



January 24, 2008

Mr. Robert A. Morin  
Secretary General  
Canadian Radio-television and  
Telecommunications Commission  
Ottawa, Ontario K1A 0N2

On-line: <http://support.crtc.gc.ca>

Dear Mr. Morin,

**Broadcasting Notice of Public Hearing CRTC 2007-17  
HDTV Networks Incorporated, Application No. 2006-1658-4**

**Introduction**

1. This is the submission of the Alliance of Canadian Cinema Television and Radio Artists (ACTRA) in the matter of Public Notice CRTC 2007-17, the application by HDTV Networks for a licence to operate an English-language high definition over-the-air television service with transmitters in Vancouver, Calgary, Edmonton, Winnipeg, Toronto, Ottawa, Montréal and Halifax.
2. Conversations with representatives of HDTV Networks and key informants suggest that commitments of the applicant to the production and scheduling of priority programming are being adjusted. Consequently, ACTRA requests an opportunity to appear at the public hearings to expand on its observations, and to respond to HDTV's opening comments and documents it might submit in that process.
3. ACTRA cannot support this application as filed since there is insufficient commitment from the applicant to the production and broadcast of 10-point Canadian drama programs.
4. ACTRA is pleased to have this opportunity to participate in this process and will bring to it the particular perspective of English-language performers. We believe it is essential to ensure that:
  - i) Canadian creative resources are predominantly used on the public airwaves; and
  - ii) there is a reasonable supply of high quality English-language drama programs and series in every medium.
5. ACTRA and its predecessor organizations have represented the interests of professional performers working in the English-language media in every region of Canada for more than 60 years. ACTRA bargains collectively on behalf of 21,000 performers. In addition, ACTRA represents the interests of thousands of singers and musicians through the work of the ACTRA Performers' Rights Society which collects and distributes royalties from the public performance of musical recordings.

**Alliance of Canadian Cinema, Television and Radio Artists**

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6. ACTRA members have a vital stake in Canada's cultural future. ACTRA members benefit professionally when work opportunities are robust. ACTRA members 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 the creativity of Canadians; in our capability to tell and perform our own stories. We also believe that a healthy democracy needs diversity in programming choices and editorial opinions. It is these beliefs that motivate ACTRA's participation in the CRTC public process.

### **Continuing Crisis in Canadian English-language Drama**

7. For the past seven years, ACTRA and its members have been leaders in the campaign to reverse the precipitous decline in the availability of domestically produced English-language television drama. We have raised this issue publicly, with the government and with the Commission. For many more years, we have worked to increase the number, budget and quality of English-language Canadian feature films. We believe that strong actions must be taken in both fields.
8. The Commission has on numerous occasions acknowledged the crucial role that dramatic programs play in our broadcasting system, and in our lives. In Public Notice CRTC 2003-54 it was expressed in this way: "it is through television drama that most Canadians participate in their national culture and share in the evolution of social values and stories of human passion. Canadian drama should be a cornerstone of the Canadian broadcasting system." In Public Notice CRTC 2004-32, the Commission added the following observation: "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*."
9. The Commission's Dunbar Leblanc Report released in September 2007 confirmed that market forces alone cannot ensure an adequate supply of Canadian drama. The authors put forward this Recommendation 6.1:

*We believe it is imperative to develop more targeted and effective measures to incent the exhibition of Canadian content during peak viewing periods where market forces will not achieve this goal. Consideration should be given to targeting peak programming obligations to a narrow class of programs, such as drama, which are not adequately supported by the marketplace, and imposing targeted exhibition obligations which require television services to broadcast a minimum number of hours of these types of Canadian programs between 7 and 11 pm during each six month period over the course of a licensee's broadcast year to ensure that they will be exhibited during months when Canadians are watching significant amounts of television.*

10. Drama remains the most popular programming genre on conventional television. The BBM reported in its 2002 fall data that prime time viewing of all drama on private, conventional English-language television stations represented 70% of all viewing. However, audiences for English-language Canadian drama are very low. Only 5% of all viewing of drama on English-language private conventional television stations was spent watching Canadian drama programs (CRTC 2004-3). This is largely due to the lack of Canadian drama programming on Canadian television networks.
11. After reaching a peak of \$1.11 billion in 1999/2000, the volume of production of English-language fiction programs (drama and scripted comedy) declined to only \$713 million in 2002/03. It rose to \$861 million in 2005/06 but this is still more than 20% lower than the peak year (Profile 2007).

12. Producing high quality drama programs requires more creative, technical and financial resources than any other programming genre. Drama production trains, develops and employs Canadian writers, actors, directors, editors, technicians and other key creative individuals. It is by far the most expensive genre of programming to produce.
13. There are a number of reasons for the decline including the shift to inexpensive reality-based television programs, the CRTC 1999 Television Policy which de-emphasized drama, the collapse of the foreign television market for Canadian producers and the uncertainty of government and cable company funding support, particularly through the Canadian Television Fund (CTF).
14. But the core reason for the current state of drama production is the woefully inadequate support provided by Canada's private OTA broadcasters, and this development has been aided and abetted by the CRTC's reluctance to put into place effective regulatory measures that will ensure Canadian English-language drama programming is available to Canadians.
15. A 2004 study, *Through the Looking Glass*, confirms that Canada's broadcast license fees paid by Canada's private broadcasters are substantially lower than those in other countries. The study, commissioned by the Directors' Guild of Canada, the CRTC and several government departments reports that domestic license fees in the United States cover on average 81% of the costs of a television production, in the United Kingdom they can cover between 70% and 115%, while in Australia, they can cover between 35% and 85%. License fees in French Canada cover an average of 38%.
16. In English-Canada, the broadcast license fees paid by broadcasters are as low as only 18.4% of the costs of a television production. Thus, the producer must look to other markets and public sources for close to 82% of the financing. While the 2004 study was based on earlier data, we expect the situation has not changed in the intervening years.
17. On 28 March 2007, the CRTC reported on the financial performance of television broadcasters for 2006. The results show that broadcasters decreased their spending on home grown drama and increased their spending on foreign drama. In total, Canadian broadcasters spent more than \$478 million on foreign drama, an increase of 19.2% from the previous year. In the same year, Canadian broadcasters spent just under \$71 million on Canadian drama, a decrease of 13.7% from the previous year, and only \$40 million of this on English-language Canadian drama. Private broadcasters spent 12 times more on foreign drama than English-language Canadian drama in 2006.
18. ACTRA is concerned about the present state and future of Canadian drama programs in television and other media. We are concerned about the level of investment; the on-air placement; the lack of adequate promotion; and the type of Canadian dramatic programs being made. Thus, ACTRA will respond to the proposal by HDTV Networks by assessing whether or not the new service will increase the production and improve the scheduling of Canadian drama.

### **ANALYSIS OF APPLICATION**

19. ACTRA finds the HDTV Networks concept to be creative and forward-looking. By concentrating on high definition programming content, HDTV will appeal to the rapidly growing number of consumers with the necessary equipment; HDTV should be able to carve out a market niche. By seeking initial distribution in Canada's major markets and pursuing only national advertising, the applicant should be able to put together a reasonable business plan. By proposing a balanced schedule and distribution on BDUs within the coverage areas of its eight terrestrial transmitters, HDTV is positioned to become essentially a third national private

English-language television network. ACTRA has long maintained that Canada's broadcasting system would benefit from the emergence of a third (and perhaps fourth) private television network.

20. While we do not support the application as filed, if it was to be approved, the applicant would add to the diversity of ownership in Canada's system. It would also add to the diversity of editorial content in the news and information program fields, which appear to constitute the core of the network's schedule. It is also proposing creative ways to encourage viewer input to news stories.
21. ACTRA shares the applicant's positive outlook for conventional broadcasting. While not growing as rapidly as they once did, advertising revenues for OTA broadcasters remain strong and most analysts expect they will continue to grow in the next few years. OTA broadcasters received nearly 75% of total television advertising revenues in 2005. Overall, despite the emergence of alternative distribution systems such as the Internet, Canadians are watching more television today than they did five years ago.
22. One of the most egregious developments of the past few years has been the imbalance between spending on Canadian and non-Canadian programs by convention English-language OTA broadcasters. Between 1999 and 2006, expenditures on all Canadian programs fell from 27% of advertising revenues to 25%, while expenditures on all foreign programming soared from 27% to 37% of advertising revenues. In this environment, we are pleased to see that the applicant proposes, in the first seven-year licence term, to spend roughly \$361 million on Canadian programs, or 55.9% of its projected advertising revenues, while spending \$220 million on non-Canadian programs.
23. Finally, in its April 23, 2007 reply to deficiencies, the applicant states that "in the first year of its operation, approximately 10.0 hours of the 48.5 hours of weekly foreign programming will be programming from the United States." ACTRA believes that if such a limit was to be translated into a condition of licence, for example to the effect that no more than 25% of the foreign programming on HDTV Networks can originate in any one country, this would add to programming diversity and be positive for Canadian viewers.

## **Programming**

24. When we look at those sections of the application which address issues connected with Canadian content, priority Canadian programming, particularly drama, and the relationship with Canada's independent producers, ACTRA is extremely disappointed.
25. In the first three years of a seven-year licence term, the applicant proposes to schedule 13 hours of original programming each week. Of this, ten hours appear to be devoted to two news/information programs. The applicant proposes only three hours per week of priority programming, one hour for documentaries, one hour for variety, and one hour for Live@XM, a program featuring new Canadian musical and comedy talent. Beginning in the fourth year of operation, HDTV would move to four hours of priority programming each week but the genre of the additional hour is not specified.
26. ACTRA believes a commitment by the applicant to doubling the hours of Canadian priority programming, beginning at six hours a week and rising to eight hours a week in the fourth year of the operation, would be appropriate for a new market OTA television entrant given recent decisions by the Commission including Rogers' acquisition of Citytv stations.
27. In its written application, HDTV proposes to provide \$1.4 million over seven years for script and concept development. Further, in its April 23, 2007 reply to deficiencies, the applicant states that these funds "will be allocated to the independent production sector." ACTRA

supports funding for script and concept development, but it submits that the quantum proposed by the applicant is inadequate. Further, for many years, ACTRA has taken the position that established industry professionals, including scriptwriters, as well as performers and directors who have written scripts, should have direct access to such funds. In our experience, it is often more effective for an individual artist to develop a project before it is made available to independent producers.

28. While the applicant discusses the importance of the independent production sector and the opportunities that will be provided by HDTV, we cannot find specific commitments to obtain programming from the independent sector. HDTV likely will obtain some or most of its “Canadian acquired” programming from Canadian independent producers. The additional licence fees to be paid would certainly be welcome. However, in respect of its original programs, the only places on the schedule in which independent producers would seem to have a possible place are the one hour per week devoted to “Canadian Doc Priority” and the one hour per week devoted to “Canadian Priority Variety.”
29. In many recent procedures, the Canadian Film and Television Production Association has urged the Commission to require Canadian broadcasters to negotiate a Terms of Trade Agreement with independent producers. Remuneration paid to performers under the terms of the CFTPA/ACTRA collective agreement is often related to the revenues that producers receive from the sale and distribution of their programs and films to broadcasters and others. Thus, ACTRA and its members would benefit if such an agreement were entered into, since it would provide some certainty as to the payment of licence fees and would assist us to monitor revenue flows. While we are not presently in favour, if the Commission was to approve the application, we would urge the inclusion of a requirement for HDTV to conclude a Terms of Trade Agreement with the CFTPA.
30. Finally, we come to question of the failure of the applicant to make any commitment to produce, acquire and schedule Canadian drama. ACTRA is extremely disappointed that there is no evident commitment to drama, in television shows, MOWs or in feature films. There appears to be no commitment to be involved in new drama productions, or to acquire rights to show existing works. While two hours each week are devoted to a “Canadian Acquired Film,” the Supplementary Brief talks only about feature length documentaries, and not about works of fiction.
31. Between 1998 and 2006, spending by English-language OTA broadcasters on Canadian drama fell from 5.1% of advertising revenues to 2.3%. While 8.1% of advertising revenues are projected to be spent on drama and comedy over the seven year licence term, this appears from the application to be focused primarily, if not exclusively, on comedy, most likely non-scripted.
32. ACTRA submits that, if the Commission was to consider issuing a licence to HDTV, the following minimum requirements would have to be reached:
  - the number of hours of priority programming would have to double, so that it would reach eight hours beginning in year four;
  - the applicant would have to commit to broadcasting at least one-hour of original 10-point Canadian drama each week;
  - the applicant would have to commit to acquiring the rights to broadcast a reasonable number of Canadian dramatic feature films each year;
  - the applicant would have to agree, or be required, to spend no less than 7% of advertising revenues on 10-point Canadian drama.

33. We thank the Commission for this opportunity to provide our comments and we would be pleased to have an opportunity to appear at the public hearing to expand on our concerns and to respond to submissions made by HDTV that impact on its programming commitments.

All of which is respectfully submitted.



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ACTRA

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