama and a requirement for a minimum number of original hours per year of Canadian drama.
- (b) Insofar as the package of incentives is concerned, it is essential that it apply only to new original Canadian dramatic programs, i.e. those in addition to the drama that broadcasters are currently exhibiting, since it is an increase in the availability of these types of productions that will help strengthen and develop the Canadian dramatic production sector and add diversity and vitality to our broadcasting system.
- (c) The CCAU supports the Commission's existing definition of original, first run productions set out in Public Notice CRTC 1988-197 which reads:
- “a program which has never before been distributed by any licensee of a broadcasting undertaking and which will be distributed for the first time by the licensee.”
- (d) The incentive package should apply to the broadcast of original Canadian dramas, and not repeats. Broadcasters should not be rewarded for broadcasting programs that have already made it to air.
- (e) The CCAU urges that the production budget threshold that the Commission has proposed for the triggering of the reward for the two “High Cost Drama” incentives be set at two levels: namely, a threshold of at least \$1 million per hour for drama productions other than children's, and at least \$750,000 an hour for children's drama productions. Non-children's drama productions are among the most expensive types of productions to produce. In order for this policy to be meaningful, it is essential that the threshold for such drama be at least \$1 million per hour.
- (f) The CCAU supports the Commission's proposed requirement that in order for broadcasters to be eligible for the 2.5 minute reward for either of the two High Cost Drama incentives, broadcasters must air a one-hour 10-point Canadian dramatic production. These are the types of productions that most reflect Canadian cultural expression and that give the greatest number of opportunities to Canadian creators. They should, therefore, be the target of this public policy proposal.
- (g) A minimum threshold of \$250,000 for the Low Cost Drama incentive should be established. Broadcasters should not be eligible for the half minute advertising bonus for productions that cost less than \$250,000 per hour.



- (h) The CCAU supports the Commission's proposal that no additional advertising minutes be available for original drama productions that received funding as part of a transfer benefit or a commitment made at the time of licensing.
- (i) That minimum benchmark should be extended to include that which broadcasters are currently doing. That is, broadcasters should only be permitted to broadcast additional advertising minutes for the hours of original dramatic productions that they broadcast over and above the number of hours of original dramatic productions that they broadcast during the current broadcast year.
- (j) The CCAU is opposed to broadcasters being eligible for the reward of a half minute for 8 to 10 point dramatic productions "broadcast at any time". In our view the incentive scheme should only be available for 10 point productions broadcast during the peak period of 7:00 p.m. to 11:00 p.m., unless the production is a 10 point children's program broadcast during hours appropriate to children.
- (k) The CCAU proposes that a broadcaster equity investment should not count as an expenditure unless (a) the broadcaster licence fee is at least \$300,000 per hour or such higher number as the CTF may prescribe or apply, and (b) the terms and conditions of the equity investment are no more favourable to the broadcaster than those that are required by Telefilm Canada in its equity investments. In particular, no broadcaster equity investment should be permitted to be recouped in preference to the equity investment made by the producer; nor should the broadcaster be permitted to recoup any part of its investment in advance of the producer recouping any deferred fees.
- (l) Broadcasters should be required to report to the Commission annually with respect to their contributions to producers as a result of revenues gained from the sale of the additional four minutes permissible for each hour of 10 point high cost drama without CTF funding. The report should include the total number of advertising minutes that the broadcaster sold during the broadcast year on programs where additional minutes were sold, the total revenues generated from the sale of advertising on those programs during that broadcast year, and the number of additional minutes that broadcasters sold pursuant to the Commission's new incentive package. This last component should identify those minutes that fall in the 2.5 additional minute category, the 4 additional minute category, the 0.5 minute category, and the 25% for the viewership incentive category and the 25% for the expenditure incentive category.
- (m) Subject to the foregoing, the CCAU supports the Commission's proposed incentive for increasing expenditure on Canadian drama, provided it is accelerated and measured over 3 years, not 5. In that connection, we also support the Commission's proposal to set an expenditures benchmark of 6% of conventional broadcasters' gross revenues on Canadian drama as a trigger for additional advertising minutes to be made available. However, it is the



- CCAUI's view that the 6% benchmark should be increased over time to 7% and that this should be imposed as an expenditure requirement at the next licence review hearings.
- (n) To ensure that there will be a diversity in the type of new drama that is made and broadcast, the CCAUI recommends that a maximum of 15% of the original hours of drama that triggers the minutes be Canadian children's drama, except for specialty services focused on children's programming where there would be no cap.
 - (o) The CCAUI is also of the view that it is necessary to define the times of day that are appropriate for the broadcast of dramatic programs directed at children. The CCAUI proposes that the time period appropriate to children be defined as 4 p.m. to 9 p.m.

C. Importance of Canadian Drama

12. Canadian dramatic productions are indeed a crucial component of our broadcasting landscape. The Commission has consistently affirmed the importance of this type of programming within our system. Notably, in Public Notice CRTC 2003-54, the Commission stated that:

“Canadian drama should be a cornerstone of the Canadian broadcasting system. Drama can, and should, reflect Canadians of every background and culture to each other...The Commission considers that a healthy and successful Canadian broadcasting system must include popular drama programs that reflect Canadian society and project Canada's stories onto the world stage.”

13. The Commission also reiterated its stance with respect to the importance of Canadian drama in the Public Notice at paragraphs 14 and 18 as follows:

“As noted in Public Notice CRTC 2003-54, drama is the most popular programming on television. English-language drama programs receive more than twice the number of viewing hours received by any other type of programming.

...

It is the Commission's preliminary view that effective measures to increase the availability of, and viewing to, Canadian drama programs are needed at this time and that such measures would further the objectives of the *Broadcasting Act* (the Act). [Emphasis added]

14. The CCAUI commends the Commission for this determination.
15. Additionally, the importance of drama within our broadcasting system was reiterated by most interveners who responded to Public Notice CRTC 2003-54. At paragraph 6 of the Public Notice, the Commission stated that it “received a total of 301 submissions in response to Public Notice 2003-54. A large majority of these were in agreement with the importance the Commission places on Canadian drama...”



16. Thus, it is clear that the creation and presentation of indigenous dramatic productions on Canadian television are essential for our broadcasting system.

D. The Need for Additional Funding

17. In our submission to the CRTC last November in response to Public Notice CRTC 2003-54, the CCAU submitted that additional funding for Canadian drama is essential in order to ensure a strong presence of this type of programming in our country. We refer the Commission in particular to pages 15 and 16 of our 28 November 2003 brief, which discuss the need for increased funding for Canadian drama.

18. In her report to the Commission and Telefilm Canada of March 2003, Ms. Trina McQueen also discussed the challenges that exist with respect to the availability of financing for Canadian dramatic productions. Specifically, she stated that “the achievements in drama have occurred against all odds; and they conceal the central problem, which is financing.”

19. Additionally, the need for increased funding is outlined in the Public Notice. Paragraph 19 of the Public Notice states that a broad range of interveners submitted, within the call for comments in Public Notice CRTC 2003-54, that the economics of Canadian drama are indeed one of the key challenges for this type of programming. Specifically it states that “[p]roducers, broadcasters and unions all agreed that financing issues were at the heart of the ‘problem’ with drama.”

20. The realization that lack of funding is a key obstacle for Canadian drama is noted at paragraph 24 of the Public Notice, which states that:

“... the Commission agrees that the lack of funding is a key contributor to the difficulties facing Canadian drama. Drama is generally expensive to produce and English-language Canadian drama programs have not, as yet, attracted audiences in the numbers that U.S. drama attracts.” [Emphasis added]

21. One of the principal factors contributing to the lack of funding is the low level of broadcaster licence fees as a proportion of production cost. This was recently confirmed in a recent study entitled *Through the Looking Glass*, carried out by research consultant Kirwan Cox. The study found that English-language Canadian broadcasters pay the lowest average licence fees among countries surveyed and spend the most on foreign programs. On average, the study found that English-language Canadian broadcast fees cover only 18.4% of production cost for indigenous drama, while fees in the U.S. typically cover 81%, those in the U.K. cover between 70% and 115%, and in Australia between 30% and 85%. Licence fees in French Canada are higher, covering an average 38.8% of production budgets.

22. Thus, it is evident that in order for Canadian drama to have a future in Canada and to find a strong place in the schedules of Canadian broadcasters, *increased funding from broadcasters is essential*. In general, that funding should take the form of higher broadcast licence fees as a proportion of the budget. The Commission has attempted to address this with its proposed incentive package, which we discuss below.



E. Proposed Package of Incentives

23. The Commission has proposed an incentive package that (if broadcasters elect to take advantage of it) would provide increased financial support from broadcasters for Canadian drama. The Commission's proposed incentive package seeks to achieve three key objectives. These are: (1) increasing the number of original hours of Canadian drama available in the system, (2) increasing the number of hours that Canadians watch Canadian drama, and (3) increasing broadcaster spending on Canadian drama. The following provides a brief description of the three proposed incentive schemes.

I - Incentive for Original Hours of Canadian Drama

24. The first incentive has as its objective an increase in the broadcast of original hours of Canadian drama. There are three different triggers within this first incentive scheme, each with a different reward. The three triggers and corresponding rewards are the following:
25. *Trigger & reward #1 – High Cost, CTF-funded Drama:* the first part of this incentive applies to the broadcast of 10-point, original, CTF-funded drama in peak time (7:00 p.m. to 11:00 p.m.) with a production budget of at least \$800,000 per hour and a minimum licence fee as established by the CTF, which is currently \$240,000. The reward for this incentive is two and a half minutes of additional advertising for each original hour of Canadian drama broadcast.
26. *Trigger and reward #2 – Other High Cost Drama, Produced Without CTF Funding:* the second part of this incentive applies to the broadcast of 10-point, original drama, broadcast in peak time (7:00 p.m. to 11:00 p.m.) having a production budget of at least \$800,000 per hour and a minimum licence fee as established by the CTF (currently \$240,000 as indicated above), but without having CTF funding. The reward for this incentive is a total of six-and-a-half minutes of additional advertising for each original hour broadcast. The 6.5 minutes consists of the two-and-a-half minutes earned under the first trigger described above, plus four minutes for not accessing CTF funding. The revenues generated from these four additional minutes must flow to Canadian producers.
27. *Trigger & reward #3 – Low Cost Drama:* the broadcast of 8- to 10-point, original drama at any time or 10 point original drama broadcast in peak time, having a production budget of less than \$800,000 per hour. The reward for this incentive is half a minute of additional advertising for each original hour broadcast.

II – Incentives for Attracting Increased Viewing to Canadian Drama

28. The second Commission incentive is to increase the viewing to Canadian drama on Canadian English-language services, as a percent of all drama viewing on Canadian services within a broadcast group. The way in which this incentive would work is as follows. Television stations (both conventional and specialty services) within a particular broadcast group will be eligible to receive bonus advertising minutes if the group increases the percentage of viewing to Canadian drama across all of the stations in the group to the percentage of viewing to all drama aired by the services in the group.



29. Broadcasters who reach their targets will receive additional advertising minutes that may be used in the subsequent broadcast year. The Commission proposes that each conventional station and each specialty service within an ownership group be entitled to an award that consists of 25% of the additional advertising minutes accumulated by the station or service for the broadcast of original hours of drama programming in the same broadcast year.
30. For the purposes of this viewing incentive, each conventional station within an ownership group would be permitted to air the additional minutes in the broadcast year following the year in which they are earned. The additional minutes could be inserted in any program broadcast by the stations that broadcast the original drama hours.
31. Each specialty service within an ownership group would also be entitled to an incentive equal to 25% of the additional advertising minutes accumulated for the broadcast on the service of original hours of drama programming in the same broadcast year. Specialty services within the ownership group would be permitted to air the additional minutes, in the next broadcast year, in any program broadcast by the service that broadcast the original drama hours.

III – Incentives for Increased Expenditures on Canadian Drama

32. The third Commission incentive is to increase expenditures on Canadian drama by the English-language conventional television industry, as a percent of total revenues from 4% to 6% over a five-year period (2004/2005 – 2009/2010). In order to be entitled to this expenditures incentive, each ownership group would be required to increase the spending by its conventional television stations on Canadian drama, as a percentage of total revenues, by 0.4 percentage points per year, or by two percentage points over a five-year period.
33. For the purposes of this incentive, the Commission proposes that CTF “top-up” funding would be excluded from the calculations. Additionally, the Commission proposes that expenditures on Canada drama programming that are made to fulfil transfer benefits or licensing commitments would not be permitted to be included in the calculations used to determine whether the incentive targets have been met. Moreover, the Commission expects each ownership group that wishes to take advantage of the expenditure incentive to provide in their annual returns filed by the licensed undertakings, the calculations necessary to demonstrate that the group has met the expenditure target.
34. Under this expenditure incentive, the Commission proposes that each conventional station within an ownership group that meets its expenditure target would be entitled to an incentive reward that amounts to 25% of the accumulated minutes earned through the broadcast of original hours of drama programming in the same broadcast year as the expenditures were made. The stations would be permitted to air the additional minutes in the next broadcast year in any program broadcast on the station.



F. How the Incentive Package Might Work

35. The following provides an analysis of the Commission’s proposal. In preparing this analysis, CCAU made independent inquiries of both ad buyers and station rep houses in Canada.
36. The Commission’s proposed incentive scheme focuses on selling additional minutes of advertising time in programs where a station group has already sold out its 12 minutes of available time on a program. U.S. programs are generally cut so as to allow 14 minutes per hour of advertisements. Hence, there is a two minute per hour opportunity that could be converted into cash by Canadian broadcasters.
37. However, the opportunity to sell additional advertising time only applies in situations where there is a pent-up demand for more minutes from advertisers. In general, we are informed that this applies primarily to the top 20 shows on television, which are typically sold out on CTV and Global. The table below sets out the top 20 programs for the current season, according to the Nielsen ratings. It will be noted that all but one of the top 20 shows were on CTV and Global (at number 12 is Hockey Night in Canada which is broadcast by the CBC).

Top TV shows			
Top shows among all viewers in Toronto, October, 2003, to May, 2004. Shows with at least five episodes.			
1.		Survivor: Pearl Island	Global
2.		Survivor: All Star	Global
3.		CSI (Thursday)	CTV
4.		American Idol 3 (performance show)	CTV
5.		ER	CTV
6.		American Idol 3 (results show)	CTV
7.		CSI Miami	CTV
8.	*	Law & Order	CTV
8.	*	The Apprentice	Global
10.		The West Wing	CTV
11.		American Idol 3 (specials)	CTV
12.		Hockey Night in Canada	CBC
13.		Law and Order: Criminal Intent	CTV
14.	*	CSI (non-Thursday)	CTV
14.	*	The Simpsons	Global
16.		Third Watch (Friday)	CTV
17.	*	Law & Order: Special Victims Unit	CTV
17.	*	Without a Trace	Global
19.		CSI: Miami (repeats)	CTV



20.	*	Eight Simple Rules	CTV
20.	*	Friends	Global
* tied			

38. By contrast, we are informed that other conventional broadcasters have relatively few programs that have pent-up demand. Nor is there significant pent-up demand for programs on the specialty services. Consequently, the incentive package applies primarily to CTV and Global.
39. Given that limitation, does the incentive package have the potential to generate additional revenue that could be used to support Canadian drama? We think the answer is a positive one. Based on our inquiries, there appears to be significant pent-up demand from advertisers to be on the top 20 shows in Canada, as listed above. We are informed that both CTV and Global could easily sell an extra two minutes per hour on all their top 10 shows. While rates vary depending on the popularity of the show, we have confirmed that the estimate of \$80,000 of net revenue per minute for a national buy is a realistic estimate.
40. In fact, we have been told that national rates for the top 20 shows are typically far higher than \$80,000 a minute. However, three countervailing factors need to be taken into account: (1) advertisers who buy early and in volume can get significant discounts, (2) the addition of new inventory in any volume will tend to depress prices, and (3) in assessing the net revenue to the station, 15% must be deducted for the ad agency commission and 5% for the station rep commission. Since average gross revenue would be \$100,000 a minute or more for these shows, however, an estimate of \$80,000 for net revenue is probably realistic.
41. Some observers have suggested that there might be sales resistance to the sale of these extra minutes because of the spectre of commercial clutter. However, we have been informed by ad buyers that this should not be a factor, since advertisers perceive that viewers already face 14 minutes of clutter (i.e. non-program material) in these shows and the replacement of two minutes of PSAs or program promotions by ads will not give rise to added consumer resistance.
42. After these factors are taken into account, our independent sources have confirmed that the \$80,000 Commission estimate is a realistic -- if conservative -- one for estimating the net revenue to conventional broadcasters per minute. A realistic gross revenue estimate would be \$100,000 per minute.
43. In terms of potential new inventory, if an additional 2 minutes was sold on all the top 20 shows, as much as 750 minutes per conventional station group per year might be added to the inventory (7.5 hours of top 10 shows x 2 minutes per hour x 50 weeks). For CTV and Global combined, this would be 1500 minutes, which at a rate of \$100,000 per minute, would represent as much as \$150 million of new inventory per year.
44. This is not an insignificant amount, representing about 10% of the total ad sales of conventional TV stations in English Canada, which was about \$1.5 billion last year.



45. The CCAU also inquired of ad buyers and station rep houses as to the effect of adding these kind of new inventory to the Canadian broadcast market. We were told the following: (1) the main beneficiaries will be the conventional broadcasters of the top 20 programs, i.e. CTV and Global; (2) the additional minutes will be sold mostly to existing advertisers, not new advertisers; (3) the additional minutes will largely be diverted from existing ad budgets, and will not represent “new money”; (4) some of this diversion may be at the expense of Canadian broadcast services that do not have top 20 shows, i.e. CBC, CHUM and the specialty services; and (5) some diversion will be at the expense of alternative non-broadcast media, including print and billboards.
46. The CCAU expects that CBC, CHUM and specialty services may wish to limit the number of additional minutes that can be sold by CTV or Global. To the extent that these new minutes are triggered by existing levels of Canadian drama on CTV and Global (or anywhere else), the CCAU has great sympathy for this position. Why reward some broadcasters (and possibly hurt other broadcasters) for simply doing what they are already doing? In that case, the reward will not go to the drama sector but simply drop to the broadcaster’s bottom line.
47. For example, the Canadian Television Fund has already approved 71.5 original hours of new Canadian drama on CTV and Global next year and Global has committed to 90 more hours of its low-cost drama, *Train 48*. These hours were not committed because of the new incentive package, since it was not then known. (In the case of CTV, the CTF commitments largely reflected the requirement in para. 34 of Decision CRTC 2000-747 that imposed a base expenditure level of \$24.9 million a year for priority programming before adding the transfer benefits.) If the new incentive package was to apply to these productions, it would simply generate \$22.4 million of additional revenue to CTV and Global (plus another \$8.9 million if the bonus minutes were triggered).¹ Yet not a single additional hour of drama production would be generated.
48. The CRTC has stated in para. 4 of its Public Notice that the package of incentives is “designed to fulfill the objectives of *increasing* the amount of original, English-language Canadian drama and of encouraging greater viewing to that programming.” [Emphasis added] To the extent that the plan rewards broadcasters for doing what they are already doing, this objective is not achieved.
49. However, an entirely different calculation applies if the reward is triggered by new levels of 10 point original Canadian drama. In that case, most of the money derived from the new ad minutes will go to support the new drama. Only the money from the bonus minutes (for increases in audiences and expenditures) will go to the broadcaster’s bottom line. This would be a very worthwhile use of the money from the additional ad minutes, and we see no ground for putting any cap on this.
50. Accordingly, we think the best approach to address the concerns of players like CBC, CHUM and specialty services is to carefully limit the use of the new minutes so that they constitute a reward for new original hours of 10 point drama, over and above what is now being done. We also believe that

¹ This is derived by multiplying 71.5 hours x 2.5 bonus minutes per hour, plus 90 hours x 0.5 bonus minutes per hour, all at a rate of \$100,000 per minute.



there needs to be a minimum cost threshold for “low-cost” drama of at least \$250,000 an hour and that this kind of drama should also be limited to 10 point drama.

51. If these limitations are imposed, we consider that the benefit of the new plan would far outweigh any concerns about diversion. In addition, by limiting the incentive to new drama, over and above existing levels, it is likely that only a portion of the newly available inventory would in fact be able to be triggered by CTV or Global, thereby lessening the impact of any diversion on other broadcast services.
52. The Commission provides an example in the Public Notice of how the incentive package might work. The CRTC suggests that a conventional station group might trigger 132.5 additional minutes by commissioning 32 hours of 10 point CTF drama, 27 hours of 8/9 point low-cost drama, and 6 hours of 10 point high cost non-CTF drama.
53. If, as we recommend, no credit is given for existing levels of drama, the above scenario would be unlikely since it would require additional funding from CTF. CTF has already committed to spend \$96 million on English Canadian drama next year and it is oversubscribed. Unless new money is added to CTF, which is unlikely, it is difficult to see how a conventional station group could commission more hours of CTF drama than is already being triggered.
54. Accordingly, we expect that any real impact in terms of new production would be in regard to *new non-CTF drama*, not in regard to CTF-supported drama. A more realistic profile for a conventional station group might involve the commissioning of 22 hours of new 10 point high-cost non CTF drama and 22 hours of new 10 point low-cost drama. If this drama was additional to the hours already being commissioned, that profile would trigger up to 231 minutes of extra ad inventory, assuming the broadcaster thereby qualified for the applicable expenditure and audience bonuses. That extra ad inventory would represent about \$23.1 million in extra ad sales (\$18.48 million of net revenue), most of which would be used to support the funding of the new drama, but a significant amount of which could be retained by the broadcaster, depending on the nature of the production.

G. CCAU General Comments on the Incentive Package

55. With the foregoing in mind, we now provide our general comments on the incentive package.
56. In the view of the CCAU, clear regulatory requirements are the most effective means to achieve the objective of strengthening the presence of Canadian drama in Canada.
57. To the extent that the CRTC focuses on incentives at this time, therefore, they should only be implemented as part of a more comprehensive plan to introduce regulatory requirements as soon as practicable to ensure that all conventional television broadcasters focus on this issue and fully discharge their obligation to support Canadian drama that is written, directed and performed by Canadians. These regulatory requirements, which should be imposed no later than the time of the next regulatory review of the conventional TV licences, should include a steadily increasing proportion of revenue devoted to expenditures on Canadian drama and a requirement for a minimum number of original hours per year of Canadian drama.



58. The Commission's proposed incentive package should therefore be viewed as part of a wider plan. In that context, it may have a positive impact on the Canadian broadcasting system if broadcasters opt to take advantage of this incentive scheme, and provided certain limitations are placed on the plan to prevent misuse.

I - Incentive for Original Hours of Canadian Drama

59. The CCAU supports this proposed incentive relating to the broadcast of original hours of Canadian drama. If broadcasters participate in this incentive program there could be a rise in the number of the hours of drama broadcast as well as an increase in the amount of money spent on Canadian drama.
60. However, in order for this proposed incentive scheme to be effective and meaningful for Canadian drama and Canadian television, a number of criteria must be met.
61. First, it is essential that this incentive apply only to original Canadian dramatic programs only. It is an increase in the presence of these types of dramatic productions that will help strengthen and develop the Canadian production sector and add diversity and vitality into our broadcasting system. As the Commission states in the Public Notice,
- “...the Commission considers that the focus of any drama incentive program should be on the broadcast of original hours only. Encouraging licensees to broadcast more original hours of Canadian drama would have a direct and positive impact on the independent production sector and the employment of Canadian creative talent and crafts persons. In the Commission's view, more original hours would also attract more viewers to Canadian programming.” [Emphasis added]
62. Accordingly, the reward of additional advertising minutes should not be awarded for the broadcast of repeats. Broadcasters should not be rewarded with potentially significant revenues for airing programs that are not new to the system.
63. As we have indicated earlier, the sale of additional minutes in the top 10 shows which are generally broadcast on CTV and Global, may displace some advertising sales that might otherwise go to other broadcasters such as the CBC, CHUM and specialty programming services. Therefore, the Commission should limit the granting of additional advertising minutes to Canadian drama that is additional to the hours of original drama already being broadcast by each station group in order to minimize the harm to other players.
64. To achieve this, a minimum hour benchmark should be set for each broadcaster in order to determine the number of additional advertising minutes they may broadcast over and above the current regulatory limit. At paragraph 77 of the Public Notice, the Commission has set limits on the types of drama productions that will not result in broadcasters being rewarded with the ability to broadcast additional advertising minutes. That paragraph reads as follows:



“No additional advertising minutes would be available for original drama productions that received funding as part of a transfer benefit or a commitment given at the time of licensing.”

65. The CCAU supports that determination. However, in our view it should be expanded upon to include all original Canadian drama which broadcasters are currently doing. Broadcasters should only be permitted to get a reward of additional advertising minutes for the hours of original 10 point dramatic productions that they broadcast over and above the number of hours of original Canadian dramatic productions that they broadcast during the current broadcast year (i.e. September 1, 2003 to August 31, 2004).
66. For instance, if a CanWest Global station broadcast 50 hours of original dramatic programs in the broadcast year 2003-04, then it should only be eligible for bonus minutes in subsequent broadcast years for the 51st and beyond original hours of dramas aired on that station. Otherwise, broadcasters will be provided with a regulatory incentive without having made any additional contribution to the system.
67. Second, the CCAU urges that the production budget threshold that the Commission has proposed for the triggering of the reward for the two High Cost Drama incentives be set at two levels: namely, a threshold of at least \$1 million per hour for drama productions other than children’s, and a level of at least \$750,000 per hour for children’s drama productions. These thresholds generally match the average production budgets of these categories of drama as reported to CTF. As the Commission correctly points out in the Public Notice, dramatic productions are generally very expensive to produce. In order for this policy to be meaningful, it is essential that the threshold for such drama be set at levels that reflect the reality of the industry. The average production budgets for non-children’s drama at the CTF currently amount to \$1 million per hour or more. These productions are also those that typically employ the greatest number of Canadians. They also have the greatest potential to attract significant audiences, since a significant level of production value is required to compete with far more expensive U.S. productions. This Commission public policy initiative should, therefore, support those productions that are most costly to produce.
68. As to the “low-cost” category, the CCAU considers that this should have a budget threshold of at least \$250,000 per hour. Giving a reward of 0.5 minute to a series that costs, say, \$100,000 an hour or less, would be paying a broadcaster more as a reward than it pays by way of licence fee. If there is to be a reward for these low-cost programs (and no more than 0.5 minute per hour should be considered) the production budget should be at least \$250,000 per hour. Any greater reward would result in a significant dilution of the Commission’s proposal, and provide broadcasters with a tremendous incentive without having to step up to the plate for Canadian drama.
69. The CCAU notes that the Commission has set the minimum licence fee threshold for the High Cost Drama with CTF funding trigger at the minimum level established by the CTF. That minimum level is currently \$240,000. In fact, however, because of the competition for CTF funding, no projects



currently get funding without a licence fee of at least \$300,000, since unless they attain that level, a production will generally not achieve sufficient points to be eligible for CTF funds.²

70. We therefore recommend that the CRTC recognize this reality and set the threshold broadcast licence fee for both CTF and non-CTF productions at \$300,000 an hour. This should also be reviewed on an annual basis to reflect any further increases that may apply in the CTF process.
71. Third, incentives should relate only to 10 point drama productions. We oppose the exception in the Low Cost Drama incentive for 8 to 9 point drama. It is the 10 point productions that are written, directed and performed by Canadians. Any reduction in the number of points that productions must attain in order to garner the advertising bonus would be a dilution of the proposal, and would confer benefits on broadcasters without there being a meaningful benefit returned to the system. This initiative should serve to provide the greatest impact possible on the Canadian dramatic production sector that very much needs broadcaster support. A dilution of the number of points that a production must achieve will run counter to that objective.
72. Fourth, the incentive scheme should not apply to any other types of productions aside from drama. Some may propose that the incentive scheme should be made available for the broadcast of productions other than drama, such as documentaries or magazine shows. The CCAU, however, opposes such a proposal. It is dramatic productions that are in a crisis in our country and most in need of regulatory support. It is also these types of programs that are most popular with Canadians, as the Commission points out in the Public Notice. It is, therefore, imperative that this incentive package relate to dramas and not any other type of productions.
73. Fifth, with respect to the four minute reward available to broadcasters for the broadcast of High Cost Drama productions that do not benefit from CTF funding (trigger #2), the CCAU is of the view that clear accounting measures must be adopted in order to ensure that the revenues generated from the sale of these four additional minutes do indeed flow to producers.
74. The CCAU understands that information on particular rates charged to advertisers for particular programs is highly confidential, since rates for particular programs can vary considerably depending on the level of demand and other factors. However, based on our inquiries, we believe that it should be possible to provide an auditable number that represents *the average net revenue per minute that a station group derives from sales of minutes on programs where additional inventory is sold under the CRTC incentive plan*. Since that number is an aggregated number over a number of programs over the entire year, it should be able to be disclosed to producers, and be backed up by worksheets that are filed with the CRTC and can be kept confidential.
75. In order to ensure that this is done, broadcasters should be required to report to the Commission annually the total revenues that they generate from advertising sales on the programs where they sold additional minutes. It is our understanding that broadcasters have at their disposal information

² In fact, the licence fee level of \$300,000 would likely have been exceeded if the CTF had not stated that it would grant the maximum points if the level of \$300,000 per hour was reached.



about the total number of minutes sold per program and the total revenues that they generate per program. This information should be set out in a confidential annual report to the Commission. From this information, the average revenue per additional minute may be determined.

76. Broadcasters should also report separately the number of additional minutes that they sold over and above the 12 minute limit, as well as identify which of those minutes fall into the four additional minute category, the 2.5 additional minute category, the 25% for the viewership incentive category and the 25% for the expenditure incentive category. The number of additional minutes that fall into the four additional minute category multiplied by the average revenue per minute for all additional minutes should be the amount of money that flows to producers from the broadcasters.
77. Sixth, the incentive for Low Cost Drama (trigger #3) provides that the reward of a half minute for that incentive will be provided for the broadcast of 8 to 10 point, original drama at any time, or 10 point original drama broadcast in peak time, having a production budget of less than \$800,000 per hour. We have earlier expressed our concern about rewarding 8 or 9 point drama. However, we are also concerned about granting a reward for the broadcast of original point drama at any time during the broadcaster's schedule. Most television viewers tune in during "prime time," which in the broadcast industry generally refers to the period from 8 to 11 p.m. (7 to 11 on Sunday nights). The CRTC uses the term "peak viewing period," which refers to the period from 7 p.m. to 11 p.m. The CCAU supports those that may urge that the drama that is rewarded under the incentive be limited to Canadian drama which is broadcast in "prime time". However, as a minimum, no broadcaster should be given an incentive to broadcast drama outside of the peak viewing period, except for children's productions. This is entirely inconsistent with the objective of supporting Canadian drama set out the Public Notice.
78. As we discuss in further detail below, there are times outside of the peak viewing period that are appropriate for children's productions. As mentioned in the Public Notice, "drama directed towards children continues to be an important and successful genre of Canadian programming. High quality children's drama contributes as much to the fulfilment of the Act's objectives as any other type of drama." The CCAU is not opposed to granting rewards to broadcasters of children's programs outside of the peak viewing period, when those programs are broadcast during times that are appropriate for children. As noted further below, we would suggest that children's drama be required to be broadcast between 4 p.m. and 9 p.m. to qualify for the incentive. We do not support the awarding of bonus minutes for dramatic productions broadcast outside of the viewing periods noted above.

II – Incentives for Attracting Increased Viewing to Canadian Drama

79. The second incentive proposed by the Commission is to increase the viewing to Canadian drama on Canadian English-language services, as a percent of all drama viewing on Canadian services within a broadcast group. This incentive would work as follows. Television stations (both conventional and specialty services) within a particular broadcast group will be eligible to receive bonus



advertising minutes if the group increases the percentage of viewing to Canadian drama across all of the stations in the group to the percentage of viewing to all drama aired by the services in the group.

80. Broadcasters who reach their targets will receive additional advertising minutes that may be used in the subsequent broadcast year. The Commission proposes that each conventional station and each specialty service within an ownership group be entitled to an award that consists of 25% of the additional advertising minutes accumulated by the station or service for the broadcast of original hours of drama programming in the same broadcast year.
81. For the purposes of this viewing incentive, each conventional station within an ownership group would be permitted to air the additional minutes in the broadcast year following the year in which they are earned. The additional minutes could be inserted in any program broadcast by the stations that broadcast the original drama hours.
82. Each specialty service within an ownership group would also be entitled to an incentive equal to 25% of the additional advertising minutes accumulated for the broadcast on the service of original hours of drama programming in the same broadcast year. Specialty services within the ownership group would be permitted to air the additional minutes, in the next broadcast year, in any program broadcast by the service that broadcast the original drama hours.
83. The Commission has not yet set the benchmarks or targets for the ownership groups for the viewing incentive and it is currently fine tuning the search tools to establish the benchmark and targets. In that connection, the Public Notice states that the Commission is currently working with the CTF, Telefilm Canada, Mediastats and other interested government departments to establish a methodology that will assist in the addition of country of origin and program genre for each of the programs captured by the BBM Canada and Nielsen Media Research people meter databases. The additional data fields will be available for programs broadcast as of September 1, 2003.
84. The Commission will review the results for the 2003/2004 broadcast year as soon as they are available. Once this is done, it will set an overall industry objective early in the 2004/2005 broadcast year. The targets for each of the ownership groups will be established in the fall of 2004/2005 to 2009/2010 broadcast years. The Commission will review the results with broadcasters on an annual basis to determine whether their targets have been reached.
85. As noted earlier, the CCAUI believes that any incentives should only be implemented as part of a more comprehensive plan to introduce regulatory requirements as soon as practicable to ensure that all conventional television broadcasters focus on this issue and fully discharge their obligation to support Canadian drama that is written, directed and performed by Canadians. These regulatory requirements, which should be imposed no later than the time of the next regulatory review of the conventional TV licences, should include a steadily increasing proportion of revenue devoted to expenditures on Canadian drama and a requirement for a minimum number of original hours per year of Canadian drama.



86. In that context, the CCAU supports the Commission's proposed incentive for attracting increased viewing to Canadian drama. However, as mentioned above, the Commission has not yet set the benchmarks or targets for each station group. Accordingly, we reserve our comments on these matters until further details have been provided.

III – Incentives for Increased Expenditures on Canadian Drama

87. The third Commission incentive is to increase expenditures on Canadian drama by the English-language conventional television industry, as a percent of total revenues from 4% to 6% over a five-year period (2004/2005 – 2009/2010). In order to be entitled to this expenditures incentive, each ownership group would be required to increase the spending by its conventional television stations on Canadian drama, as a percentage of total revenues, by 0.4 percentage points per year, or by two percentage points over a five-year period.
88. For the purposes of this incentive, the Commission proposes that CTF “top-up” funding would be excluded from the calculations. Additionally, the Commission proposes that expenditures on Canada drama programming that are made to fulfil transfer benefits or licensing commitments are not permitted to be included in the calculations used to determine whether the incentive targets have been met. Moreover, the Commission expects each ownership group that wishes to take advantage of the expenditure incentive to provide in their annual returns filed by the licensed undertakings, the calculations necessary to demonstrate that the group has met the expenditure target.
89. Under this expenditure incentive, the Commission proposes that each conventional station within an ownership group that meets its expenditure target would be entitled to an incentive reward that amounts to 25% of the accumulated minutes earned through the broadcast of original hours of drama programming in the same broadcast year as the expenditures were made. The stations would be permitted to air the additional minutes in the next broadcast year in any program broadcast on the station.
90. As noted earlier, the CCAU believes that any incentives should only be implemented as part of a more comprehensive plan to introduce regulatory requirements as soon as practicable to ensure that all conventional television broadcasters focus on this issue and fully discharge their obligation to support Canadian drama that is written, directed and performed by Canadians. One of these regulatory requirements should include a steadily increasing proportion of revenue devoted to expenditures on Canadian drama. The CCAU has earlier proposed that the appropriate expenditure level for conventional TV broadcasters in English Canada should be 7% of revenue, and that top-up fees should be excluded from the calculation.
91. The CCAU commends the Commission for establishing a steadily increasing expenditure benchmark for Canadian drama, excluding licence fee top-ups, for conventional TV in English Canada. Under the Commission's proposal, the proposed benchmark would rise from the present average level of 4% of revenue to 6%. Although the CCAU would prefer an ultimate benchmark of 7%, it considers the Commission proposal to be a useful measure to push stations to steadily increase their financial



commitment to Canadian drama, and a way to monitor progress in that area. However, the end result of this process should be specific licence requirements, not just incentives.

92. The CCAU notes that at paragraph 97 of the Public Notice CRTC, the Commission states the following with respect to its evaluation of the incentive package:

“The Commission has proposed viewing and expenditure targets to be achieved by the industry over a five-year period. Nevertheless, the Commission would evaluate the industry’s progress towards these targets on an annual basis. The results of this evaluation would be made public in the Commission’s Broadcast Policy Monitoring Report. If the annual results do not demonstrate sufficient progress towards the targets, the Commission could introduce necessary changes to its policy at any time.” [Emphasis added]

93. The CCAU strongly encourages the Commission to introduce necessary changes to its policy, prior to the next conventional licence renewal hearings, if the results do not demonstrate that there has been a meaningful increase in the support for original Canadian drama within our system. Time is of the essence with respect to drama. This sector cannot wait until the licence renewals of the conventional broadcasters for satisfactory support mechanisms to be implemented. Talent will leave the country or exit the industry if the crisis is not addressed immediately. If it does not appear that the broadcasters are taking advantage of the Commission incentive package and that there is not an improvement in the number of hours and dollars for Canadian drama, the Commission should, as expeditiously as possible, amend its policy.
94. In our submission to the Commission in response to Public Notice CRTC 2003-54, the CCAU proposed that the Commission require broadcasters to spend at least 7% of gross revenues on Canadian drama, not including licence fee top-ups. It is our view that at the next hearings to review the licences of the large station groups, which can occur as early as 2006, this 6% target that the Commission has established should be converted to a 7% broadcaster expenditure requirement in order to ensure sufficient funding to the Canadian drama sector into the future.
95. As the Commission has pointed out in the Public Notice, its proposal consists of an incentive package. It has not imposed additional regulatory requirements on broadcasters. While there is a potential for increased benefits to broadcasters and to the broadcasting system, broadcasters may decide not to take advantage of the Commission’s proposed incentive package and can opt out. In such a case, support to Canadian drama will not be improved and further Commission involvement will be required. The Commission, and the public, should therefore closely monitor the impact of the incentive package on drama over the next year.

G. Commission Questions – Call For Comments in the Public Notice

96. In its call for comments set out in the Public Notice, the Commission sought comments on a number of questions relating to the Commission’s proposed incentive package and the regulation of Canadian drama. The following are the CCAU’s comments on each of the questions in the Public Notice.



(i) *For the purpose of the proposed incentives, please comment on the following definition for an original program:*

“An original program is a program that has never before been distributed by any licensee of a broadcasting undertaking and that will be distributed for the first time by the licensee.”

97. As mentioned above, the Commission has stated in the Public Notice that there should be an increased emphasis on original hours of Canadian drama, and that generally over the past decade, broadcasters have not been required to broadcast any set amount of original programs. The Commission also stated that there should be greater clarity in the definition of “original.” Consequently, the Commission has called for comments with respect to the extent to which the current definition of original hours is satisfactory, or whether it should be amended. The current definition of an original first run program as stated above is set out in Public Notice CRTC 1988-197.
98. The CCAU is of the view that broadcaster requirements should focus on original programs, and is satisfied with the above mentioned definition of an original program. This definition has been in place for a number of years. It is clear, concise and does not include programs that should not be considered original programs, such as repeat productions. The CCAU, therefore, supports the Commission’s definition of original, first run programs as set out above.

(ii) *The Commission proposes incentives for Canadian drama programs directed to children when such programs are broadcast at times of the day that are appropriate for children. Should the Commission define these time periods? If so, what specific hours of the day should be considered as appropriate for television viewing by children?*

99. The Commission has proposed to include as part of any incentive to support Canadian drama overall, original Canadian drama directed towards children in sub-categories 7(a) to 7(e) when such programs are broadcast at times appropriate for children. The CCAU supports the inclusion of children’s productions in sub-categories 7(a) to 7(e) as part of incentives to support Canadian drama overall. As the Commission states in the Public Notice, children’s programs are an important and integral part of our broadcasting system. Incentives should be in place to encourage broadcasters to air programs targeting the younger viewers.
100. The CCAU, however, recommends that the Commission set limits on the number of hours of children’s programming for which broadcasters may receive bonus advertising minutes to ensure that there will be a diversity in the type of new drama that is made and broadcast. To ensure that there will be a diversity in the type of new drama that is made and broadcast, the CCAU recommends that a maximum of 15% of the original hours of drama that triggers the minutes be Canadian children’s drama, except for specialty services focused on children’s programming where there would be no cap.
101. With respect to the Commission’s question about whether the times appropriate for the broadcast of children’s programming should be defined, the CCAU is of the view that it is necessary to define the



times of day appropriate for the broadcast of children’s dramatic programming. As discussed in further detail above, the revenues that broadcasters will generate if they take advantage of this incentive package will in large part shift from other broadcasters. Thus, there should be mechanisms built into the incentive package that limit the extent to which the broadcasters that opt to use the incentive regime will accumulate additional advertising minutes.

102. The CCAU notes that the broadcast licence for Teletoon, which focuses predominantly on children’s but also includes some adult animation programming, defines the “peak viewing period” as 4 p.m. to 10 p.m. (See Broadcasting Decision CRTC 2004-12). Using this precedent, but removing the period after the watershed hour of 9 p.m., the CCAU suggests that the time periods appropriate to children should be defined as from 4 p.m. to 9 p.m.

(iii) *Is two-and-a-half additional minutes of advertising for each original hour of high cost, 10-point Canadian drama broadcast in peak time an appropriate incentive reward? If not, what would be an appropriate incentive?*

103. In the CCAU’s view, 2.5 additional advertising minutes bonus is satisfactory as a reward for each original hour of high cost, 10-point Canadian drama. However, this should only be awarded for the broadcast of new drama programs that have a production budget of at least \$1 million per hour (for non-children’s) or \$750,000 an hour (for children’s) and that achieves 10 points out of 10.

(iv) *Is thirty seconds of additional advertising for 8- and 9-point Canadian drama, or for 10-point drama outside peak time an appropriate incentive reward? If not, what would be the more appropriate incentive?*

104. As mentioned above, the CCAU does not support an incentive for programs broadcast outside of the peak viewing period of 7:00 p.m. and 11:00 p.m. Further, as mentioned above, the CCAU recommends that the Commission set a minimum production budget of \$250,000 per hour for the Low Cost Drama Programs. Broadcasters should not receive a bonus for productions that cost less than \$250,000 per hour to produce.

(v) *Will the proposed incentive of an additional four minutes of advertising for drama programs that are not funded by the CTF help reduce pressure on the CTF, while still encouraging broadcasters to acquire new Canadian drama?*

105. As stated above, the CCAU supports the Commission’s proposal for the revenue of four additional advertising minutes to be directed to producers of 10-point High Cost Drama programs that do not receive CTF funding. This source of revenue to producers may take some pressure off the CTF.

106. The CCAU, however, supports this component of the Commission’s incentive package subject to the accounting measures that we recommend in response to question (vi) below.

(vi) *How can the Commission best ensure that revenues derived from the additional four minutes of advertising for drama programs that are not funded by the CTF flow through to Canadian drama production?*



107. As mentioned above, broadcasters should be required to report to the Commission annually with respect to their contributions to producers as a result of revenues gained from the sale of the additional four minutes permissible for broadcasting 10 point high cost drama without CTF funding (trigger #2).
108. As also mentioned above, it is our understanding that broadcasters have at their disposal information about the total number of minutes sold per program and the total revenue that they generate. This information should be set out in the broadcaster annual report to the Commission. From this information, the average revenue per minute may be determined.
109. Broadcasters should also report separately the number of additional minutes that they sold over and above the 12 minute limit, as well as identify which of those minutes fall into the four additional minute category, the 2.5 additional minute category, the 25% for the viewership incentive category and the 25% for the expenditure incentive category. The number of additional minutes that fall into the four additional minute category multiplied by the average revenue per minute should be the amount of money that flows to producers from the broadcasters.
110. Information about the transfer of the money to producers should also be set out in the broadcaster's annual report to the CRTC.
- (vii) Is an increase of 0.4 percentage points in annual spending on Canadian drama an appropriate trigger for an incentive reward? If not, what would be the appropriate increase?*
111. With an increase of 0.4 percentage points per year, it will take 5 years for the Commission's target of 6% to be reached. Given the fact that the net result of the incentive is to put money in the pockets of the major station groups, the CCAU sees no reason why the target of 6% should not be reached in a shorter time. Accordingly, we would support an increase of 0.5 percentage points per year instead of 0.4, in annual spending on Canadian drama.
112. As mentioned above, the calculations to determine whether incentive targets have been met must not include expenditures that result from commitments made within the context of a transfer of ownership, or promises made at time of licensing. Moreover, the expenditures should not include CTF "top-up" monies, as the Commission proposes at paragraph 87. In that regard, the CCAU has long opposed the use of CTF "top-up" fees as counting towards a licensee's Canadian program expenditures and will continue to press for their elimination in any conditions of licence.
113. Further, each ownership group that wishes to take advantage of the expenditure incentive should be required to provide in their annual returns the calculations necessary to demonstrate that the group has met the expenditure target.
114. As also mentioned above, if the Commission finds that broadcasters are not demonstrating sufficient progress towards the expenditure target, it should introduce necessary changes to its policy, as soon as possible, in order to ensure that there is adequate support for Canadian English-language drama. This can be done as part of the process to review the licences of the major station groups.



(viii) Is the reward for achieving the viewing or expenditure targets (25% of the minutes earned through the broadcast of original hours of drama) appropriate? If not, what would be the appropriate incentive?

115. The CCAU supports the 25% reward mechanism for the viewing and expenditure targets. However, we reserve the right to comment further on the viewing incentive once the Commission has developed it in more detail.

(ix) Is it necessary, or appropriate, to place a cap on the number of extra advertising minutes earned? If so, what should that cap be?

116. The CCAU does not believe that it is necessary to place a cap on the number of extra advertising minutes earned by broadcasters. However, there should be mechanisms built into the incentive regime that limit the impact that this regime will have on other broadcasters. A significant part of the additional revenues that will be made available in the system for drama may be diverted from the advertising revenues that would otherwise go to other broadcasters, such as specialty services and the CBC. That is, advertising revenues will shift from the smaller broadcasters and the public broadcaster to the larger players. Therefore, the incentive package should be carefully crafted in order to limit the number of advertising minutes that will be awarded to the broadcasters who will be in a position to benefit from the proposed incentive package.

These mechanisms should include the following (all of which are discussed in further detail above):

- (1) Broadcasters should not be granted additional advertising minutes for repeats.
- (2) All triggers should only apply to 10 point dramatic productions.
- (3) The minimum production budget for the High Cost Drama incentives (triggers #1 & #2) should be at least \$1 million per hour for non-children's drama and \$750,000 an hour for children's drama.
- (4) In order to be eligible for additional advertising minutes under the High Cost Drama incentive without CTF funding (trigger #2), the dramatic programs should be broadcast during prime time, or at least in the peak evening period, other than children's drama programs.
- (5) A minimum benchmark should be established for the purposes of determining the number of additional minutes broadcasters will be eligible for under the High Cost Drama incentives (triggers 1 & 2). The base line should be the number of hours of original dramatic Canadian productions that the broadcaster aired during the current broadcast year.
- (6) A minimum threshold of \$250,000 should be established for the Low Cost Drama incentive (trigger #3).



(7) No additional advertising minutes should be made available for original drama productions that receive funding as part of a transfer benefit or a commitment made at the time of licensing.

(x) Will the proposed incentive program for drama impact negatively on other program categories such as documentary? If so, what could be done to minimize any negative impact?

117. Provided the limitations set out above are adopted, the CCAU does not believe that the incentive program will have a significant negative impact on other genres such as long-form documentaries which will still be benefited and encouraged by the priority programming rules, which remain unchanged.

(xi) Please comment on the Commission's proposed five-year viewing and expenditure targets. Should such targets be established for a shorter period of time, such as three years? If so, what would be the appropriate viewing and expenditure targets over a three-year period?

118. The CCAU is of the view that the five-year viewing and expenditure targets are too long. If the regime is not adequately working, it should be changed as soon as possible. The CCAU therefore recommends that the time period should be set for three years.

119. Under section 9 of the *Broadcasting Act*, the Commission has the authority to review and amend the licences of broadcasters where five years have expired from the time of the last renewal. Thus, for the major station groups, the Commission has the authority to review their licences and add new or amended licence conditions as early as September 1, 2006.

120. In the CCAU's view the Commission should closely monitor the contributions that the major station groups make to the broadcasting system, and the extent to which they are opting to use the incentive package. If the broadcaster is not adequately contributing to the system, it should be called to a licence review hearing at the earliest possible date, and its licence should be amended in order to ensure that it is making meaningful contributions to the broadcasting system.

(xii) How should the Commission ensure that broadcaster equity investments are demonstrably at risk investments? Are any other safeguards necessary or appropriate?

121. The CCAU has long opposed allowing recouped equity to count as expenditures because the market power of broadcasters allows them to insist on recoupment or participation conditions that erode the position of the producer, and make it difficult if not impossible for producers to be commercially viable. (Unrecouped equity is treated as an expenditure under current CRTC rules in Public Notice 1993-93 and the CCAU does not object to this.) By extracting unreasonable recoupment conditions, broadcasters can minimize if not eliminate risk.

122. Pending the development of equitable Terms of Trade, the CCAU proposes that a broadcaster equity investment should not count as an expenditure unless (a) the broadcaster licence fee is at least \$300,000 per hour or such higher number as the CTF may prescribe or apply, and (b) the terms and



conditions of the equity investment are no more favourable to the broadcaster than those that are required by Telefilm Canada in its equity investments. In particular, no broadcaster equity investment should be permitted to be recouped in preference to the equity investment made by the producer, nor should the broadcaster be permitted to recoup any part of its investment in advance of the producer recouping any deferred fees.

H. Conclusion

123. As stated, Canadian drama is a key element of our broadcasting system. It is imperative that measures be adopted in order to ensure that this type of programming continues to exist, develop and prosper in Canada.
124. Provided that it supplements and does not replace clear regulatory requirements, the Commission's proposed package of incentives set out in the Public Notice, subject to a number of recommendations that we make above, may be able to play a useful role. With this in mind, we have provided specific comments on that package of incentives above.
125. However, the adoption of incentives of this kind should not be seen as representing any kind of total solution to the crisis in Canadian drama problem. The crisis can only be properly addressed by a combination of regulatory measures and incentives. To the extent that the CRTC focuses on incentives at this time, therefore, they should only be implemented as part of a more comprehensive plan to introduce regulatory requirements as soon as practicable to ensure that all conventional television broadcasters focus on this issue and fully discharge their obligation to support Canadian drama that is written, directed and performed by Canadians. These regulatory requirements, which should be imposed no later than the time of the next regulatory review of the conventional TV licences, should include a steadily increasing proportion of revenue devoted to expenditures on Canadian drama and a requirement for a minimum number of original hours per year of Canadian drama.
126. If the Commission's proposal is adopted with the safeguards that we discussed above, such as maintaining a minimum threshold of \$1 million for the High Cost Drama production trigger for non-children's programs and excluding repeats from the reward scheme, important benefits might flow to Canadian drama. This of course also requires that broadcasters opt to take advantage of the incentive package.
127. The CCAU, therefore, has presented what it hopes are constructive comments on the incentive package with a view to having it apply as a transition regime until the Commission can review the licences of the conventional broadcasters. At that time, a stronger regulatory regime will need to be adopted in order to ensure that broadcasters fully play their part in ensuring a strong presence for Canadian drama over the airwaves.

All of which is respectfully submitted

CCAUI

Coalition of Canadian Audio-visual Unions



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