



September 8, 2005

M. s. Diane Rheaume  
Secretary General  
Canadian Radio-television and  
Telecommunications Commission  
Ottawa, Ontario K1A0N2

VIA Email [procedure@crtc.gc.ca](mailto:procedure@crtc.gc.ca)

Dear M. s. Rheaume,

**Re: CRTC PUBLIC NOTICE - 2005-6 Applications for a broadcast licence to carry on a national general interest pay television undertaking**

1. This is the submission of the Alliance of Canadian Cinema Television and Radio Artists (ACTRA) in the matter of PUBLIC NOTICE - 2005-6 Applications for a broadcast licence to carry on a national general interest pay television undertaking. ACTRA and its predecessor organizations have represented the interests of professional performers working in the English language media in every region of Canada for over sixty years.
2. ACTRA's principal function is looking after the collective bargaining needs of the more than 2,000 members and others, whose performances in movies, television programs, sound recordings and digital media entertain, educate and inform Canadians and global audiences.
3. ACTRA members have a vital stake in Canada's cultural future and benefit professionally when work opportunities are strong. They also believe passionately that Canada needs a strong Canadian presence wherever entertainment and information services are created and however these are provided to Canadians. We believe in our own creativity; our capability to tell and perform our own stories. It is this belief that motivates ACTRA's participation in the public processes about the future of Canadian television, film and other media that make up the cultural industries.
4. In the past four years, ACTRA and its members have been in the forefront of the campaign to reverse the precipitous decline in the availability of domestically produced English language television drama. We have raised this issue publicly, with politicians and with the Commission. There is an ongoing crisis that requires urgent and immediate action. Reversing the Commission's policy in respect of the broadcast distribution undertakings (BDUs), notwithstanding the CCTA proposal to allocate 25% of revenues to the CTF, would not benefit the broadcast system as a whole and would not provide any measurable assistance to stem the crisis in English language television.

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drama. To the contrary it would likely contribute to a further decline in English language Canadian television drama.

5. The CRTC has received five applications for national pay television services, of which four propose to launch English-language services. ACTRA's comments will be limited to these four applications:

Spotlight Television Limited  
Application No. 2004-0991-3

The Canadian Film Channel Inc.  
Application No. 2005-04523

Allarco Entertainment Inc.  
Application No. 2005-0454-9

BOMM TV  
Application No. 2005-0755-1

6. ACTRA supports licensing of one or more additional pay tv service(s), subject to appropriate conditions of licence which are discussed below. ACTRA does not endorse or support any one applicant. In addition there are some issues that emerge from these applications that ACTRA asks the Commission to consider in regard to the applicants and to pay TV in general.

## ANALYSIS OF APPLICATIONS

### Spotlight Television

7. This applicant states clearly that it intends to compete with the incumbent licensees. Premium movies and first-run programming of other kinds will be the core of the service, with only a small amount of sports and other programs. In order to compete, Spotlight Television is requesting a period of regulatory protection until it has reached a critical mass of subscribers, after which it proposes to secure exclusive rights to certain Hollywood titles. This will enable it to become distinct from the existing licensees and provide a rationale for serious movie buffs to subscribe to both the regional and national services.
8. Spotlight Television promises to schedule Canadian programs for 30% of the time between 6:00 pm and 11:00 pm and 25% of the remainder of the day. It will spend 55% of current year's revenues (or \$15 million according to the projection) on its Canadian programs in Year 1, 74% of previous year's revenues in Year 2 and 32% of previous year's revenues in Years 3-7. In addition, it will allocate \$1.5 million annually to development support. It projects to have 335,600 subscribers in Year 1, rising to 2149,700 in Year 7.
9. The applicant proposes that Spotlight Television will be able to acquire up to 25% of its Canadian content programs (and spend up to 25% of its requirement) on productions that are produced by the licensee or a related company.

### **ACTRA Comments**

10. ACTRA notes that the subscriber numbers are the most optimistic of the applicants as are the revenue projections. Consequently, if the CR TC were to license this applicant, it might be appropriate to provide a condition of license that would mandate the absolute amount of Canadian content spending in the first two years of the service.
11. Given that the existing Pay TV services will seek to protect their competitive position, there seems little doubt that the cost of acquiring exclusive rights will drive up the cost of foreign programs and this causes some concern. On the other hand, we note that the commitment to spend 32% of revenues on Canadian content movies and programs will help to provide a limit on how much can be spent on acquiring Hollywood films.
12. We note that the proposed contribution to development is lower than another applicant and there is no indication that the delivery mechanism will include the possibility for established writers and other industry professionals to apply for support without a producer being attached to the project.

### **Canadian Film Channel**

13. This applicant proposes to provide a channel "dedicated entirely to creating, promoting and exhibiting Canadian movies." It will be provided free to all existing Pay TV subscribers. The channel would be financed by a levy of 12.9% of gross revenues of Corus' Movie Central and Encore Avenue, and on Astral's The Movie Network and MoviePix. The applicant proposes to spend 50% of its revenues on Canadian movies.

### **ACTRA Comments**

14. While this is an interesting and creative concept, unfortunately, we find that it may be somewhat difficult to support. It would seem to have a challenging financing model and it would create the greatest risk of ghettoizing Canadian movies in a channel that people would simply not watch. This would be particularly the case if launching this service provides a rationale for the existing Pay TV licenses to put pressure on the CR TC to reduce their own Canadian content time and expenditure commitments, since they would be funding the Canadian Film Channel from their revenues.

### **Allarco Entertainment Inc.**

15. This applicant proposes a service based on movies, original series and specials, with a small amount of sports and other programming. It suggests that it would not compete with the existing licenses for exclusive rights, since that will only drive up the cost of U.S. movie rights. Presumably, it would attempt to compete with a balanced schedule, original drama and special events.
16. The applicant's Canadian expenditures would be an absolute amount of \$4 million in the first year and 32% of revenues each subsequent year. In addition, after profitability is achieved, it will use all of its after-tax profits to take equity positions in Canadian programs. The applicant would use one of its multiplex channels as an all-Canadian service, "not to ghettoize Canadian drama but to make it available throughout all parts of the day and across all time zones." It appears that this Proudly Canadian feed is in addition to Canadian on the "main" channel, where it would occupy 30% of the hours from 6:00 pm to 11:00 pm and 25% in the remainder of the day. It projects to have 137,500 subscribers in Year 1, rising to 1,400,000 in Year 7.

17. The applicant would spend \$2 million annually on script and concept development and will commit \$1 million annually to third party advertising of its Canadian dramas. It would also commit to acquiring all of its Canadian programs from independent producers.

#### **ACTRA Comments**

18. While there have been many changes in Canadian broadcasting since the CRTC's Pay TV decision of 1982, this proposal would seem to be risking the same fate as earlier services. If the core of the service is providing Hollywood movies to home screens, the issue becomes on what basis will the new service compete for subscribers, particularly given that the existing services have a two decade head start? Presumably, it would attempt to do this on the basis of its specials, its movie selection and its original Canadian drama. But, without significantly greater resources for original Canadian programs, this may be a difficult challenge.
19. ACTRA notes a number of positive elements in this application, including the contribution to script and concept development, the commitment to advertising and the commitment to acquire all of its Canadian from independent producers. We also find that the model of multiplexing an all-Canadian channel in addition to programming Canadian movies and drama on the main service could be the most effective way of highlighting the Canadian programs. We hope that industry professionals will be able to file applications for development funding without having a producer attached to the project. We also acknowledge Allarco's commitment to highlight Canadian programming in its web-based navigation system.

#### **BOM TV**

20. This applicant proposes to offer a premium service with first-run dramatic programs, partnered with a French-language service for which it has also applied. It will have roughly 35% movies, 35% sports, 20% dramatic programs for television, and other programs and specials.
21. The applicant proposes to have 30% Canadian content from 6:00 pm - 11:00 pm and 25% in the remainder of the day. Expenditures on Canadian content will be 20% of annual revenues, with an additional 1% of annual revenues being allocated for script development. Projecting revenues of \$11.3 million in Year 1 would translate in to \$22 million of Canadian content expenditures. The development funding will be provided through the Quebecor Fund and will presumably concentrate on French-language productions. It projects having 167,000 subscribers in Year 1, increasing to 819,900 subscribers in Year 7. It proposes a limit of 30% of content and expenditures on productions produced by licensee or related companies.

#### **ACTRA Comments**

22. ACTRA notes that this applicant has substantially lower Canadian content expenditure commitments than the other applicants and we would have serious concerns about such a modest commitment. While the applicant proposes to schedule all Canadian feature films appropriate for Pay TV, there may be only limited opportunities for most of these movies given that the service is less reliant on movies overall. In addition, its commitment to allocate only 1% of revenues to script development pales in comparison

to others; even by the end of its licence term, the script development support would not reach the level committed by Spotlight Television beginning in the first year, and this in turn is one-third lower than the commitment from Allarco.

### PROVING THE PRECARIOUS STATE OF CANADIAN DRAMA PROGRAMMING

23. As the Commission is aware, for the past few years, ACTRA has been raising the alarm bells about the precipitous decline in the production of English-language Canadian drama. We were the first to raise concerns about the consequences of the 1999 Television Policy, which has been a key factor in the ongoing decline in the development, production and broadcast of original drama. The licensing of a new Pay TV service must take account of this situation.
24. Canada's feature film industry continues to fall short of its potential. We have the performers, writers, directors and producers we need to make high quality and entertaining movies that should be able to attract audiences in Canada and elsewhere. However, despite 50 years of public policy and investment, it remains the case that Canadian movies account for only a small percentage of the domestic market. While there has been some progress in the five years since the latest feature film policy was announced, ACTRA has argued that more attention needs to be paid to marketing and exposing Canadian movies, including through the broadcast system. ACTRA has also pointed out the urgent need for additional resources to be provided to script development, with conditions permitting professional writers and other film artists to be able to apply for funding without having a producer attached to the project. The licensing of a new Pay TV service must take account of this situation as well.
25. As a key member of the Coalition of Canadian Audiovisual Unions (CCAU), we endorse the recommendations of the report on *The Need for a Regulatory Safety Net, Broadcast Policy and Canadian Television Drama in the English Canada in the Next Five Years*. That Report highlights that spending on Canadian dramatic series was down by 33 percent from 2000 to 2004 and spending on feature films was down by 49 percent in the same period.
26. While Canada's private conventional television broadcasters must bear the brunt of the obligation to reverse the decline in television drama and ensure that Canadian audiences have an adequate supply of high quality drama programs and series, specialty and pay television services must play a role as well. In this context, the Report puts forward the following recommendations with respect to Pay TV services, and we urge the Commission to adopt these principles in the current licensing process.
  - Canadian Pay TV services should be required to increase their Canadian content and to make greater Canadian content programming expenditures, commensurate with their increased financial resources.
  - The CRTC should provide enhanced reporting for Pay TV services, with revenue and drama hours and dollars identified for those that include drama in their mandate.

- The CR TC should improve the integrity of the financial reporting process by removing the licence fee “to p-up” policy .
  - Pay TV services should not be permitted to reduce their financial obligation to Cancon by having their spending on productions treated as equity, even when there is little or no risk to the investment.
27. The rationale for these recommendations is provided at length in the CCAU Report. We believe it is sufficient here to make the following brief comments on them .
28. Under the licence fee “to p-up” policy, broadcasters receive credit for the funds made available by the Canadian Television Fund that are designed to increase the value of the broadcast licence fee of independently produced Canadian programs. It seems to be inappropriate to permit the broadcaster to count these payments when they have not made the expenditure. In the year in which they spent \$31.5 million on Canadian programs, the CR TC policy excused Canada’s Pay TV services from spending \$5.8 million more. The current process is an opportunity for the Commission to begin to reverse this policy throughout the broadcasting system .
29. With respect to reporting requirements, it is essential for the CR TC to continue to provide detailed information about all Pay TV licences. We also believe that such information should be made available for licensed services. Without it, the public cannot be guaranteed that private broadcasters are fulfilling their obligation under the *Broadcasting Act* to contribute to the creation and presentation of Canadian programs, “to an extent consistent with the financial and other resources available to them .” The CR TC should confirm in this process that it will continue to release such information about any new licences.
30. Finally, this process also enables the CR TC to implement a requirement that to count as an eligible Canadian content expenditure, any equity investment made by a Pay TV licence should have no higher a recovery status than the other equity investors. This is necessary throughout the system in order to ensure that independent producers are not required by broadcasters to carry an unfair burden of the financial risk of the productions.
31. In its submission to the House of Commons Standing Committee on Canadian Heritage review of feature film policy, ACTRA has noted that government support measures are overwhelmingly designed to affect the supply side of the movie industry, rather than the demand side. These include a range of policies to assist producers to create Canadian movies with reasonable budgets, including marketing and promotion expenses. ACTRA has pointed out that these should be balanced and complemented with concrete measures to stimulate audience demand as well.
32. In this connection, ACTRA believes there must be greater exposure of our films in Canada’s broadcasting system and the current hearings provide an additional means to achieve this objective. ACTRA urges the Commission to require that any new general interest Pay TV service(s) program every Canadian feature film that is appropriate for Pay TV release. This will help to showcase Canadian movies and help to create a star system .

33. However, ACTRA would have a concern if Canadian movies become ghettoized in the Pay TV system. Unless it is accompanied by significant exposure on the core Pay TV service, we are not convinced that a channel devoted exclusively to Canadian movies is appropriate. Canadian authors did not succeed when their works were sold as part of a "Canadiana" section of book stores. Rather, Canadian authors and musicians sell more works when they are distributed together with the very best foreign works, in the fiction and non-fiction section of our book stores, and on the blues or pop racks of our music stores. ACTRA believes this same formula must apply to television.

## TECHNOLOGY

34. ACTRA notes that the core programming of the existing and the proposed English-language Pay TV services in Canada, as well as the core programming of the successful Pay TV services in the United States, is Hollywood feature films. Given the state of technology and the developments that are likely to occur over the next decade, ACTRA is somewhat surprised to find four serious applications for a national Pay TV licence, each with a business model that projects continuing subscriber growth through 2013. The applicants would seem also to expect that their business model will continue to be viable well beyond the initial licence term. However, ACTRA has some doubts about this basic underlying assumption.
35. The home theatre is already here, delivering digital sound and pictures, and an overall experience that comes as close to the big movie screen as it is possible to imagine in a home. Soon to come will be the full integration of the home computer with this unit, creating significant new opportunities for the consumer, broadcasters and movie distributors. The integration of the computer will make it far easier and more satisfying for the consumer to navigate through a plethora of programming choices. When this integration arrives, so too will the next stage in the evolution of the post-theatrical movie market - delivery of movies directly to your home, whenever you want them, with all the capabilities to pause and replay, and all the add-ons, additional scenes and alternative endings that we have come to expect in our DVDs.
36. A few years ago, most of the major Hollywood studios announced the creation of a consortium through which they intend to deliver movies to the home over the Internet. At the time, some commentators expressed the view that Internet-based distribution would not be a viable option for the studios. But, one by one, the impediments to this form of distribution are falling by the way. Increasingly, North American homes have broadband connections, the roll-out of digital television is proceeding rapidly and commercial transactions over the Internet are now commonplace.
37. Perhaps the only remaining impediment is the crucial issue of ensuring the security of the movie when it is distributed over the Internet. It seems almost certain that this remaining problem will be solved in the next few years and the companies then will have certainty that the movies they deliver to the home will be capable of being viewed only for the length of time that the consumer has purchased and will be secure against unauthorized reproduction.

38. When that point is reached, the delivery of Hollywood movies by means of subscription television services and video rental stores would seem to be an achronistic. With the Hollywood majors in control, the logical distribution chain would be theatrical release, followed by DVD sales and the new video-on-demand (VOD) via the Internet, followed by conventional television, followed by the supplemental markets. While there will no doubt continue to be different windows for the television release, it is difficult to imagine a place for what we now know as Pay TV. This is because the serious movie viewer, who is the core Pay TV subscriber, would be the target market of the new video-on-demand service. It is also difficult to contemplate how the price points could sustain a subscriber-based tier that would presumably have to be placed between the new VOD service and the various conventional television windows.

39. ACTRA notes that this scenario will present challenges for all segments of the broadcasting system, not just Pay TV, and we continue to urge the CRTC to reopen discussion about its new media policy.

**ACTRA SUPPORTS LICENSING OF ONE OR MORE ADDITIONAL PAY TV SERVICE(S), SUBJECT TO APPROPRIATE CONDITIONS OF LICENCE**

40. ACTRA acknowledges that its views on where technology is headed are speculative in some areas and the transition to Internet-based movie distribution is unlikely in the next seven years in any case.

41. Having tabled them, ACTRA will state it is convinced by the applicants that, in the short term, competition will increase the market overall for Pay TV. This is positive and creates an environment in which additional resources can be directed to the production of Canadian programs, most particularly feature films.

42. With a 50% growth in Pay TV revenues between 2000 and 2003 and a substantially lower penetration rate than in the U.S., there would seem to be room for competition. And, since the five general interest pay television licenses now spend around \$31.5 million annually on Canadian drama, the additional resources for Canada could be significant. In the most optimistic scenario, this spending could increase by 50% or more even in the first year of operation of any new service(s).

43. As a consequence, we would support the licensing of one or more additional national general interest English-language Pay TV service(s), subject to appropriate conditions of licence, which must include:

- guarantees that all Canadian feature films appropriate for Pay TV release will be programmed on the service;
- appropriate minimum Canadian content requirements, at least matching those of the existing Pay Television services;
- appropriate minimum spending by the licensee on Canadian content in each year of the licence with no ability to claim the CTF "to-p-up" fees
- ensuring that the minimum Canadian content programming expenditures are directed exclusively to television dramas, feature films or documentaries, since these categories are the most under-represented in the broadcasting system.



44. We note that the applicants have requested that the Commission license only one additional service to compete with the incumbents and they have conducted market research and prepared economic models based on this assumption. If the CRTC is inclined to license more than one additional service, we hope that it will have the necessary independent analysis to support such a conclusion. ACTRA does not believe it would be useful to license more than one additional Pay TV service, unless there is evidence of sufficient demand to support multiple licenses. If there is insufficient demand, the economic clout of the incumbents would likely guarantee the failure of all of the new services, and this would seem to defeat the basic objective of providing more exposure and additional resources to Canadian content programs and movies.

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



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