Broadcasting Public Notice CRTC 2004-32

Ottawa, 6 May 2004

Proposed incentives for English-language Canadian television drama – Call for comments

The Commission seeks comment on a proposed package of incentives designed to increase the expenditures on, and the production of, high quality, original, Canadian drama broadcast by English-language television licensees; and to encourage increased viewing to such programming.

In another public notice to be released shortly, the Commission will propose separate measures designed to ensure the continued presence of high-quality, original French-language Canadian drama in peak time.

Background

1. In *Support for Canadian television drama – Call for comments*, Broadcasting Public Notice CRTC 2003-54, 26 September 2003 (Public Notice 2003-54), the Commission sought comment on the steps it might take to encourage the production and broadcast of more high quality, original, English-language Canadian drama capable of attracting larger audiences. The Commission also sought comment on possible measures to ensure that high quality, original, French-language Canadian drama remains a key component of peak time viewing. Specifically, the Commission asked the following questions:

> 1. What are the most important elements necessary to ensure an appropriate quantity of original Canadian drama on English-language television, and to attract larger audiences to such programming?
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> 2. How effective are regulatory requirements, or regulatory incentives, in achieving the objectives of increasing the amount of original, English-language drama programming and attracting larger audiences to that programming?
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> 3. If regulatory requirements, or incentives, can be effective tools in fulfilling the Commission's objectives, what specific proposals should the Commission adopt?
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> 4. While it is generally considered that the most pressing problems concern English-language drama, there are concerns that French-language drama may not remain as healthy in the future. How can the Commission help to ensure the continued production of popular, original, French-language drama? What specific requirements, or incentives, designed to support English-language drama, may affect French-language drama? Should the Commission develop separate and distinct regulatory regimes, or incentive programs, for the two language markets?

2. In addition to the above questions, the Commission indicated in the public notice that it was prepared to consider the following specific matters:

- possible changes to the CRTC definition of drama where such changes could further the objectives of this proceeding;
- measures that may encourage specialty services to play a greater role in the creation and presentation of Canadian drama;
- the Nordicity Report's analysis of certain incentives;
- the fairest and most effective audience measurement tools that might be used to determine the success of individual Canadian drama programs;
- details concerning the financing of Canadian drama that would assist the Commission better understand what can reasonably be expected of Canadian broadcasters, given their own resources and the resources available in the rest of the system; and
- matters specific to French-language Canadian drama.

3. In Public Notice 2003-54, the Commission noted that it might call for further submissions if it considered that additional information was necessary.

4. In this current public notice, the Commission reviews the comments received in response to Public Notice 2003-54 and sets out for comment a proposed package of incentives designed to fulfil the objectives of increasing the amount of original, English-language Canadian drama and of encouraging greater viewing to that programming.

5. The proposals set out in this public notice apply only to English-language licensees. More than a dozen comments focused largely, or exclusively, on concerns relating to French-language drama. The Commission will issue shortly another notice that will examine the submissions addressed to the fourth question contained in Public Notice 2003-54, and intends to announce a second set of proposals specifically designed to fulfil its objectives with respect to French-language Canadian television drama.

Review of the comments received in response to Public Notice 2003-54

6. The Commission received a total of 301 submissions in response to Public Notice 2003-54. A large majority of these were in agreement with the importance the Commission places on Canadian drama and many suggested specific actions that could be taken to support the production and broadcast of such programming. A few comments argued that market forces should be permitted to play a greater role in broadcasting policy.

7. The Commission notes the large number of comments filed by individual actors, writers and producers working in Canadian television. These individuals provided insights, based on personal and professional experience, with respect to how Canadian drama projects are created, developed, produced and marketed, and offered suggestions for improvement. A significant number of comments were filed by supporters of the Canadian Broadcasting Corporation (CBC). They stated that they would support any initiative, including increased funding, that would strengthen the role of the public broadcaster.

8. The Commission takes particular note of the comments from 23 students at Holy Trinity Catholic High School in Simcoe, Ontario. These students articulated their concern about the lack of Canadian drama on television, and underscored the importance of that medium in telling stories that provide young people with a greater appreciation of their country. Some also emphasized that programs need not include themes or scenes of violence and sex in order to find an audience.

9. Finally, the Commission received substantive comments from a variety of broadcasters, producers, industry associations and unions. These comments are examined in the following sections of this notice.

10. In the appendices to Public Notice 2003-54, the Commission provided certain data with respect to viewing to Canadian drama, the hours of drama broadcast and the spending by licensees on Canadian drama programs. The Commission is now able to update this information with 2003 data. These tables, as they relate to the English-language market, are appended to this public notice.

11. The Commission appreciates the comments submitted during the first phase of this proceeding. The submissions have been helpful in assisting the Commission in the development of the policy proposals that it now sets out for further public comment. In the following sections, the Commission announces its preliminary determinations on those issues that were central to the Commission's analysis, including:

- the importance of drama programming;
- the economics of Canadian drama;
- defining Canadian drama;
- defining "original" hours;
- drama directed to children;
- drama earning less than 10 Canadian content points;
- the effectiveness of regulatory requirements; and
- the effectiveness of regulatory incentives.

12. Possible incentives examined by the Commission to encourage and reward the production of more English-language Canadian television drama include:

- granting time credits for Canadian content;
- permitting additional advertising minutes; and
- a reduction in Part II Fees.

13. Effective incentive triggers considered by the Commission and discussed below might also include:

- incentives for original hours;
- incentives for attracting increased viewing to Canadian drama; and
- incentives for increased expenditures on Canadian drama.

The importance of drama programming

14. As noted in Public Notice 2003-54, drama is the most popular programming on television. English-language drama programs receive more than twice the number of viewing hours received by any other type of programming. According to Fall 2002 data collected by the Bureau of Broadcast Measurement (BBM), prime time viewing of drama on private, conventional, English-language television stations represented 70% of all viewing. This disproportionate amount of viewing to drama relative to programming in other categories has been recorded consistently since measurement of this type was introduced.

15. The production of high quality drama programs requires more creative, technical and financial resources than any other genre of television programming. Drama production trains, develops and employs Canadian writers, actors, directors, editors, technicians and other key creative individuals. In 2003, the total value of Canadian drama production exceeded one billion dollars.

16. As has been frequently noted, however, viewing to Canadian drama, as a percentage of all drama viewing on English-language services, has been very low. It stands at only 5% of all viewing to drama on Canadian English-language private conventional television stations, according to Fall 2002 BBM data.

17. None of the comments received by the Commission in this proceeding argued that an emphasis on Canadian drama was misplaced. Although a few expressed the view that regulatory action was unnecessary or that too great a focus on drama could be to the detriment of programming in categories such as documentary, there was a clear consensus that Canadian drama was important and needed support.

Commission's preliminary view

18. 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* (the Act).

The economics of Canadian drama

19. In a 2003 report prepared for the Commission and Telefilm Canada (Telefilm) entitled *Dramatic Choices*,[1] Trina McQueen stated that "the achievements in drama have occurred against all odds; and they conceal the central problem, which is financing". Many of the comments submitted in response to Public Notice 2003-54 focused on the particular economics of producing and distributing peak time drama in Canada. Producers, broadcasters and unions all agreed that financing issues were at the heart of the "problem" with drama. There was also agreement on the key role played by production funds and other forms of public support in financing high quality and distinctively Canadian programs. Serious concerns were expressed about the decrease in the funding of the Canadian Television Fund (CTF) and the complexity, for both producers and broadcasters, of the process for gaining access to public funding.

20. The Canadian Film and Television Producers Association (CFTPA) noted that, while production budgets have increased significantly in recent years, public funding has not kept pace. Consequently, producers have been required to assume a greater portion of the financial risk. The CFTPA also noted that, while broadcasters pay licence fees of 20% to 25% for CTF-funded dramas, licence fees drop to between 5% and 10% for non-CTF funded projects. In the CFTPA's view any incentive based on licence fees should exceed the minimum requirements of the CTF.

21. The Canadian Association of Broadcasters (CAB) pointed out that there is no marketplace incentive to commission Canadian drama. At an average cost of $1.85 per viewer, an original Canadian drama costs roughly ten times as much per viewer as a comparable U.S. program. CTV Inc. (CTV) and CHUM Limited (CHUM) noted that, while an average U.S. drama series costs from $3 million to $4 million per hour, an average of only $1 million per hour is spent on Canadian series drama. They added that this figure has not changed significantly for the past decade despite increases in costs. The CAB stated that a private, conventional broadcaster can expect to lose at least $100,000 per hour on Canadian drama, while an episode of U.S. drama will typically earn $275,000 for that broadcaster.

22. The Coalition of Canadian Audio-visual Unions (CCAU) submitted comments representing the views of the Alliance of Canadian Cinema Television and Radio Artists (ACTRA), the Directors Guild of Canada (DGC), the National Association of Broadcast Employees and Technicians (NABET) and the Writers Guild of Canada (WGC). The CCAU argued that it is crucial that private conventional broadcasters increase their

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[1] *Dramatic Choices – A report on Canadian English-language drama*; prepared by Trina McQueen for the CRTC and Telefilm Canada, May 2003.

financial support of Canadian drama. In the view of the CCAU, the largest broadcasters should be required to spend at least 7% of their gross revenues on Canadian drama. The CCAU noted that broadcasting in Canada is still a profitable business activity and that Canadian drama should be a part of a licensee's obligations even though it may not contribute to that profitability.

Commission's preliminary view

23. The Commission recognizes that English-language Canadian drama faces economic pressure from a number of sources. First, Canadian broadcasters have ready access to the most popular U.S. programs at a relatively low cost. The CAB noted that an original Canadian drama series costs roughly ten times as much per viewer as a comparable U.S. program. Second, the simultaneous substitution rules, which protect Canadian broadcasters' program rights, make the acquisition of U.S. drama more attractive and may negatively affect the scheduling of Canadian programs. Third, Canadian dramas with average production budgets of approximately $1 million per hour must compete with U.S. programs whose budgets are at least three times greater. Finally, in recent years the international market for Canadian programs has declined significantly.

24. In light of this, the Commission agrees that the lack of funding is a key contributor to the difficulties facing Canadian drama. Drama is generally expensive to produce and English-language Canadian drama programs have not, as yet, attracted audiences in the numbers that U.S. drama attracts. Those peak time Canadian programs that have garnered audiences of more than one million viewers have generally required significant public funding and, even then, have not earned a profit for the broadcaster.

25. The Commission also recognizes the important role of public funding in the production of Canadian drama. Public support, whether in the form of tax credits, equity investment or grants from federal and provincial governments, makes possible the production and broadcast of drama programs that the market simply cannot support on its own. In this respect, the Commission notes favourably the new emphasis placed by the CTF and Telefilm on broadcasters' audience track records. In the Commission's view, public policy designed to support Canadian television programming should, wherever possible, seek to attract larger audiences to such programming.

26. Although the government, not the Commission, determines the level of public funding that is set aside for Canadian drama, the Commission is cognizant of the role it plays in the creation of private production funds and of the important contribution that broadcast distribution undertakings make to the CTF as a result of the Commission's regulatory requirements.

Defining Canadian drama

27. In Public Notice 2003-54, the Commission set out its definition of drama (Category 7) and indicated that it would consider proposals to change the current definition if such changes could further the objectives of the proceeding.

28. Almost all of those who commented on the current definition said that it should be retained. The CFTPA, however, considered that the definition has become too broad and recommended the elimination of sub-categories 7(f) Comedy sketches, improvisation, unscripted works, stand-up comedy, and 7(g) Other drama. In the CFTPA's view, these sub-categories lack certain essential components of traditional drama programming, "…such as scripted storyline, characterization, dialogue and action, gesture, costume and scenery." In addition, the CBC submitted that the definition of a drama program must "explicitly exclude programs such as reality television productions".

Commission's preliminary view

29. Based upon the widespread support in the comments received for retention of the current definition of drama, the Commission does not propose to make any change. With respect to the CFTPA's comments, however, the Commission notes that sub-categories 7(f) and 7(g) do not qualify for the dramatic time credit incentive set out in *Implementation of TV Policy*, Public Notice CRTC 1999-206, 23 December 1999 (Public Notice 1999-206). In the Commission's view, any other incentives designed to support Canadian drama should continue to apply only to those programs in sub-categories 7(a) to 7(e).

30. Regarding the CBC's concern that "reality television productions" should be excluded from the definition of drama, the Commission notes that reality TV is included in the description for Category 11 General entertainment and human interest. While reality television may raise questions of overlap with other program categories, it has never been considered as Category 7 Drama.

Defining "original hours"

31. One of the Commission's objectives identified in Public Notice 2003-54 is to increase the amount of original hours of English-language Canadian drama. The Commission tracks original programs and repeats through its logging requirements. Licensees must identify whether a given program is:

- an original broadcast – i.e., a live program;
- a recording of a live program (first play) or other recorded program (first play); or
- a repeat broadcast of a program.

32. For the last decade, most licensees have not been required, either by regulation or by condition of licence, to broadcast specific quantities of "original" or "first run" programming. The regulatory requirements for Canadian content and current conditions of licence with respect to priority programming make no distinction between original and repeat hours. With respect to Canadian drama, the Commission has taken the view in recent years that broadcasters are best positioned to determine the appropriate balance between original and repeat programs.

33. A number of comments proposed that the Commission return to the practice of regulating original hours. For instance, the CCAU proposed a modified version of the Australian system, whereby points would be awarded for each original hour of Canadian drama, varying according to the licence fee paid. David Barlow, a writer of television programming, supported the idea of "making original Canadian drama a Canadian content priority."

Commission's preliminary view

34. The Commission is of the view that there should be an increased emphasis on original hours of Canadian drama. However, it considers that there is a need for greater clarity in the definition of "original". In *"First Run" Television Programming*, Public Notice CRTC 1988-197, 30 November 1988, an original, first run program was defined as a "program which has never before been distributed by any licensee of a broadcasting undertaking and which will be distributed for the first time by the licensee."

35. The Commission seeks comment on whether the above definition is appropriate in the context of regulatory action to support the production of more original, English-language, Canadian drama. Parties may wish to propose alternative definitions and should provide reasons for any different approach.

Drama directed to children

36. A number of comments focused on the need for the Commission to provide support for Canadian drama that is directed to children (i.e., those aged 2 to 12). Some noted that, prior to the publication of *Building on Success – A Policy Framework for Canadian Television,* Public Notice CRTC 1999-97, 11 June 1999 (the 1999 TV Policy), children's drama broadcast during children's viewing hours could claim a 150% time credit. In 1999, the policy changed so that only qualifying drama programs broadcast between 7:00 p.m. and 11:00 p.m. were entitled to the new credit. As a result, most children's drama programs were no longer eligible for the time credit.

37. The Shaw Television Broadcast Fund supported Trina McQueen's recommendation that children's drama receive a 150% time credit for the purpose of calculating Canadian content. Corus Entertainment Inc. also supported this approach for all children's drama, including animation. The CFTPA proposed that the credit be given only to live action children's drama. Global Television Network Inc. (Global) proposed that the credit be capped at one hour per day.

Commission's preliminary view

38. The Commission recognizes that drama directed towards children continues to be an important and successful genre of Canadian programming. High quality children's drama contributes as much to the fulfilment of the Act's objectives as any other type of drama. If children are exposed to attractive television drama programs that reflect their own

values and realities, it is reasonable to expect that they will be more likely to continue as viewers of adult Canadian drama. The Commission also recognizes that animation, an area in which Canadians have excelled, is a sub-genre of drama with particular appeal to children.

39. In light of the above, the Commission proposes to include, as part of any incentive to support Canadian drama overall, original Canadian drama directed towards children in sub-categories 7(a) to 7(e) when such programs are broadcast at times appropriate for children.

Drama earning less than 10 Canadian content points

40. In *Certification for Canadian Programs – A revised approach*, Public Notice CRTC 2000-42, 17 March 2000, the Commission announced that it had revised the point system it uses for the certification of Canadian programs. Conditions of licence with respect to Canadian drama programs are not limited to programs that achieve the full 10 Canadian content points. Licensees are able to fulfil conditions of licence by broadcasting Canadian drama programs that earn a minimum of 6 points. The 150% time credit for Canadian drama, however, is limited to 10-point drama programs.

41. Most of those who commented on this subject proposed that incentives should apply only to 10-point drama programs. Global proposed that, if an incentive based upon extra advertising minutes were to be considered, dramas earning a lower number of points should be included, although with a reduced benefit, such as 30 seconds of additional advertising rather than a full minute. Global noted that these dramas, "… provide valuable experience and international track records for Canadian creative and craftspeople without creating additional pressure on public funding mechanisms."

Commission's preliminary view

42. In the Commission's view, the primary focus of any action to support Canadian drama should be on those programs achieving 10 points. It is these programs that are most likely to tell Canadian stories and reflect Canadian values and realities. Nevertheless, the Commission finds merit in the proposal that the production of some lower point count dramas be encouraged. Further, the Commission considers that any regulatory incentives should minimize pressure on public funding mechanisms. Providing modest support for 8- and 9-point dramas, as the Commission proposes in this public notice, may provide producers with an alternative to CTF funding.

Effectiveness of regulatory requirements

43. In Public Notice 2003-54, the Commission asked interested parties to comment on the effectiveness of regulatory requirements, such as regulations or conditions of licence, and on regulatory incentives, in achieving the Commission's objectives.

44. Broadcasters opposed any return to the regulation of drama hours or expenditures. The CAB noted that the 1999 TV policy, which removed requirements for drama hours and expenditures, was established following an extensive public process. In the CAB's words, "… this policy framework is still relatively new, and should therefore be given more time to have an impact before substantive evaluation is undertaken." With respect to the effectiveness of regulatory requirements, the CAB noted that a volume-centred approach is "unlikely to succeed in building audiences for English Canadian drama". CHUM argued that, "in the long run, regulations in and of themselves can never create a successful Canadian dramatic production industry. They can only create an environment that will allow and nourish success".

45. Certain parties proposed a regulatory minimum requirement for either drama hours or expenditures, or both. Friends of Canadian Broadcasting (Friends) proposed requiring a minimum of two hours per week of Canadian drama broadcast between 8:00 p.m. and 10:00 p.m., Monday to Wednesday. The Province of British Columbia stated that the Commission should set a minimum requirement on the amount of drama to be broadcast, but did not propose a specific number of hours. The CFTPA suggested that the major conventional broadcasters be required to spend 7% or 8% of their revenues on drama, and that those unwilling to commit to appropriate expenditures be required to meet higher levels of priority programming. No minimum hourly requirements for drama programming were proposed by the CFTPA. The CCAU presented a detailed proposal for regulatory requirements. With respect to drama hours, it proposed a variation on the Australian model whereby the major station groups would be required by regulation to achieve a minimum number of points based upon the licence fee paid for each hour of original drama broadcast. In addition, starting in 2006, the CCAU proposed imposing conditions of licence requiring expenditures of at least 7% of a licensee's gross revenues on Canadian drama.

Commission's preliminary view

46. The Commission notes that regulatory measures are effective in ensuring minimum performance levels by licensees. The Commission's Canadian content regulation is an example of a necessary and effective quantitative requirement. These measures work best when the regulatory requirement is clear, measurable and within the direct control of the licensee. Prior to the 1999 TV policy, conditions of licence have been used to require major conventional television licensees to broadcast minimum hours of Canadian drama during peak time and to spend minimum amounts on Canadian programs.

47. The Commission has reviewed its past experience regulating both hours and expenditures on Canadian programming, including drama, through conditions of licence. While this approach provided a minimum "floor" that licensees must achieve, it did not necessarily motivate licensees to invest in the success of that programming. In the time since the 1999 TV policy came into effect, there has been no significant change in viewing to Canadian drama, in expenditures on Canadian drama, or in the total hours of Canadian drama broadcast in peak time.

48. The English-language conventional broadcaster groups have recently received licences that do not expire until 2008 and 2009. The earliest time that the Commission could amend their conditions of licence would be 2006 and 2007. While the Commission could introduce amendments to the *Television Regulations, 1987* (the Regulations) in order to require minimum hours of drama, the Commission is of the view that imposing regulatory requirements at this time would be inappropriate and unlikely to fulfil the objective of increasing the quantity of and viewing to Canadian drama programs, and that alternative mechanisms need to be attempted.

Effectiveness of regulatory incentives

49. Public Notice 2003-54 sought comments on the effectiveness of regulatory incentives in general, as well as comments on the specific incentive proposals contained in Trina McQueen's report. The Commission also made public a report prepared by Nordicity Group Ltd. entitled *Evaluation of the "Dramatic Choices" Report: Economic Considerations of Certain Audience-based Incentives* (the Nordicity report)[2] which set out a model to assess the financial impact of Trina McQueen's major proposals. These proposals were to reinstate the 150% time credit against Canadian content requirements, to permit an additional minute of advertising time for qualifying drama hours, and to offer a 200% credit for drama programs that achieve "hit" audience levels.

50. Almost all of those who commented on incentives supported Trina McQueen's proposals. However, a number of parties proposed modifications or clarifications, and one party, Alliance Atlantis Communications Inc. (Alliance Atlantis), opposed all incentives. In the view of Alliance Atlantis, incentives that translate into less Canadian content are counter-productive to the creation of successful drama that attracts audiences and advertisers. Alliance Atlantis also stated that the extra minute of advertising, "may only serve to discount advertising rates and increase the reliance conventional broadcasters have on programs they can simulcast because the revenue generating potential has increased by one full minute on their most popular shows."

51. The CFTPA, Friends, the CAB, and individual broadcasters all supported the restoration of the 150% time credit for Canadian drama. Prior to 1999, the Commission awarded a 150% time credit against Canadian content requirements to licensees who broadcast qualifying Canadian drama programs in peak viewing periods. The additional advertising minute incentive was supported by the larger broadcasters and the CCAU. CHUM noted that this incentive would favour the larger broadcasters and could negatively impact the sale of advertising time by medium and smaller broadcasters. CHUM proposed a cap of 22 extra minutes per year. Craig Media Inc. (Craig) opposed the advertising incentive. Virtually all broadcasters supported an incentive based on the amount of viewing that a program receives, but suggested that further research was needed to determine how a "hit" would be calculated.

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[2] Prepared for the CRTC by Nordicity Group Ltd., September 2003.

Commission's preliminary view

52. Incentives, by definition, act as an encouragement for licensees to take appropriate action. They are flexible regulatory tools that permit an individual broadcaster to determine first, whether to utilize the incentives proposed and second, to do so in a manner tailored to the broadcaster's own programming strategy. Incentives, if properly calibrated, would encourage broadcasters to work cooperatively with producers in order to ensure the production of high quality programming that is promoted and scheduled in a manner that attracts and retains the largest possible audience. The Commission considers that existing regulatory requirements, coupled with new regulatory incentives, should fulfil the Commission's objective of increasing the number of original hours of English-language Canadian drama and the number of viewers to those hours. It has therefore determined that additional regulatory requirements would be inappropriate at this time.

Incentive rewards

53. Two main incentive rewards were proposed in the submissions of interested parties. The first of these, time credits, would permit licensees to air an additional amount of non-Canadian programming. The second, extra advertising minutes, would permit licensees to broadcast more than 12 minutes of advertising in a given hour. In addition, a few parties proposed that another reward could be a reduction in the Part II licence fees payable pursuant to the *Broadcasting Licence Fee Regulations, 1997*. The Commission has analysed each of these potential incentive rewards.

Time credits against Canadian content

54. The 150% drama time credit noted above effectively permitted licensees to replace Canadian programs with more profitable non-Canadian programs. As part of the 1999 TV Policy, the Commission removed the application of the 150% time credit from all programming other than the eight hours per week of priority programming required by condition of licence. Accordingly, since 1999, while licensees have been able to reduce the minimum amount of priority programming they broadcast through the use of dramatic time credits, they have not been able to use such time credits to reduce their Canadian content below the minimum levels set out in the Regulations.

Commission's preliminary view

55. In the Commission's view, an incentive that would permit the use of drama time credits to reduce required Canadian content levels raises a number of serious concerns. First, there is the fundamental contradiction that, by granting a time credit to encourage more Canadian drama, the Commission would be permitting licensees to broadcast less Canadian programming overall. Second, the Commission considers that the likely result of a time credit for drama would be to encourage licensees to schedule Canadian

programs at off-peak times or in low viewing periods of the year. In addition, the ability to schedule more profitable non-Canadian programs would likely drive licensees to make even more use of simultaneous substitution, thus creating greater scheduling problems for the remaining Canadian priority programs.

Additional advertising minutes

56. The proposal to use additional advertising minutes as an incentive was first raised by Trina McQueen in her report *Dramatic Choices*. As noted above, the concept received broad support from those who submitted comments, with only a few parties expressing concern. Section 11 of the Regulations sets a limit of 12 minutes of advertising material in any clock hour in a broadcast day, except as provided in the Regulations or by a condition of licence. Where a program occupies two or more consecutive hours, the minutes may be averaged over the length of the program. Promotions for Canadian programs and for Canadian feature films do not count as advertising material.

Commission's preliminary view

57. In contemplating an incentive based upon extra advertising minutes, the Commission's first concern is the impact that this may have on the viewing public. In this regard the Commission notes that the most valuable advertising time for English-language broadcasters is that placed in popular U.S. programs – particularly those with extraordinarily high ratings such as the Super Bowl, the Academy Awards and popular dramas or reality shows. U.S. broadcasters have no regulated limits on advertising. Typically, the U.S. programs that Canadian licensees acquire have between 14 and 16 minutes of commercial breaks in each hour. Canadian broadcasters can only use 12 minutes of these breaks for advertising material and, therefore, fill the remaining two to four minutes with promotions for Canadian programs, public service announcements or newsbreaks. This means that viewers are already experiencing program breaks that cumulatively exceed 12 minutes per hour. If Canadian broadcasters were permitted to sell a limited amount of additional minutes, there would still be time available for the promotion of Canadian programs without increasing the number of minutes of program interruptions per hour.

58. The sale of advertising time is, of course, the life blood of commercial broadcasters. Advertising minutes, particularly those placed in the most popular programs, have significant value. Thirty second spots broadcast during the Super Bowl or Academy Awards can reach $90,000, while those airing during games of the Stanley Cup Finals or during the Grammy Awards cost in the $50,000 range. Nordicity, in its report prepared for the Commission, submitted that an average value for 30 seconds of advertising aired during peak time U.S. programs was $40,000. Of course, advertising time on smaller conventional stations, or on specialty services, has a lower value.

59. Financing is at the heart of the drama issue. English-language Canadian drama rarely represents an opportunity for business success. With little opportunity for profit, broadcasters may be less willing to invest in the promotion and scheduling of Canadian drama in order to maximize audiences. An incentive approach that seeks to make Canadian drama at least a break-even proposition should encourage broadcaster investment in drama programming. Moreover, such an approach would also provide another source of funding to complement public funding.

60. Additional advertising time may be an effective incentive for a number of reasons. It has significant commercial value, particularly for the major television broadcasters who are in a position to attract the largest audiences to Canadian drama. In addition, the amount of the reward can easily be adjusted to take into account the nature of the dramas broadcast, the size of the audience attracted or the financing structure and/or licence fees. Finally, an advertising incentive would not result in any reduction of Canadian content or any increase in program interruptions.

61. The Commission acknowledges the concerns raised by certain specialty broadcasters and smaller conventional television licensees. These concerns related to the possible negative effects of increasing advertising inventory, particularly in the most popular programs. In formulating its detailed proposals, the Commission has attempted to balance the concerns expressed by smaller broadcasters against the benefits that it expects would result from an effective incentive to broadcast more original Canadian drama and to attract larger audiences to these programs. On this basis, the Commission has decided to propose incentives that would permit the broadcast of extra advertising minutes as the reward.

Reduction in Part II Fees

Commission's preliminary view

62. The Commission notes that section 11(2)(b) of the Act gives the Commission the ability to provide for lower fees if, for example, licensees fulfil certain programming objectives set by the Commission. However, any such proposal would require a change to Commission regulations and approval by Treasury Board. Further, the Commission notes that the Standing Joint Committee on the Scrutiny of Regulations reported on the matter of Part II licence fees on 27 October 2003. This Committee and the Standing Committee on Canadian Heritage both made recommendations with respect to Part II fees.

63. On 25 March 2004, the government provided a preliminary response to the Standing Joint Committee on the Scrutiny of Regulations. The government stated that it was continuing its examination of this issue and noted that, because of ongoing litigation, it was premature to comment further.

64. In the Commission's view, it would be inappropriate to propose an incentive reward based upon a reduction of Part II fees in the absence of an announcement of government policy in this area.

Incentive triggers

65. In Public Notice 2003-54, the Commission identified increases in original hours of Canadian drama and increased viewing to those hours as its primary objectives. The CCAU and other parties in the process identified increased spending on Canadian drama as a further important objective. The Commission considers that a package of incentives that addresses these three objectives will be most effective. Accordingly, it proposes for public comment incentives that are based upon three different triggers: first, the broadcast of qualifying drama hours; second, an increase in viewing to Canadian drama overall; and third, an increase in spending on Canadian drama. The proposed incentive rewards for increasing viewing and expenditures are based upon the reward for qualifying drama hours broadcast in a given year.

Incentives for original hours

Commission's preliminary determination

66. As discussed earlier in this notice, the Commission considers that the focus of any drama incentive program should be on the broadcast of original hours only. Encouraging licensees to broadcast more original hours of Canadian drama would have a direct and positive impact on the independent production sector and the employment of Canadian creative talent and crafts persons. In the Commission's view, more original hours would also attract more viewers to Canadian programming.

67. In order to determine the level of incentives that would encourage the production of more original English-language drama, the Commission used data from the Nordicity report, the CTF Activity Reports and the submissions received in this proceeding. The Commission proposes a three-part incentive model developed for the purpose of differentiating between high cost drama productions having CTF funding, other high cost drama productions that do not have CTF funding, and low cost drama productions that are also produced without CTF funding. In addition, the Commission proposes a mechanism for utilisation of additional advertising minutes earned through the broadcast of all three of these types of drama productions.

High cost, CTF-funded drama

68. The first part of the incentive model would apply to original 10-point drama to be broadcast in peak time (7:00 p.m. to 11:00 p.m.) with production budgets of $800,000 per hour or more and with a minimum licence fee of $240,000 per hour, the current CTF threshold. According to the Nordicity study, the larger conventional television ownership groups can expect to receive approximately $75,000 in advertising revenue from the broadcast of two plays of such programs. This would result in an estimated net loss of $165,000 per hour (the licence fee of $240,000 less advertising revenues of $75,000).

69. As an incentive, the Commission proposes to allow the broadcast of an additional two-and-a-half minutes of advertising for each hour of original 10 point drama broadcast in peak time, having a production budget of at least $800,000 per hour and a licence fee of at least $240,000 per hour. Using the Nordicity estimate of $80,000 of advertising revenue per minute for the large television broadcasters, this incentive could result in an additional $200,000 in advertising revenues for the broadcaster for each original hour of high budget Canadian drama broadcast. This would result in such drama programming potentially earning a profit of $35,000 per hour for the broadcaster. This economic model is based on the assumption that the production is supported by the CTF.

Other high cost drama, produced without CTF funding

70. As explained earlier in this public notice, the CAB and others indicated in their submissions that CTF funding has not kept pace with the demand for funding for English-language Canadian drama programming. The CAB noted that, even were the Federal Government to restore its contribution to the $100 million level, the funding gap would continue to be a serious problem. The Commission notes that, although the government has confirmed that it will contribute $100 million to the CTF in 2004/05 and 2005/06, a funding gap would likely continue, as evidenced by the fact that the CTF drama envelope has been over-subscribed in recent years.

71. In order to address the limited funding available from the CTF, the Commission proposes, as the second part of its incentive model, to permit four minutes of advertising in addition to the two-and-a-half minutes noted above for productions that do not receive CTF funding. The revenue from these advertising minutes could serve as a replacement for funding that would otherwise be provided by the CTF to support qualifying drama with budgets of $800,000 per hour or more. In 2001/02, the CTF provided an average of 37% of the funding for English-language drama productions. The average production budget in that year was $800,000 per hour. Preliminary data from the CTF for 2002/03 indicates that both the average CTF percentage contribution and the average production budgets for English-language drama have increased. The Commission estimates that an additional four minutes of advertising per hour would be required in lieu of CTF funding in order to complete the financing for high budget drama productions. The additional four minutes would be available only for productions that do not receive CTF funding.

72. The Commission expects broadcasters to work creatively with producers to ensure that the advertising revenue that broadcasters receive from the additional four minutes of advertising flows through to the production. The intent of the proposal is that the revenues associated with the four additional advertising minutes be used to compensate a producer for the absence of CTF funding. Revenues earned under this provision and passed on to producers would not to be counted as Canadian programming expenditures on CRTC annual returns.

73. The broadcaster would still benefit by receiving two-and-a-half minutes of additional advertising per hour for airing the same original production. Furthermore, drama productions financed without CTF funding would facilitate the attainment of the rewards for achieving a minimum group viewing threshold, as described below. The associated licence fees for the production would also assist a broadcaster to obtain a proposed drama expenditure reward, also described below.

Low cost drama

74. The third part of the incentive model would apply to 8- to 9-point drama programs, and 10-point drama programs having production budgets of under $800,000 per hour. The Commission considers that the production of lower point Canadian drama would benefit the system by developing creative talent and production infrastructure. In order to provide a continued incentive for broadcasters to license these productions, the Commission proposes to permit broadcasters who air 8- to 9-point drama programs, and 10-point drama programs having production budgets of under $800,000 per hour, an additional half minute of advertising beyond the regulatory limit for each original hour broadcast.

Utilizing additional advertising minutes

75. The Commission proposes that, under the incentive model for the three types of drama productions described above, the additional advertising minutes would be available for each conventional television station that broadcasts the original drama production. The Commission proposes that there would be no carry-over of advertising minutes from one broadcast year to the next.

76. The incentives for the broadcast of original Canadian drama productions would also be available to individual specialty services. The additional minutes could be aired in any program broadcast by the specialty service that has broadcast the qualifying original drama program (provided that the extra minutes are aired in the same broadcast year as the qualifying drama). The Commission recognizes that this incentive model is generally based on the economics of the larger conventional television systems, but is of the view that some specialty services, as well as smaller conventional television licensees, may be able to take advantage of the incentives available for lower budget drama productions.

77. No additional advertising minutes would be available for original drama productions that received funding as part of a transfer benefit or a commitment given at the time of licensing.

78. In determining production budgets, the Commission expects parties to follow the business policies of the CTF, in particular, the Accounting and Reporting Requirements and the Producer’s Fees and Corporate Overhead Policy.

Incentives for attracting increased viewing to Canadian drama

79. Increased viewing to Canadian drama programs is one of the key objectives identified by the Commission in Public Notice 2003-54. In her report, Trina McQueen proposed incentive rewards for "hit" drama, which she defined as an episode drawing one million viewers to a conventional television station, or 500,000 viewers to a specialty service. An incentive trigger based upon viewing received strong support in principle in the comments received, although most parties considered that more work was required to develop an appropriate trigger point that would take into account the varying reach of individual licensees. Several parties recommended that any assessment of viewing to Canadian drama should measure the cumulative audience to all drama, not just the size of the audience for the original broadcast. The CAB also recommended setting a specific goal for the industry to achieve over a defined period of time. In the view of the CAB, a demanding but attainable objective would be to increase viewing by Anglophones to Canadian drama, as a percentage of viewing to all drama, from the present 11% to 15%, over a period of five years.

Commission's preliminary view

80. The Commission sees merit in establishing an industry goal. Having an industry goal would not only provide a clear overall objective, but would also provide a means to measure the effectiveness of regulatory incentives. However, the Commission notes that the measurement proposed by the CAB would be based upon BBM fall diary data, and would represent a percentage of all the drama available to Canadians – including drama on non-Canadian services. In the Commission's view, it would be more appropriate to base an incentive on the viewing to Canadian drama as a percentage of viewing to all drama on Canadian services. This would give licensees a greater degree of control than they would have if the viewing to non-Canadian services were included in the base. BBM diary data for 2002 shows that viewing to Canadian drama, as a percentage of viewing to all drama on Canadian English-language services, was approximately 14%.

81. The Commission also proposes that the viewing percentages that would serve as the basis for any incentive model should be calculated using metered data throughout the entire broadcast year, as opposed to the BBM fall diary data. The Commission is currently working with the CTF, Telefilm, Mediastats and interested government departments to refine a methodology that will facilitate the addition of country of origin and program genre for each program captured by both the BBM Canada and Nielsen Media Research people meter databases. These two additional data fields will be available for programs broadcast beginning 1 September 2003. The Commission proposes to review the results of the project for the 2003/04 broadcast year, as they become available, with a view to setting an overall industry objective early in the 2004/05 broadcast year. The viewing incentive would be based on the viewing to Canadian drama as measured against the viewing to all drama aired across all the conventional television and specialty services that form part of an ownership group[3]. The

[3] For the purpose of this notice an ownership group is defined as more than one conventional television station or specialty service owned or controlled by the same person or entity.

targets for each of the ownership groups would also be established in the fall of 2004 for the 2004/2005 to 2009/2010 broadcast years. The Commission would review the results with broadcasters on an annual basis to determine whether their targets have been achieved.

82. To establish the objectives for each of the individual ownership groups, the Commission would first compare the current level of viewing to Canadian drama across the industry to an overall industry objective. To qualify for a viewing incentive reward, each ownership group would be required to increase the percentage of viewing to Canadian drama across all of the conventional television and specialty services in the group to the percentage of viewing to all drama aired by those services. The required annual increase could be set at a level of 20% of the difference between the current industry level and the industry objective. For example, using the current BBM fall diary statistics to explain the model, the Commission could establish an objective for an increase in the viewing to Canadian drama on English-language Canadian services over a five-year period, from the current industry average of 14% to 20%. In this case, to qualify for an incentive, an ownership group would be required to increase its viewing by six percentage points over 5 years, or by 1.2 percentage points per year. The Commission expects that it will be able to propose the precise viewing objective for the industry in the Fall of 2004, once the metered viewing data becomes available.

83. The Commission proposes that the incentive for meeting the viewing targets would be additional advertising minutes that could be used in the following broadcast year. For example, if an ownership group increased its viewing by 1.2 percentage points in year 1, it would receive additional advertising minutes in the following year. In year 2, the group would be required to achieve an increase in the ratio of viewing to Canadian drama, as compared to total drama viewing, of 2.4 percentage points over the initial base in order to receive the incentive reward of additional advertising minutes in year 3. In order to receive the reward in year 6, the ownership group would be required to increase its viewing percentage in year 5 by six percentage points from the 2003/04 base level.

84. The Commission proposes that a conventional station or a specialty service would be entitled to an incentive reward equal to 25% of the additional advertising minutes accumulated by the station or service for the broadcast of original hours of drama programming in the same broadcast year. For the purpose of the viewing incentive, each conventional television station within an ownership group would be permitted to air the additional minutes in the broadcast year following that in which they are earned. The additional minutes could be inserted in any program broadcast by the stations that broadcast the original drama hours. Each specialty service within an ownership group would also be entitled to an incentive equal to 25% of the additional advertising minutes accumulated for the broadcast, on the service, of original hours of drama programming in the same broadcast year. Specialty services within the ownership group would be permitted to air the additional minutes, in the next broadcast year, in any program broadcast by the service that broadcast the original drama hours.

Incentives for increased expenditures on Canadian drama

Commission's preliminary view

85. A number of parties, including the CFTPA and the CCAU, proposed a return to expenditure regulation. For the reasons noted earlier, the Commission does not consider it appropriate to regulate expenditures at this time. However, it does consider that, in order for its objectives to be fulfilled, spending on Canadian drama must be maintained and should be increased. Accordingly, the Commission is proposing an incentive that would be triggered by an increase in spending on Canadian drama.

86. The Commission proposes to establish an overall objective for expenditures on Canadian drama that would represent 6% of the total revenues earned by the Canadian private television industry, to be achieved over a five-year period. Each ownership group would be encouraged, through the incentive of additional advertising minutes, to increase its Canadian drama expenditures, as a percentage of revenue earned by its conventional television services, by an amount equal to the difference between the current industry average and the 6% industry objective.

87. As an example, in each of 2002 and 2003, English-language private conventional television licensees expended a combined average of 4.0% (excluding the CTF top-up) of their total revenues on Canadian drama. In order to be entitled to the incentive reward, each ownership group would be required to increase the spending by its conventional television stations on Canadian drama, as a percentage of total revenues, by 0.4 percentage points per year, or by two percentage points over a five-year period. The Commission notes that, for the purpose of this incentive, CTF "top-up" funding would be excluded from the calculations.

88. The Commission will review the financial results for the 2003/04 broadcast year for each of the ownership groups before setting the incentive triggers for each group for 2004/05 to 2009/10. The annual reporting of broadcast year financial results, including program spending, is not usually provided to the Commission until the end of November following the end of the broadcast year. The Commission would expect each ownership group wishing to take advantage of the incentives to provide, in the annual returns filed by its licensed undertakings, the calculations necessary to demonstrate that the group has met the expenditure target. If an ownership group has met the target, its members would be entitled to use the additional advertising minutes commencing on the date that their annual return is filed with the Commission. Broadcasters would have the remainder of the broadcast year to broadcast the additional minutes.

89. Broadcasters would not be permitted to include expenditures on Canadian drama programming undertaken to fulfil transfer benefits or commitments given at the time of licensing in the calculations used to determine whether the incentive targets have been met. They would be required in their annual returns to clearly identify and separate program expenditures used to fulfil transfer benefits and new licensing commitments from on-going program spending.

90. The Commission is currently reviewing the annual returns for specialty services with a view to determining how best to monitor their spending on individual program categories, as is now done in the case of the annual returns filed by the licensees of conventional television services. At this time the Commission does not collect information with regard to expenditures by program category for specialty services. The potential qualification of specialty services for the drama expenditure incentive model will be reviewed at a later date.

91. The Commission proposes that each conventional television station within an ownership group that has met its expenditure target would be entitled to an incentive reward equal to 25% of the accumulated minutes earned through the broadcast of original hours of drama programming in the same broadcast year as the expenditures were made. The stations would be permitted to air the additional minutes in the next broadcast year in any program broadcast on the station.

Impact of advertising incentives

92. As noted earlier, the Commission considers that any additional advertising minutes are likely to be placed by most licensees in high-value non-Canadian programming. The average English-language conventional television station broadcasts approximately 14 hours per week of U.S. entertainment programming in peak time. The U.S. programming purchased by Canadian conventional television broadcasters normally contains between 14 and 16 minutes of advertising material per hour. Because conventional television stations are limited by regulation to a maximum of 12 minutes per hour of advertising, there would be a minimum of two minutes per hour of potential additional advertising time available to Canadian broadcasters. Over a year, this would represent a potential of at least 1,456 minutes of advertising available to each Canadian conventional television licensee for insertion in non-Canadian programming broadcast during peak time.

93. Based upon the Commission's proposed incentive package, a station that broadcasts approximately 65 hours of qualifying original Canadian drama per year, and obtains both the 25% viewing and expenditure incentives, could broadcast approximately 200 additional minutes of advertising in a year. The dollar value of these extra minutes would be a significant contribution to the production of Canadian drama.

Implementation and monitoring

94. The Commission proposes that any incentives based upon additional advertising time would be implemented by way of condition of licence. Conventional television licensees that wish to participate in the incentive program would apply for a condition of licence permitting them to broadcast additional minutes of advertising material, in addition to the 12 minutes per hour permitted by section 11 of the Regulations. Specialty licensees would apply to amend the advertising limits set out in their conditions of licence.

95. The Commission expects that applications seeking the conditions of licence necessary to implement the new incentives could be approved early in 2005. Licensees would be able to accumulate advertising credits from the beginning of the 2004/05 broadcast year. However, licensees would not be permitted to broadcast the additional advertising minutes until the appropriate conditions of licence have been approved.

96. The Commission would monitor the performance of those licensees participating in the incentive program through a combination of the annual returns and annual reports submitted by the participating licensees, and the Commission's logs. The details of the monitoring plan are set out below.

Evaluation of the incentive package

97. The Commission has proposed viewing and expenditure targets to be achieved by the industry over a five-year period. Nevertheless, the Commission would evaluate the industry's progress towards these targets on an annual basis. The results of this evaluation would be made public in the Commission's Broadcast Policy Monitoring Report. If the annual results do not demonstrate sufficient progress towards the targets, the Commission could introduce necessary changes to its policy at any time.

Summary of the proposed incentive package

98. Based upon the comments received in response to Public Notice 2003-54 and on the available economic data, the Commission proposes, for comment, the following package of incentives designed to increase the broadcast hours of original Canadian drama, increase viewing to Canadian drama, and increase expenditures on Canadian drama. Appendices 4 and 5 summarize the criteria for qualifying dramas and how the incentive package could work for an ownership group.

Incentives to broadcast original hours of Canadian drama

99. These incentives have, as their objective, an increase in the broadcast of original hours of Canadian drama. There are three different triggers, each with a different reward.

- **Trigger**: the broadcast of 10-point, original, CTF-funded drama in peak time (7:00 p.m. to 11:00 p.m.) with a production budget of at least $800,000 per hour and a minimum licence fee as established by the CTF.

  Reward: two-and-a-half minutes of additional advertising for each original hour broadcast.

- **Trigger:** the broadcast of 8- to 10-point, original drama at any time or 10-point original drama broadcast in peak time, having a production budget of less than $800,000 per hour.

  Reward: half a minute of additional advertising for each original hour broadcast.

- **Trigger**: the broadcast of 10-point, original drama, broadcast in peak time (7:00 p.m. to 11:00 p.m.) having a production budget of at least $800,000 per hour and a minimum licence fee as established by the CTF, but without having CTF funding.

  Reward: A total of six-and-a-half minutes of additional advertising time for each original hour broadcast – i.e. the two-and-a-half minutes earned under the first trigger described above, plus four minutes for not accessing CTF funding.

100. In the case of each trigger, hourly production budgets would be determined on the basis of CTF business policies. Implementation of the triggers and rewards would be by condition of licence.

101. Licensees would be required to submit a report to the Commission at the end of each broadcast year, specifying the following:

- the number of qualifying hours broadcast including titles, episode number and date and time of broadcast on each conventional television or specialty service;

- the production budget of each qualifying hour broadcast and an identification of those productions financed with revenues derived from the additional four minutes of advertising provided in lieu of CTF funding; and

- the name, time and date of broadcast of the programs in which the extra advertising minutes were placed.

102. As required, the Commission will cross-check a licensee's reports against the Commission's logs data.

Incentive to increase viewing to Canadian drama

103. The objective of this incentive is to increase the viewing to Canadian drama on Canadian English-language services, as a percent of all drama viewing on Canadian services.

- **Trigger**: an annual increase in the ratio of total viewing to all Canadian drama compared to total drama viewing by all stations and specialty services within a broadcast group. The increase would be measured using metered data throughout the broadcast year.

  Reward: 25% of the additional advertising minutes earned by the broadcast of qualifying original Canadian drama programs.

104. Licensees taking advantage of the incentive would be required to submit a report to the CRTC at the end of each broadcast year providing the same information as that specified above in paragraph 101. Implementation would be by condition of licence.

Incentive to increase expenditures on Canadian drama

105. This incentive has as its objective an increase in the spending on Canadian drama by the English-language conventional television industry, as a percent of total revenues, from 4% to 6% over a five-year period.

- **Trigger**: a total increase by all conventional television stations within a broadcast group of 0.4 percentage points in annual expenditures on Canadian drama.

  Reward: 25% of the additional advertising minutes earned for the broadcast of qualifying original Canadian drama programs.

106. Licensees taking advantage of the incentive would be required to provide the appropriate calculations with their annual returns in order to enable the Commission to monitor performance. Again, implementation would be by condition of licence.

The regulatory framework

107. The Commission considers that, if the proposed incentive package is implemented, the regulatory framework with respect to Canadian content and priority programming requirements should remain unchanged until there has been sufficient opportunity to evaluate the effect of the new incentives. Accordingly, licensees will be required to continue to fulfil conditions of licence relating to priority programming. The existing 150% and 125% dramatic time credits against priority programming will remain in effect. There will be no change to the Canadian content regulations.

108. The proposed package of incentives would apply to the licensees of all conventional, private, English-language television stations, as well as to the licensees of those English-language specialty television services that are permitted by condition of licence to broadcast Category 7 programs. The proposed incentive package would also apply to the English-language television services of the CBC. The Commission recognizes the vital role that the CBC has played in developing, broadcasting and attracting audiences to Canadian drama. The Commission also notes that, in its submission, the CBC underlined that stable and predictable financing is what the CBC needs most.

109. In the CBC's view the audience-based incentives proposed by Trina McQueen would not be of benefit to the CBC. The Commission, however, notes that the CBC carries certain types of programming that has significant value to advertisers – in particular, sports and foreign feature films. Further, advertising revenues make up a significant portion of CBC's overall budget. Accordingly, the Commission considers that the proposed incentive package may, in fact, have some value to the CBC.

Licence fee top-ups

110. A number of parties submitted that the practice of allowing money received from the CTF to count towards Canadian program expenditure (CPE) obligations for specialty services lowers the amount of money a service must invest in Canadian programming. Parties also argued that the practice puts pressure on the CTF as it gives licensees an additional incentive to seek CTF funding. In this regard, it was suggested that services are often willing to pay higher licence fees in order to increase the likelihood of receiving CTF funding.

111. The Commission notes that the existing CPE requirements were partly based on the projected CTF licence fee top-ups for each service. If the licence fee top-up was deemed to be ineligible in the future, fairness would require that a public process be held to re-calculate the CPE requirements for each service. The end result would likely be a similar amount of money spent on Canadian programming, only calculated differently. Accordingly, the Commission does not propose any change to the way in which licence fee top-ups are claimed at this time.

At risk equity

112. At risk equity refers to equity investments in drama productions that have no guarantee of a return. Currently, licensees of specialty services may only claim the losses on equity investments as Canadian program expenditures. Conversely, pay services are authorized to use equity investments to fulfil their CPE obligations.

113. In recent years very few equity investments in Canadian programming have been undertaken by Canadian specialty services. In contrast, pay services have traditionally financed Canadian feature films by way of equity investments. The Commission considers that permitting specialty services to count at risk equity against CPE requirements could result in the increased willingness and ability of those few specialty services that commission original Canadian drama to make equity investments.

114. The Commission agrees with the positions of Telefilm and the CCAU who submitted that an equity investment is not truly at risk if it has some return that is guaranteed. In these cases, it is more akin to a loan or advance. In accepting equity investments to count against CPE requirements, the Commission would require that the investment be demonstrably “at risk”. The Commission seeks comment on the most appropriate means to ensure that broadcaster investments are truly at risk and do not replace appropriate licence fees.

Reflecting Canada’s diversity

115. Drama is an important way to reflect and share culture. Public Notice 2003-54 emphasized that “drama can and should reflect Canadians of every background and culture to each other”. While few comments raised the issue of diversity in Canadian drama programming, the Commission considers that it is a crucial element that must be taken into account by producers and broadcasters alike in the development of new drama projects.

116. The Commission has taken a number of measures to meet cultural diversity objectives. In the 1999 TV policy, emphasis was placed on the role and responsibility of television licensees to accurately reflect the cultural diversity of Canadians in their programming. To aid this objective the Commission, in the same public notice, indicated its support for an industry and community task force to examine the issue of cultural diversity. The creation of the Task Force on Cultural Diversity was announced in *Representation of cultural diversity on television – Creation of an industry/community task force*, Public Notice CRTC 2001-88, 2 August 2001. The task force is expected to publish its report shortly. In addition, most licensees are required to file annual cultural diversity plans which describe how each is meeting the cultural diversity objectives within its corporate organization and in its programming. These reports are available for public consultation.

117. In the Commission’s view, the mechanisms are in place to encourage licensees to ensure that the original Canadian drama they broadcast reflects Canada’s diversity.

Call for comments

118. The Commission seeks comment on its proposals for the incentives described in this public notice. Specifically, the Commission seeks comment on the following questions:

1. For the purpose of the proposed incentives, please comment on the following definition for an original program:

> An original program is a program that has never before been distributed by any licensee of a broadcasting undertaking and that will be distributed for the first time by the licensee.

2. The Commission proposes incentives for Canadian drama programs directed to children when such programs are broadcast at times of the day that are appropriate for children. Should the Commission define these time periods? If so, what specific hours of the day should be considered as appropriate for television viewing by children?

3. Is two-and-a-half additional minutes of advertising for each original hour of high cost, 10-point Canadian drama broadcast in peak time an appropriate incentive reward? If not, what would be the appropriate incentive?

4. Is thirty seconds of additional advertising for 8- and 9-point Canadian drama, or for 10-point drama broadcast outside peak time, an appropriate incentive reward? If not, what would be the appropriate incentive?

5. Will the proposed incentive of an additional four minutes of advertising for drama programs that are not funded by the CTF help reduce pressure on the CTF, while still encouraging broadcasters to acquire new Canadian drama?

6. How can the Commission best ensure that revenues derived from the additional four minutes of advertising for drama programs that are not funded by the CTF flow through to Canadian drama production?

7. Is an increase of 0.4 percentage points in annual spending on Canadian drama an appropriate trigger for an incentive reward? If not, what would be the appropriate increase?

8. Is the reward for achieving the viewing or expenditure targets (25% of the minutes earned through the broadcast of original hours of drama) appropriate? If not, what would be the appropriate incentive?

9. Is it necessary, or appropriate, to place a cap on the number of extra advertising minutes earned? If so, what should that cap be?

10. Will the proposed incentive program for drama impact negatively on other program categories such as documentary? If so, what could be done to minimize any negative impact?

11. Please comment on the Commission's proposed five-year viewing and expenditure targets. Should such targets be established for a shorter period of time, such as three years? If so, what would be appropriate viewing and expenditure targets over a three-year period?

12. How should the Commission ensure that broadcaster equity investments are demonstrably at risk investments? Are any other safeguards necessary or appropriate?

119. The Commission will accept comments that it receives on or before **Monday, 21 June 2004.**

120. The Commission will not formally acknowledge comments. It will, however, fully consider all comments and they will form part of the public record of the proceeding, provided that the procedures for filing set out below have been followed.

Procedures for filing comments

121. Interested parties can file their comments to the Secretary General of the Commission by using ONE of the following formats:

- Intervention/Comments form
  available from the Commission's web site by indicating and selecting the public notice number under the *Decisions, Notices and Orders* section

  OR

- **by electronic mail to**
  procedure@crtc.gc.ca

  OR

- **by mail to**
  CRTC, Ottawa, Ontario K1A 0N2

  OR

- **by fax at**
  (819) 994-0218

122. Submissions longer than five pages should include a summary.

123. Please number each paragraph of your submission. In addition, please enter the line ***End of document*** following the last paragraph. This will help the Commission verify that the document has not been damaged during transmission.

124. The Commission will make comments filed in electronic form available on its web site at www.crtc.gc.ca but only in the official language and format in which they are submitted. Such comments may be accessed in the *Public Proceedings* section of the CRTC web site. Copies of all comments, whether filed on paper or in electronic form, will also be placed on the public examination file.

125. The Commission encourages interested parties to monitor the public examination file and the Commission's web site for additional information that they may find useful when preparing their comments.

Examination of public comments and related documents at the following Commission offices during normal business hours

Central Building
Les Terrasses de la Chaudière
1 Promenade du Portage, Room G-5
Gatineau, Quebec K1A 0N2
Tel: (819) 997-2429 - TDD: 994-0423
Fax: (819) 994-0218

Metropolitan Place
99 Wyse Road
Suite 1410
Dartmouth, Nova Scotia B3A 4S5
Tel: (902) 426-7997 - TDD: 426-6997
Fax: (902) 426-2721

405 de Maisonneuve Blvd. East
2nd Floor, Suite B2300
Montréal, Quebec H2L 4J5
Tel: (514) 283-6607
Fax: (514) 283-3689

55 St. Clair Avenue East
Suite 624
Toronto, Ontario M4T 1M2
Tel: (416) 952-9096
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Kensington Building
275 Portage Avenue
Suite 1810
Winnipeg, Manitoba R3B 2B3
Tel: (204) 983-6306 - TDD: 983-8274
Fax: (204) 983-6317

Cornwall Professional Building
2125 - 11th Avenue
Room 103
Regina, Saskatchewan S4P 3X3
Tel: (306) 780-3422
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10405 Jasper Avenue
Suite 520
Edmonton, Alberta T5J 3N4
Tel: (780) 495-3224
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530-580 Hornby Street
Vancouver, British Columbia V6C 3B6
Tel: (604) 666-2111 - TDD: 666-0778
Fax: (604) 666-8322

Secretary General

This document is available in alternate format upon request and may also be examined at the following Internet site: http://www.crtc.gc.ca

Appendix 1 to Broadcasting Public Notice CRTC 2004-32

Number of Drama and Comedy Program Hours Scheduled During Peak Viewing Hours (7 p.m. to 11 p.m.)

The following tables (Tables 1.1 to 1.4) set out the number of drama/comedy (category 7) Canadian program hours scheduled for the 1998/99 to 2002/03 broadcast years during the peak viewing period of 7 p.m. to 11 p.m. for the following conventional television stations:

- CFTO-TV Toronto (CTV)
- CIII-TV Toronto (Global)
- CBLT Toronto (CBC)

Note to tables:

- *Tables in hours and minutes (hh:mm).*
- *Calculation of the Estimated Average Weekly Hours of Canadian Drama/Comedy: Total Hours of Drama/Comedy divided by 365 days times 7.*
- *Source: Information taken from the logs data filed by the station with the CRTC. Information on file January 8, 2004, for CBLT and March 29, 2004 for CFTO-TV and CIII-TV stations.*

Table 1.1: CFTO-TV CIII-TV and CBLT Station Totals

(hh:mm)	Total Hours per Broadcast Year					Estimated Average Weekly Hours				
	98/99	99/00	00/01	01/02	02/03	98/99	99/00	00/01	01/02	02/03
CFTO-TV, Toronto (CTV)	291:51	263:34	270:59	247:32	255:18	5:35	5:03	5:11	4:44	4:53
CIII-TV, Toronto (Global)	290:38	324:02	338:28	310:50	298:36	5:34	6:12	6:29	5:57	5:43
CBLT, Toronto (CBC)	293:47	359:37	282:30	248:38	264:44	5:38	6:53	5:25	4:46	5:04
Total	**876:17**	**947:15**	**891:58**	**807:01**	**818:39**	**16:48**	**18:09**	**17:06**	**15:28**	**15:42**

Table 1.2: CFTO-TV Toronto (CTV)

	(hh:mm)	Total Hours per Broadcast Year					Estimated Average Weekly Hours				
CFTO-TV, Toronto (CTV)		98/99	99/00	00/01	01/02	02/03	98/99	99/00	00/01	01/02	02/03
07a	Ongoing dramatic series	220:47	198:06	158:12	171:09	157:27	4:14	3:47	3:02	3:16	3:01
07b	Ongoing comedy series	0:00	9:55	0:59	7:25	20:21	0:00	0:11	0:01	0:08	0:23
07c	Specials, mini-series, etc.	55:41	47:45	72:04	48:31	31:16	1:04	0:54	1:22	0:55	0:35
07d	Theatrical feature films	0:00	0:00	0:00	0:00	0:00	0:00	0:00	0:00	0:00	0:00
07e	Animated TV prog.	1:00	0:00	7:00	1:27	1:00	0:01	0:00	0:08	0:01	0:01
07f	Comedy sketches, etc.	13:23	7:48	32:43	18:59	45:13	0:15	0:08	0:37	0:21	0:52
07g	Other Drama	1:00	0:00	0:00	0:00	0:00	0:01	0:00	0:00	0:00	0:00
	Total Drama	**291:51**	**263:34**	**270:59**	**247:32**	**255:18**	**5:35**	**5:03**	**5:11**	**4:44**	**4:53**

Source: CRTC Logs – PGM 21 Report run March 29, 2004

Table 1.3: CIII-TV Toronto (Global)

	(hh:mm)	Total Hours per Broadcast Year					Estimated Average Weekly Hours				
CIII-TV, Toronto (Global)		98/99	99/00	00/01	01/02	02/03	98/99	99/00	00/01	01/02	02/03
07a	Ongoing dramatic series	195:14	216:37	232:01	184:37	203:05	3:44	4:09	4:26	3:32	3:53
07b	Ongoing comedy series	70:23	61:32	45:44	2:30	5:59	1:21	1:10	0:52	0:02	0:06
07c	Specials, mini-series etc.	6:55	23:24	23:49	35:17	14:27	0:07	0:26	0:27	0:40	0:16
07d	Theatrical feature films	0:00	0:00	0:00	0:00	0:00	0:00	0:00	0:00	0:00	0:00
07e	Animated TV prog.	17:02	22:23	36:53	88:25	74:03	0:19	0:25	0:42	1:41	1:25
07f	Comedy sketches, etc.	0:00	0:00	0:00	0:00	1:00	0:00	0:00	0:00	0:00	0:01
07g	Other Drama	1:01	0:04	0:00	0:00	0:00	0:01	0:00	0:00	0:00	0:00
	Total Drama	**290:38**	**324:02**	**338:28**	**310:50**	**298:36**	**5:34**	**6:12**	**6:29**	**5:57**	**5:43**

Source: CRTC Logs – PGM 21 Report run March 29, 2004

Table 1.4: CBLT Toronto (CBC)

	(hh:mm)	Total Hours per Broadcast Year					Estimated Average Weekly Hours				
CBLT, Toronto (CBC)		98/99	99/00	00/01	01/02	02/03	98/99	99/00	00/01	01/02	02/03
07a	Ongoing dramatic series	104:52	135:00	89:00	66:59	45:59	2:00	2:35	1:42	1:17	0:52
07b	Ongoing comedy series	17:30	21:00	40:18	14:30	43:00	0:20	0:24	0:46	0:16	0:49
07c	Specials, mini-series etc.	40:00	48:12	26:20	50:46	54:46	0:46	0:55	0:30	0:58	1:03
07d	Theatrical feature films	11:25	12:39	4:00	4:00	12:46	0:13	0:14	0:04	0:04	0:14
07e	Animated TV prog.	2:00	2:06	6:30	1:30	1:30	0:02	0:02	0:07	0:01	0:01
07f	Comedy sketches, etc.	111:30	137:10	113:52	108:53	106:09	2:08	2:37	2:11	2:05	2:02
07g	Other Drama	6:30	3:30	2:30	1:59	0:32	0:07	0:04	0:02	0:02	0:00
	Total Drama	**293:47**	**359:37**	**282:30**	**248:38**	**264:44**	**5:38**	**6:53**	**5:25**	**4:46**	**5:04**

Source: CRTC Logs – PGM 21 Report run January 8, 2004

Appendix 2 to Broadcasting Public Notice CRTC 2004-32

Programming and Production Expenses Category 7 Drama

English-Language	**($000,000)**							**Annual % Growth**						**Growth: '97 to '03**
	1997	1998	1999	2000	2001	2002	2003	98	99	00	01	02	03	
Private Conventional Television*	45.0	73.0	57.8	60.4	62.6	58.6	64.7	62%	-21%	5%	4%	-6%	10%	44%
CBC Television	35.9	35.3	62.0	62.4	46.2	60.7	66.7	-2%	76%	1%	-26%	31%	10%	85%
Total	81.0	108.3	119.8	122.9	108.8	119.3	133.4	34%	11%	3%	-11%	10%	10%	62%

**Includes ethnic stations*
Source: CRTC Financial database.

Appendix 3 to Broadcasting Public Notice CRTC 2004-32

Viewing to Canadian Drama/Comedy as a Percentage of All Viewing to Drama on English-Language Services

Based on BBM Fall surveys and CRTC database – All Canada – All persons 2+ (Includes all Canadian and U.S. conventional, specialty and pay television services with the exception of ethnic television services).

83	84	85	86		91		96	97	98	99	00	01	02
4%	4%	6%	7%		6%		8%	10%	10%	11%	11%	11%	11%

Appendix 4 to Broadcasting Public Notice CRTC 2004-32

Types of Canadian drama, whether broadcast on conventional television stations or specialty services, that will qualify for the proposed incentives and the proposed rewards associated with them:

a) 10-point, original, CTF-funded, drama, broadcast in peak time (7:00 p.m. to 11:00 p.m.) with a production budget of at least $800,000 per hour and a minimum licence fee as established by the CTF.

- **2.5 additional advertising minutes per original hour of drama**

b) 8-10 point, original drama broadcast at any time or 10-point original drama in peak time with a production budget less than $800,000 per hour.

- **0.5 additional advertising minutes per original hour of drama**

c) 10-point, original drama, broadcast in peak time (7:00 p.m. to 11:00 p.m.) with a production budget of at least $800,000 per hour and a minimum licence fee as established by the CTF, but without CTF funding.

- **6.5 additional advertising minutes per original hour of drama**

Note:
For Canadian drama programs intended for children the peak time (7:00 p.m. to 11:00 p.m.) criterion does not apply when the program is broadcast at an appropriate children's viewing time.

Appendix 5 to Broadcasting Public Notice CRTC 2004-32

Example of how the proposed incentives could work for an ownership group with both conventional television stations and specialty services.

	PERFORMANCE	REWARD	PLACEMENT OF REWARD MINUTES	TIMING OF REWARD MINUTES	REPORTING
ORIGINAL HOURS INCENTIVE					Annual reports filed by group
a) Conventional stations	a) 32 hours of 10-point, high-cost, CTF-funded, original hours b) 27 hours of 8/9-point or low-cost 10-point original hours c) 6 hours of 10-point, high-cost, original, non-CTF funded hours - broadcast in a given year	a) 32 X2.5 = 80 additional minutes b) 27X0.5 = 13.5 additional minutes c) 6X6.5 = 39 additional minutes **TOTAL = 132.5 additional minutes**	In any program on the station that broadcast the original drama hours	In the broadcast year that the original drama hour was broadcast	
b) Specialty Service	a) 5 hours of 10-point, high-cost, original, CTF-funded, hours b) 10 hours of 8/9-point or low-cost 10-point original hours c) 0 hours of 10-point, high-cost, original non-CTF funded hours - broadcast in a given year	a) 5X2.5 = 12.5 additional minutes b) 10X0.5= 5.0 additional minutes c) 0 additional minutes **TOTAL = 17.5 additional minutes**	In any program on the specialty service that broadcast the original drama hours	In the broadcast year that the original drama hour was broadcast	

	PERFORMANCE	REWARD	PLACEMENT OF REWARD MINUTES	TIMING OF REWARD MINUTES	REPORTING
VIEWING INCENTIVE					Annual reports filed by group
a) Conventional TV station	Ownership group (conventional & specialty) meets CRTC viewing target	132.5 X 25% = 33.0 additional advertising minutes	In any program on the stations that broadcast the original drama hours	In the following broadcast year	
b) Specialty Service	Ownership group (conventional & specialty) meets CRTC viewing target	17.5 X 25% = 4.5 additional advertising minutes	In any program on the specialty service that broadcast the original drama hours	In the following broadcast year	

	PERFORMANCE	REWARD	PLACEMENT OF REWARD MINUTES	TIMING OF REWARD MINUTES	REPORTING
EXPENDITURE INCENTIVE					Annual returns filed by licensees
a) Conventional TV station	Ownership group (conventional stations) meets CRTC expenditure target	132.5 X 25% = 33.0 additional advertising minutes	In any program on the stations that broadcast the original drama hours	In the following broadcast year	
b) Specialty Service	No applicable drama expenditures				

	PERFORMANCE	REWARD	PLACEMENT OF REWARD MINUTES	TIMING OF REWARD MINUTES	REPORTING
GRAND TOTAL REWARD MINUTES					
a) Conventional		198.5 additional minutes			
b) Specialty		22.0 additional minutes			