



November 2, 2009

Mr. Robert A. Morin
Secretary General
CRTC
Ottawa, ON K1A 0N2

Online: <http://support.crtc.gc.ca>

**CRTC Broadcasting Notice of Consultation 2009-614:
Call for comments following a request by the Governor in Council to prepare a
report on the implications and advisability of implementing a compensation
regime for the value of local television signals**

Dear Mr. Morin,

1. This is the intervention of the Alliance of Canadian Cinema, Television and Radio Artists (ACTRA) in the matter of Public Notice CRTC 2009-614.
2. ACTRA would like the opportunity to appear before the Commission at the public hearings commencing December 7, 2009.
3. ACTRA is the voice of more than 21,000 professional performers who live and work in every corner of Canada. Our members are English-speaking artists whose audio-visual performances cross all delivery platforms; film, television, sound recordings, radio and digital media. ACTRA is responsible for negotiating and administering collective agreements establishing minimum conditions of engagement and a framework for how producers engage individual performers. The ACTRA Performers Rights Society secures and disburses use fees, royalties, residuals and all other forms of performers' compensation. In 1997, ACTRA created the ACTRA Recording Artists Collecting Society, which is a member of the Neighbouring Rights Collective of Canada. RACS administers the royalty and private copying levy due to performers in sound recordings.
4. This intervention is endorsed by the American Federation of Musicians, Canada which represents more than 17,000 members.

Alliance of Canadian Cinema, Television and Radio Artists

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THE CURRENT CLIMATE

5. ACTRA approached BN 2009-411 (*Policy proceeding on a group-based approach to the licensing of television services and on certain issues relating to conventional television*), with “a spirit of cooperation and of partnership with Canadian audiences, the Commission, broadcasters, distributors and our colleagues in the creative community.” As “It has become apparent that our fates are interconnected; one part of the system can’t succeed if another is weak.”
6. We are disappointed that two of the most powerful players in our broadcasting system have not taken a similar approach. Instead, private broadcasters and cable and satellite companies have chosen to launch a multi-million dollar public relations war that has turned into a school-yard shouting match over who is greedier.
7. We are disappointed that the cable and satellite companies have once again diverted the agenda away from the issue of content, particularly the shocking lack of Canadian drama and scripted comedy programs. However, we are not surprised since they have a blatant self-interest and endless resources to make their case so loudly.
8. Both the broadcasters and the BDUs are manipulating and confusing consumers with half-truths and hypocritical rhetoric that is doing nothing but furthering public cynicism of our broadcasting system. While they are arguing about which one of them is more hard done by, regular Canadians are the ones who are suffering. While cable and broadcasters are getting free rides Canadian consumers are paying dearly with higher cable bills and less Canadian programming on our TVs.
9. Since cable rates were deregulated in 2002, cable and satellite companies can charge consumers as much as they want to – and they do. Rogers has increased its basic cable rates an average of 85% (in Ottawa rates shot up by 109%) while Shaw customers are paying an average 68% more (90% for those in Winnipeg). Just this past week Rogers Inc. reported a 6% increase in profits this year to \$1.15 billion, from \$1.08 billion a year ago. Of that \$329 million was from cable – a 3% increase. Last year, all of the BDUs set record high profits of \$2.1 billion, an extraordinary return in a time of the most significant global economic recession since the ‘30s. Now cable and satellite companies are hiking up rates and falsely putting the blame on the CRTC for imposing a new “TV tax”.
10. Meanwhile, there’s a good reason why private broadcasters want the Commission and the public to think the only thing at stake right now is local

news and information programming. That's because they don't want to talk about their own dismal records of supporting Canadian programming, the crisis in Canadian drama and the fact that Canadians can't see our own scripted series on our conventional TV networks.

11. ACTRA believes in the need for a strong local news and public affairs presence in communities across the country. However, we also believe it is essential for Canadians across the country to have access to drama and comedy programs. How do we know what it is to be Canadian if we can't see and share our experiences, our own lives, our communities, our heroes and our history on TV, the most popular and pervasive cultural medium in history? And if Canadian broadcasters don't give us space to tell our stories, no one else will.
12. Canadian English-language drama has been a rarity on prime time since 1999 when the CRTC relaxed the rules for private broadcasters. Since then, private broadcasters have been saturating Canada's prime time schedules with U.S. shows. Last year they spent \$740 million on U.S. and foreign programming and just \$54 million on Canadian English-language drama.
13. In 2008, CTV spent 11 times more on US and other foreign programming than on Canadian dramas and comedies, Global spent 19 times more and CityTV spent a whopping 29 times more. We appreciate that the Chair has expressed concern with this trend and hope that the upcoming hearings with respect to BN 2009-411 will result in a new regulatory framework to correct this imbalance.
14. In our written submission to the Commission's hearings on broadcasting policy (BN 2009-411) ACTRA proposed a modern regulatory framework for Canadian television that would fix this untenable situation:
 - i. Retain all scheduling, niche and CPE expenditures for specialty/discretionary services;
 - ii. Re-instate a CPE for OTA services;
 - iii. Introduce a drama CPE floor for all broadcasting groups, regardless of whether they have OTA services;
 - iv. Eliminate the concept of 'priority programming';
 - v. Implement a scheduling safety net on OTA services for underrepresented programming categories, in particular, drama;
 - vi. Require that at least 75% of the Canadian drama, documentaries and children's programming be acquired from independent producers, measured both by number of hours and by expenditures;
 - vii. Ensure OTA broadcasters are compensated fairly by BDUs for use-of-signal.
15. ACTRA's proposal, shared by our colleagues the Directors Guild of Canada, Writers Guild of Canada and the Canadian Film and Television Production Association, presents a fair and flexible way to return balance back to the

system. As part of this balanced system, we believe it is essential for broadcasters to receive a fee-for-carriage, which will be part of their gross revenues subject to expenditure requires under the CPE and drama CPE floors.

16. Canadians are tired of being held hostage by cable jacking-up their bills and private broadcasters cutting local news. The conversation that isn't being heard is about drama and comedy. Canadian consumers should be getting a good selection of Canadian programming from cable companies and broadcasters, including drama, comedy and local news. But for years, Canadians haven't been getting what we're paying for with our cable fees or our taxes. It's time to make both private broadcasters and BDUs contribute more to the system.

THE ORDER IN COUNCIL

17. This process was initiated in response to an Order in Council (OIC) released by the federal government on September 17, 2009. The OIC asks the Commission to:

...hold hearings and provide the government with a report on the implications of implementing a compensation regime for the value of local television signals, more commonly known as fee-for-carriage.

18. ACTRA has serious concerns about the OIC. It speaks of consumers as having only two interests: "affordable access" and access to "a variety of local and regional news, information and public affairs programming."¹

19. The preamble to the OIC states that:

...ensuring Canadians have affordable access to a variety of points of view on matters of public concern, and that their local and regional television news and information needs are met, is of fundamental importance to the achievement of the objectives of the broadcasting policy for Canada set out in the Act.

20. ACTRA finds it odd that the government of Canada has adopted such a restrictive vision of the *Act* by failing to acknowledge that Canadians must also have full affordable access to drama and other underrepresented programming categories. The *Act* mandates that the Canadian broadcasting system should:

3d (ii) encourage the development of Canadian expression by providing a wide range of programming that reflects Canadian attitudes, opinions,

¹ Government of Canada Directs CRTC to Consider Consumer Interests with Regard to Fee-For-Carriage. September 17, 2009.

ideas, values and artistic creativity, by displaying Canadian talent in entertainment programming and by offering information and analysis concerning Canada and other countries from a Canadian point of view,

and

3 I (i) the programming provided by the Canadian broadcasting system should be varied and comprehensive, providing a balance of information, enlightenment and entertainment for men, women and children of all ages, interests and tastes,

21. The Government of Canada appears to be cherry-picking from the *Broadcasting Act* and giving higher priority to news and information programming. We urge the Commission not to follow this lead and instead to pay heed to the ability of Canadian to access *all* forms of programming they are entitled to under the *Broadcasting Act*, including drama. Under the *Act* each programming genre is important and the Commission must take the same approach.

PROTECTING THE CONSUMER INTEREST

Local and Regional News, Information and Public Affairs Programming

22. Performers applauded the Commission's creation of the new LPIF and supported the Commission's determination to increase the BDUs contributions to 1.5% of their gross revenues. We anticipate that this new fund will provide relief to broadcasters as they struggle to produce quality local programming in the face of lower advertising revenues during the current economic downturn.
23. ACTRA submits that the Commission's previous determinations in this matter and the creation of the LPIF are already addressing the interests of consumers with respect to local and regional news and information programming.

Drama and Scripted Comedy

24. ACTRA has previously recorded our support for BDUs paying a fee-for-carriage to private broadcasters if the revenues are seen on the screen in the form of new, original drama and scripted comedy programs. We would oppose new revenues for broadcasters if their intention is to take it Los Angeles as part of their bidding wars for U.S. drama series.
25. Since 1999, private broadcasters have demonstrated time and time again that they will not invest in Canadian programming unless forced to do so as a condition of licence. In 2009-411, we have therefore urged the Commission to impose CPE requirements on OTA broadcasters and to create a drama CPE

floor. We have also supported the imposition of a fee-for-carriage on the understanding that expenditure and exhibition requirements will be re-imposed on OTA broadcasters and that these new revenues will be included in the calculation of expenditure requirements.

26. In that same proceeding, ACTRA has proposed targeted content quotas for drama and scripted comedy programs.
27. When taken together, these measures will create a situation in which Canadian consumers will once again be able to see themselves in drama and scripted comedy programs, an essential cultural goal.

Affordable Access

28. ACTRA notes that most Canadians subscribe to cable and/or satellite television services: this is how we now receive both local and distant signals, as well as specialty services. ACTRA submits that Canadian consumers should have access to cable and satellite services for a reasonable fee. In order to ensure that this is the case, we urge the CRTC to re-regulate the rates which cable and satellite companies charge.
29. BDUs can, and should, absorb the LPIF charge and any fee-for-carriage fee that is implemented as a consequence of the current proceeding. BDUs do not pass on the fees they pay to specialty channels under the label of a 'TV tax' and they should not be permitted to do so for the LPIF and for any fees paid to compensate OTA broadcasters for use of their signal. With \$10 billion in revenues, and profits of \$2.1 billion, BDUs can afford to pay these charges.
30. In theory, Canada's cable business is open to competition. In reality, Canadians have little choice over their cable provider. Cable has become completely consolidated; the top four cable companies and top two direct-to-home companies capture 90% of the market. Non-compete agreements such as the one between Shaw and Rogers, restricts Canadians consumers' choices even further.
31. Clearly the system has become unbalanced. It does not make sense that while one part of the system – the content providers – is struggling, the other part – the distributors – is making billions in profits. One way to restore balance to the system and ensure consumers are being charged fairly would be to return to regulated cable rates.
32. ACTRA would also support giving consumers increased choice in the services and packages they can purchase. However, being mindful of the *Broadcasting Act*, all packages must include a predominance of Canadian services.

33. Finally, ACTRA would note that if the CRTC re-regulates the rates that cable and satellite companies can charge their subscribers, the CRTC public hearing process will allow consumers to have an ongoing say in these rates.

CONCLUSION

34. Private broadcasters and BDUs have been getting a free ride for too long. The result has been less Canadian drama on our TVs and sky-high cable, satellite and wireless charges. It's time to make both private broadcasters and BDUs, who have profited from using public ariwaves, give back to the broadcasting system and Canadian consumers.

35. ACTRA urges the Commission to:

- make BDUs do their part by having them pay for being able to carry conventional television signals, without passing the buck on to consumers;
- impose exhibition and expenditure requirements on private broadcasters so that revenues from fee-for-carriage payments flow into programming, including drama, and these programs have pride of place on out television screens; and
- re-regulate the rates charged by BDUs.

When these actions are combined with the new LPIF, the interests of Canadian consumers will be protected.

36. Thank you for this opportunity to contribute to this important process on behalf of our members. We look forward to appearing before you at the public hearings in December.

Thank you.



Stephen A. Waddell
National Executive Director

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