



CFTPA
Representing television, film
and interactive production in Canada

ACPFT
Porte-parole de l'industrie de la production
cinématographique, télévisuelle et interactive au Canada

23 July 2003

Mr. Charles Dalfen
Chair, CRTC
Les Terrasses de la Chaudière
Central Building
1 Promenade du Portage
Hull, Quebec J8X 4B1
Mail to: Ottawa, ON K1A 0N2

Dear Mr. Dalfen:

This letter expresses the strong concerns of the Canadian Film and Television Production Association with regard to the Commission's recent policy directive to the DTH distribution undertakings, Bell ExpressVu and Star Choice, regarding required contributions to Canadian programming to provide funding for independently-owned small market local broadcasters (Broadcasting Public Notices CRTC 2003-37 and 2003-38 and Broadcasting Decisions CRTC 2003-257 and 2003-258 dated 16 July 2003).

Specifically, by stating that the new fund "would constitute an independent production fund within the meaning of section 44(1)(b) of the *Broadcasting Distribution Regulations*", the CRTC has opened the door for ExpressVu and Star Choice to divert 40% of their present funding support to the Bell Broadcast and New Media Fund (Bell Fund), and the Shaw Television Broadcast Fund (STBF), Canadian Independent Film and Video Fund (CIFVF), and The Harold Greenberg Fund, respectively.

According to Paul Hoffert, Chair of the Bell Fund board, this will result in an estimated \$3 million annual reduction in the amount of support available to the television and new media production industry. Such a reduction will be devastating to the new media sector of our industry. There will also be proportionate reductions in the funding support that the other DTH operator, Star Choice, contributes to three other independent production funds – the Shaw Broadcast Television Fund (SBTF), the Astral Media Harold Greenberg Fund (Greenberg Fund) and the Canadian Independent Film and Video Fund (CIFVF). These independent production funds play an essential role in helping to finance the development and creation of Canadian new media and interactive content, as well as drama, documentaries and programming targeted to Canadian children, youth and families.

Last fall, the Association had expressed its views with regard to the DTH operators' proposals requesting relief from the obligation to effect simultaneous and non-simultaneous program deletion and the CRTC's earlier call for comment on the carriage of local television stations by DTH undertakings in smaller markets (Broadcasting Public Notices CRTC 2002-57 and 2002-71 and Public Notice CRTC 2001-103).

In our submission, CFTPA expressed strong reservations about the DTH operators' proposals to support the programming initiatives of private Canadian broadcasters. We recommended that "the issue of funding support for local and regional programming should be considered separate and apart from the proposed carriage and compensation issues" and that any such program funding support should specifically address the "circumstances of the few remaining television stations that are not part of large corporate interests".

CFTPA strongly objected to the DTH operators' proposed solution – to support a new regulatory obligation of financial compensation to small market broadcasters from a portion of the funds already allocated to the creation of drama, documentary, children's and performance programming. We termed this a "short sighted ... band-aid proposal, which would effectively take money away from the creation of drama, documentary, children's and performance programming in order to make funds available to local news and sports programming". The Association also clearly expressed its appreciation of the important contributions made by ExpressVu and Star Choice to the private independent production funds and recommended that these allocations should not be impacted.

In its ruling, the CRTC clearly deemed it "inappropriate to permit the diversion of DTH contributions from the Canadian Television Fund (CTF) to provide financial assistance to small market stations". The CFTPA appreciates the Commission's recognition of the invaluable support the CTF provides to the creation of Canadian drama, children's, documentary and performance programming and applauds the CRTC's determination to safeguard the full amount of the DTH operators' contribution. However, there is a logical inconsistency in the Commission's approach if this same principle – of not robbing Peter to pay Paul – is not also extended to protect the DTH operators' existing contributions to the independent production funds.

Impact on the Bell Fund

The Bell Fund was established by Bell Canada, the corporate parent of ExpressVu, in 1997 to encourage the development and production of Canadian content for digital media and television. To date, the Fund has dispersed more than \$20 million in grants to help finance more than 200 Canadian interactive new media projects, in every genre, and provided licence fee top-ups to more than 75 television programs. The projects supported range from creating interactive programming on the internet for deaf children, to interactive content tied to such popular television programs as Open Mike and Degrossi. The Fund has also provided licence fee top-ups to more than 75 television projects.

The Bell Fund is the most important source of financial support to the new media component of the Canadian production community and the only private independent fund that focuses on new media content creation.

This Fund has been in the vanguard of supporting Interactive Television development, resulting in the creation of original Canadian ITV content for the interactive television services of Shaw, Rogers, Vidéotron and ExpressVu and in the creation of Canadian wireless content that is used by Canada's wireless carriers. More than 30 broadcasters around the world license web content that has been created with the support of Bell Fund financing. Without the continued level of support for such initiatives, Canada risks losing its reputation as the developer of innovative, interactive web content.

ExpressVu is the major contributor to this fund. A reduction of 40% in its contribution will result in an immediate loss of between \$2.4 and \$3 million per year in funding support to the Canadian creators

of innovative, interactive content for digital delivery. Such a reduction will mean that dozens of worthwhile projects will receive reduced funding or no support at all.

Impact on the STBF, the Harold Greenberg Fund and the CIFVF

Star Choice's discretionary Canadian program contribution is divided among three private independent funds. STBF supports children's and family programming; CIFVF supports film, video and new media projects that promote lifelong learning; and the Greenberg Fund assists in the development of Canadian feature film scripts.

In 2002, Star Choice contributed approximately \$730,000 of STBF's total available funding support of \$6.2 million. STBF makes equity contributions of up to 15% of the cost of production of eligible Canadian fiction and non-fiction television programming intended for viewing by children, youth and family audiences. Animation, made-for-TV movies, drama series, documentary and variety programs are eligible. The Fund supports 40 to 45 projects a year, at an average contribution of \$294,000 per project. A reduction in Star Choice's contribution would mean that many worthwhile projects will not receive funding. This means that Canadian children and youth will be deprived of important resources that help them learn, and learn what it is to be Canadian.

While it appears that Star Choice's required contribution to small market local broadcasters will have a lesser impact on each of the funds it supports than would be the case with a 40% reduction in ExpressVu's contribution to the Bell Fund, it should be noted that some production projects with an interactive component, many of which are targeted to children and youth, apply to several funding sources. STBF reports that approximately thirty percent of their applications have an interactive component. In the current fiscal year alone, 7 of 24 projects have associated websites, with an estimated cost of more than \$2 million. For its part, CIFVF also supports new media projects, with a maximum contribution of \$90,000 per project.

Amount of the Proposed Contribution

The Commission has determined that it is appropriate for DTH operators to assist small market television broadcasters to meet their commitments to local programming. It has established that the appropriate level of such compensation should not exceed 50% of the amount that the identified small market stations spent on station-produced programming in the year 2002. That total amount was \$7.3 million. Accordingly, Public Notice 2003-37 stipulates that the DTH operators should contribute \$3.6 million annually (which equates to 0.4% of gross revenues earned from their broadcasting activities during the same year) to a new independent production fund.

The CFTPA takes issue with the calculation of the level of contribution. DTH subscriber numbers and revenues have grown rapidly over the past few years. The Commission's Statistical and Financial Information Summaries for Class 1 and 3 Broadcast Distribution Undertakings for the years 2000 to 2002 indicate that DTH and MDS revenues increased from \$ 52 million to \$ 277.8 million, with the number of subscribers increasing from 964,000 to 2 million. (The statistics do not break out DTH financial data separately from MDS.)

While we concur with the CRTC's finding that DTH subscriber rates are unlikely to increase at this same torrid pace in future, and that future growth would likely be attributable to migration of customers from other BDUs, nevertheless CFTPA is concerned that establishing a percentage of

revenue formula to compensate small market broadcasters may not be the most appropriate mechanism, particularly as the contribution level would increase proportionate to revenues, despite the fact that these amounts could well exceed the level of programming contribution to small TV stations that the Commission has deemed appropriate.

We respectfully submit that the CRTC review the revenues and subscriber numbers of the two DTH operators for the 2003 year (ending 31 August) and establish a dollar cap on the level of contribution to be split proportionately between ExpressVu and Star Choice on a pro-rata basis based on subscriber numbers. To be fair, the level of station-produced programming should also be set at the 2003 level.

While CFTPA does not have access to the amount of gross revenues derived from broadcast activities of the DTH operators, we are certain that, with a dollar cap, their level of contribution would be significantly less than 0.4%. We consider that such a mechanism would be a more appropriate means of providing a significant measure of support to independently-owned small market television stations without jeopardizing existing production support.

CFTPA requests that the Commission review this ruling at the earliest possible date to ensure that the proposed funding support to small market TV stations does not create unintentional harm to the private independent funds.

Sincerely,



Guy Mayson
Acting President, CFTPA

- cc. Chris Frank, Bell ExpressVu
- Cynthia Rathwell, Star Choice
- Andra Sheffer, Bell Fund
- Gail Yakemchuk, STBF
- Robin Jackson, CIFVF
- Wendy MacKeigan, Greenberg Fund
- Nick Ketchum, CRTC