



CFTPA
*Representing television, film
and interactive production in Canada*

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

17 August 2006

Ms Diane Rhéaume, Secretary General
Canadian Radio-television and
Telecommunications Commission
1 Promenade du Portage
Ottawa, Ontario K1A 0N2

Dear Ms Rhéaume:

Re: Broadcasting Notice of Public Hearing CRTC 2006-7, Application by Câblevision du Nord de Québec Inc. (CNQ) for a broadcasting undertaking licence to operate a general interest video-on-demand (VOD) service

1. The Canadian Film and Television Production Association (CFTPA) provides the following **comment** in response to the application by CNQ for a licence to operate a general interest video-on-demand (VOD) service to be known as "Fleximo". The applicant has requested two significant changes to standard conditions required of VOD operators.
2. CFTPA represents the interests of more than 400 companies engaged in the production and distribution of English-language television programs, feature films and interactive media products in all regions of Canada. Our member companies are significant employers of Canadian creative talent and assume the financial and creative risk of developing original content for Canadian and international audiences. In terms of the Canadian broadcasting system, it is independent producers who create the drama, documentary, children's and performance programs that are important domestic components of the offerings of Canadian conventional and specialty programming television services.
3. CNQ provides cable television and high-speed internet services in the Abitibi-Témiscamingue, Mauricie, Lanaudière, Laurentians and Outaouais regions of Quebec and some communities in northeastern Ontario. In total, the cable operator serves almost 33,000 customers. It is owned by Quebec telco Télébec LP, which is controlled by a subsidiary of BCE Inc.

4. The applicant proposes to be permitted to allocate the entire 5% of annual gross revenues generated by its VOD programming undertaking to the resources of the community channel of its broadcasting distribution undertaking, rather than to an independent Canadian production fund, as stipulated by CRTC policy. It is also seeking to be relieved of the condition of licence which would require it to remit to the rights holders of all Canadian films 100% of the revenues earned from the exhibition of these films. CNQ proposes, instead, to “negotiate with the film distributors the amount of the revenues it will remit to them...”
5. CFTPA notes that with these requests, CNQ is asking to be relieved of the two Canadian program expenditure requirements that are required of video-on-demand programming undertakings.
6. With regard to the first of these requests, the applicant states in the Supplementary Brief filed with the application that it is seeking this exception under a provision of paragraph (5) of Section 29 of the *Broadcasting Distribution Regulations* which permits Class 1 licensees with fewer than 20,000 subscribers that distribute their own community programming on the community channel to allocate the complete 5% Canadian programming contribution to the community channel.
7. In doing so, the applicant appears to consider that the VOD licence it is seeking is merely an extension of its cable operations, rather than a separate and distinct broadcast undertaking, subject to different provisions and obligations. However, there is no provision in the CRTC’s licensing framework for video-on-demand programming undertakings (Public Notice CRTC 1997-83) to reallocate the 5% of annual gross revenues earned by a VOD programming undertaking to the community channel of a related broadcast distribution undertaking.
8. CFTPA recommends that if the application is approved, the CRTC **deny** the requested exemption and the decision should clearly state that CNQ is required to remit the entire 5% of gross revenues from the VOD undertaking to an independently-administered production fund.
9. As creators of quality Canadian programming, independent producers consider it essential that the modest contributions of broadcast distribution undertakings to Canadian programming – particularly to the Canadian Television Fund and other independently administered production funds that support programming in the under-represented categories of drama, documentary, children’s and musical performance – not be eroded.
10. In this regard, we note the Commission’s statement in a decision denying Rogers cable permission to seek an exemption to required Canadian programming contributions in order that it could allocate more funds to local expression (Decision CRTC 2000-169). The CRTC said that it “continues to believe that contribution by broadcasting distribution undertakings to production funds provided essential support for the production of Canadian programming. Such support is necessary if Canadian programming is to continue to have a strong presence in a more competitive

broadcasting environment. The Commission considers that subscribers will benefit from higher quality and more diverse Canadian programming on the services offered by distribution undertakings as a result of these contributions. It therefore wants to ensure that production funds receive broad support from the distribution sector.”

11. CNQ has also requested to be exempt from the requirement that it remit to rights holders 100% of revenues earned from the exhibition of Canadian films. Instead, it proposes to negotiate with film distributors the amount of revenues it will remit. It argues that imposing the standard condition of licence would make it impossible to recoup the cost of broadcasting Canadian films and would thus be a disincentive to broadcast them.
12. As rationale for this request, CNQ states that it operates in an area that is 95% francophone, where Quebec feature films are increasingly popular and in high demand. It cites some statistics published by the provincial government indicating that the proportion of American films screened in the province declined from 84% in 2000 to 72% in 2004, while Quebec-based films increased from 2% to 14% over the same time. It also asserts that of the top 25 films exhibited in Quebec, just two of these were of Quebec origin in 2002, while there were nine in the first six months of 2005.
13. This argument seems to suggest that because Quebec films are attracting larger audiences, CNQ would have to remit more funds to the rightsholders and would thus have less revenue to retain for itself. Surely, a Quebec-based programming undertaking whose primary business is the exhibition of films and events, should be proud to support the creation of more Canadian feature films originating in the province it serves.
14. The applicant has provided no justification for redirecting for other corporate purposes money that the CRTC has mandated to support quality Canadian programming. In addition, CFTPA is concerned that should the CRTC approve this request, it would set an unfortunate precedent that would have implications across the system.
15. At page seven of its Supplementary Brief, the applicant says that if the CRTC does not agree with this request, CNQ would commit to remit to rightsholders 100% of net (rather than gross) revenues from the broadcasting of Canadian films. Respectfully, CFTPA recommends that the CRTC **deny** both of these proposals and stipulate that CNQ, if it is awarded a licence to operate a video on demand programming undertaking, be required to adhere to the same obligation in this regard as other VOD services.
16. Otherwise, CFTPA notes CNQ’s commitment to adhere to the minimum 1:20 ratio of Canadian to non-Canadian feature film titles. It has also committed to exhibit all available new Canadian feature films that are suitable for VOD exhibition and meet the *Pay Television Programming Standards and Practices Code*. CNQ has also committed to make available a minimum 1:10 ratio of Canadian to non-Canadian titles overall.

17. CFTPA appreciates the opportunity to comment on CNQ's application for a licence to operate a general interest video on demand service. We **oppose** the requested changes to the standard conditions of licence for VOD undertakings.

Sincerely,



Guy Mayson
President and CEO

Cc.: Allen Mercier, Directeur – Recherche réglementaire

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