



Canadian Association of Broadcasters  
Association canadienne des radiodiffuseurs

February 23, 2009

*Via Epass*

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

Dear Mr. Morin:

**Re: Local Programming Improvement Fund**

1. The Canadian Association of Broadcasters (CAB) represents the vast majority of Canadian programming services, including private radio and television stations, networks, specialty, pay and pay-per-view services. The CAB represents and advances the interests of Canada's private broadcasters in the social, cultural and economic policy areas.
2. The CAB provides below its proposal respecting the new Local Programming Improvement Fund (LPIF). This fund was announced by the Commission in Broadcasting Public Notice CRTC 2008-100, *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services* (PN 2008-100) as a means to improve the quality of local programming in non-metropolitan markets.
3. In developing this proposal, the CAB consulted with non-member broadcasters, specifically, the CBC/Radio-Canada and Groupe TVA.

**Current Economic Conditions**

4. The LPIF represents the Commission's unique response to the challenges facing smaller television markets with regard to local programming. Over the months of written submissions and the hearing leading to PN 2008-100, the industry did not contemplate the creation of a new fund for local programming.
5. Indeed, Broadcasting Notice of Consultation CRTC 2009-70, released February 13, provides the first opportunity for some licensees to comment on the administration and delivery of the LPIF. Licensees may observe that the LPIF is but one way of achieving the Commission's objectives for local programming; however, to be effective, the design of the

LPIF must take into account the critical economic realities facing over-the-air (OTA) television.

6. The public process leading to the issuance of PN 2008-100 was completed prior to the global economic meltdown of the past few months; the CAB submits that any expectations of future programming expenditures, based on the circumstances that prevailed six to twelve months ago, must be recalibrated in light of more recent developments.
7. As demonstrated in the *Statistical and Financial Summaries* for private conventional television, released by the Commission on February 10, there are significant structural challenges that OTA broadcasters have been facing for some time. The sector's revenues have essentially been flat since 2004; steadily declining profit margins reached their lowest level in 2008, at less than half of one per cent.
8. TD Economics noted in its last quarterly economic report that Canada would suffer "collateral" damage from shocks to the US economy, damage that would be exacerbated by tumbling commodity prices. TD now predicts a contraction in nominal gross domestic product (GDP) of 0.6% for 2009. Ad spend very closely tracks nominal GDP; consequently, TD's forecast 0.6% decline in nominal GDP translates into a 0.6% decline in ad spend in Canada.
9. Other analysts paint a bleaker picture. For example, in early January 2009, Scotia Capital forecast a drop of 7.7% in conventional television ad revenues and an overall decline of 4.6% in ad revenues for all Canadian media. These observations are borne out in recent data on air time sales. Television ad sales are pacing as much as 17% lower for the coming six months compared to 2008.
10. The Commission alluded to the possibility of economic factors beyond its control in the discussion of the LPIF in PN 2008-100; at paragraph 382 the Commission noted its intention that "...funding from the LPIF be available for the 2009/2010 broadcast year, subject to further public process required to amend the *BDU Regulations* and barring any unforeseen intervening economic events" [emphasis added].
11. Arguably, the forecast declines in ad revenue for conventional television are precisely the type of "unforeseen intervening economic event" that the Commission contemplated in PN 2008-100. This has radically altered the outlook for OTA broadcasters over the next licence term, and directly influences the potential effectiveness of the LPIF.

### **The Commission's Objectives for the LPIF**

12. The Commission addressed the economic challenges associated with the production of local programming by television broadcasters in PN 2008-100. At paragraph 348 it concluded that, as an underlying principle, "...it is in the public interest for the Canadian broadcasting system to include healthy local stations that will enrich the diversity of information and editorial points of view."

13. The stated purpose of the LPIF is to improve the quality of local programming in non-metropolitan markets. The Commission established the following specific objectives for the LPIF:
- to ensure that viewers in smaller Canadian markets continue to receive a diversity of local programming – particularly news programming;
  - to improve the quality and diversity of local programming broadcast in these markets; and
  - to ensure that viewers in French-language markets are not disadvantaged by the smaller size of those markets.
14. The CAB strongly endorses the Commission’s view that it is in the public interest for the Canadian broadcasting system to include healthy local stations that will enrich the diversity of information and editorial points of view. The CAB has consistently maintained that local service is the cornerstone of the broadcasting system and that the Commission must ensure that its policies serve to protect and enhance this role.
15. In this context, the CAB appreciates the Commission’s interest in assisting over-the-air television broadcasters.

#### A Simple, Objective Allocation Formula

16. The existing Small Market Local Programming Fund (SMLPF), which supports the production of local programming in markets served by small independently owned OTA television stations, is a successful example of the type of assistance that can help make a difference in very challenging circumstances. The SMLPF is designed to provide simple, objective, formula-based funding to stations whose eligibility is determined by the CRTC. Funding allocations in the SMLPF are calculated using a three-part formula: an equal allocation among all eligible stations, an allocation based on historic spending on local programming; and an allocation based on a DTH impact analysis.
17. The CAB recommends that the principles of simplicity and objectivity that have worked in the SMLPF be adopted for the LPIF.

#### “Incremental” Spending is Unrealistic

18. A separate issue from the allocation of funding among eligible broadcasters is the use of LPIF funding. The Commission has stated in PN 2008-100 that, for the purpose of ensuring that each station’s use of LPIF funding is incremental to the station’s current expenditures on local programming, it intends to calculate the base level of local programming expenditures as the average for the last three broadcast years (i.e. 2005/2006 to 2007/2008), adjusted annually in accordance with the CPI.

19. In the current economic climate, OTA broadcasters may be forced to limit spending in all expense categories, including local programming. It is unlikely that these broadcasters will match or exceed their historic local programming expenditures.
20. Moreover, for small market stations, there is additional uncertainty surrounding their existing carriage arrangements on DTH. The new DTH carriage policies announced in PN 2008-100 allow for a reduction of existing carriage guarantees. Any loss of carriage by these small market stations would have devastating consequences on their economic circumstances and their ability to maintain, let alone increase, local programming expenditures.
21. The transition to digital technology is fraught with further uncertainty for small market television. Broadcasters are unclear at this time whether they will be required to continue to provide OTA service to all Canadians in all markets beyond the August 31, 2011 cut-off date for analog broadcasting, but the costs of the conversion have been, and will continue to be, significant.
22. Given these circumstances, many OTA broadcasters will be unable to meet the CRTC's proposed incrementality requirement. In such a case, the LPIF would be of little practical value and its fundamental objectives would not be met. The CAB therefore urges the Commission to revisit its expectations concerning incremental local programming expenditures.

#### Broadcasters' Use of Funding

23. Broadcasters receiving funds from the LPIF should be permitted to direct those funds to support various types of expenditures relating to local programming. Specifically, the CAB submits that the following be considered eligible expenditures:
  - staff, both on-air and technical, involved in local programming;
  - other operating expenses related to local programming, such as overhead and the leasing of equipment and facilities;
  - capital funding directly related to the production of local programming, such as digital or HD cameras and studios, fibre links to local news sources and trucks equipped to conduct live broadcasts of local news events; and
  - the promotion of local programming, such as advertising on non-related radio or television stations, newspapers, Internet sites or other platforms and the creation of promotional campaigns to advertisers.

## Fund Administration

24. The CAB recommends that a not-for-profit corporation be created to govern the LPIF. The principal role of this corporation would be to select a Fund Administrator and ensure appropriate reporting to the Commission's LPIF oversight panel.
25. The corporation should be governed by a Board of Directors, composed of five industry representatives. Two Board members would be nominated by the CAB, and would be drawn from companies with small market television stations. One Board member would be nominated by the CBC/Radio-Canada and one Board member would be nominated by BDUs. Because the emphasis of the Fund is on local programming, the final Board member, nominated by the CAB, would have small market programming experience, be it as a program or news director, or small market station manager. The composition of the Board should reflect both official language markets.
26. The CAB anticipates that the activities of the Fund Administrator would be as follows:
  - Once a year, calculate the amount of funding to be allocated to each eligible station, using a list of stations and information provided by the CRTC.
  - Each month, request and collect contributions from BDUs, using a list of BDUs that are required to contribute, provided by the CRTC.
  - Distribute funding every quarter to eligible stations.
  - Receive annual reports from recipient stations on their utilization of the funds.
  - Report annually to the LPIF Board on funding activities and administration costs.
  - Respond to questions and inquiries from BDUs, broadcasters, and the public.
  - Provide information, as required, to the CRTC.
  - Serve as a Secretariat to the Board of Directors, which would meet approximately three times per year (likely more in the pre-launch phase of the Fund).
27. The CAB issued a request for proposals (RFP) for the administration of the LPIF. A copy of the RFP is provided as Appendix A. To provide some guidance to bidders, the RFP included some broad parameters for the administration of the fund, as described above.
28. Three organizations were invited to submit cost proposals and indicate their compliance with the CRTC's criteria for the selection of the Fund Administrator as defined in PN 2008-100 (paragraph 377), and with the CAB's additional criteria: McCay, Duff LLP; the Canadian Cable Systems Alliance (CCSA) and the Canadian Broadcasters Rights Agency (CBRA). The CAB recommends that McCay, Duff be selected to administer the LPIF.

29. McCay, Duff LLP has been providing clients with asset management services, audit, accounting, tax and related services within the National Capital Region for over 62 years and has been involved in the broadcasting industry for over 50 years. The firm provides audit and other services to the CAB, the TVB, RMB and BBM. It also deals with BDUs through its involvement with CAB-administered funds to which BDUs contribute. It is therefore familiar with the broadcasting sector and, more specifically, with the BDU and OTA broadcasting sectors. Because, however, neither individual BDU companies nor private OTA broadcasters are audited by the firm, there are likely no conflict of interest issues concerning contributors to the LPIF or its beneficiaries.
30. McCay, Duff is familiar with both official language communities. The firm has bilingual staff who deal regularly with broadcasters in both official language markets.
31. The firm has experience in the management of funds for the broadcasting sector. It is involved in the DTH 4+1 distant signal fund (administered by the CAB), and was involved in managing the Starmarker Fund and the Fonds Radiostar. McCay, Duff has also been involved in the management of trust funds for other private sector clients.
32. McCay, Duff's proposed costs for the administration of the LPIF were competitive and well below the administration costs of other audiovisual sector funding programs.
33. The final determination of the Fund Administrator should be made by the LPIF Board, subject to Commission approval.

### **Annual Reporting**

34. The annual report to be submitted by the Fund Administrator will focus on the allocation of funds received from BDUs to the participating OTA licensees. It should include the following information:
  - Total funds received by BDUs pertaining to the broadcast year under in question.
  - Total funds disbursed to recipient stations applicable to the broadcast year in question, broken down on a station-by-station basis and aggregated on the basis of language of broadcast.
  - Total administration costs incurred during the broadcast year.
  - Any further reconciliation required to account for the disposition of all funds collected from BDUs.
  - Any other matters having a bearing on the administration of the LPIF during the broadcast year in question.
35. Broadcasters' annual reports should be filed confidentially with the CRTC by the recipient OTA licensees.

36. The CAB recommends that the LPIF Board develop a standardized reporting template and submit it to the Commission for approval. The use of a standardized reporting template will streamline the reporting process and facilitate the ability of third parties to analyze the impact of LPIF funding.

### **Indicators of Success**

37. The Commission's objectives for the LPIF relate to access by audiences to local programming and the quality and diversity of this programming. The CAB believes, however, that many of the indicators of success listed in PN 2008-100 do not directly relate to these objectives.
38. Metrics such as the number of local news stories picked up nationally, the expansion of news bureaus and increases in the quantity of local programming, for example, are not relevant to the quality, diversity or access to local programming.
39. The CAB recommends the use of a limited number of targeted metrics that relate specifically to the Commission's objectives for the Fund. These could include audiences to local programming, programming awards, expenditures on local programming compared to broadcasters' most recent licence renewal proposals, and local ad revenues.
40. The LPIF Board should be charged with developing the detailed indicators that will be used to evaluate the success of the LPIF, subject to Commission approval.

### **Surpluses and New Entrants**

41. Stations eligible for LPIF funding will likely need to develop their own medium- to long-term plans for local programming. Applying the funding formula on a year-by-year basis makes it difficult for stations to be able to develop these multi-year programming plans.
42. Consequently, the CAB recommends that stations be awarded multi-year allocations. In Year 1, stations would be informed of the amounts they could receive for the next three years. Stations that do not expend the entirety of their allocation in one year could carry the allocation over into subsequent years.
43. Based on this approach, all funds available for allocation (after administration expenses) would in fact be allocated to recipient stations. Accordingly, it is not anticipated that there would be any unallocated funds in any given year.
44. As noted above, stations that do not expend the entirety of their allocation in one year could carry the allocation over into subsequent years. Excess funds not spent by the end of the 2<sup>nd</sup> quarter of Year 3 would be redistributed to other stations based on the original funding formula.
45. New entrants should be subject to the same criteria as currently eligible stations. The funding formula should be applied to new entrants in the year following the CRTC's

determination of eligibility. Adjustments could be made to all stations' multi-year allocations if new entrants are admitted to the LPIF in the first three years of its existence.

46. The possibility of OTA station closures also looms in the future. In this case, as with new entrants, the funding formula could be re-run after the closure of a station. Adjustments could then be made to remaining stations' allocations.

### **Conclusion**

47. The CAB appreciates the opportunity to provide these recommendations and comments respecting the establishment and administration of the LPIF. We would be pleased to provide further information if the Commission so requires.

Sincerely,

A handwritten signature in black ink, appearing to read 'Pierre-Louis Smith', with a large, sweeping flourish at the end.

Pierre-Louis Smith  
Vice-President, Policy and Chief Regulatory Officer

C.c.: Pierre Dion, Groupe TVA  
Pierre Lampron, Groupe TVA  
Hubert Lacroix, CBC/Radio-Canada  
Steve Guiton, CBC/Radio-Canada

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## APPENDIX A

### REQUEST FOR PROPOSALS REGARDING THE ADMINISTRATION OF THE LOCAL PROGRAMMING IMPROVEMENT FUND

The Canadian Association of Broadcasters (CAB) has been asked by the Canadian Radio-television and Telecommunications Commission (CRTC) to provide a detailed plan for the administration of the to-be-created Local Programming Improvement Fund (LPIF, or the Fund). The CAB in turn seeks proposals from organizations that could be contracted to administer the Fund. This document provides some background on the Fund, the nature of the work to be performed by the Fund Administrator, and the criteria for selection of the Fund Administrator.

#### **Background on the LPIF**

In its Public Notice CRTC 2008-100 (October 30, 2008), the CRTC announced its intention to implement the LPIF. The CRTC's objectives for the LPIF are the following:

- to ensure that viewers in smaller Canadian markets continue to receive a diversity of local programming - particularly local news programming;
- to improve the quality and diversity of local programming broadcast in these markets; and
- to ensure that viewers in French-language markets are not disadvantaged by the smaller size of those markets.

The Fund's resources would come from licensed Class 1 broadcasting distribution undertakings (BDUs). These BDUs would be required to contribute 1% of their gross revenues derived from broadcasting activities, each year, to the Fund. In its first year of operation, the Fund would administer approximately \$60M, an amount that is likely to increase in subsequent years.

The CRTC's parameters of the Fund are as follows:

- it would be available to private and CBC/SRC stations serving markets in which the population with a knowledge of the official language of the station (French or English) is less than 1M; consequently, Vancouver, Calgary, Edmonton, Toronto, Ottawa-Gatineau Anglo and Montreal Franco do not qualify
- eligible stations must provide local programming that includes local news; regionally produced programming may also be included for stations that serve regional audiences
- two-thirds of the LPIF is for English-language stations and one-third for French-language stations
- funding must be used to produce original local programming or invest in improvements to the quality of existing local programming (with a priority to local news and public affairs)

## **Governance and Administration**

The CAB is recommending to the CRTC that the LPIF be governed by a three-member Board of Directors, through a not-for-profit Corporation (to be incorporated). The Corporation will be responsible for overall Fund oversight, including contracting with the Fund Administrator and ensuring compliance with the terms of the contract. In addition, the CRTC will supervise the Fund, review annual reports from the Fund Administrator, and evaluate the Fund following its third year of operation. Funds would be allocated using a funding formula to be provided by the Corporation to the Fund Administrator.

## **The Work of the Fund Administrator**

The CAB anticipates that the activities of the Fund Administrator would be as follows:

1. Calculate the amount of funding to be allocated to each eligible station, using a list of stations provided by the CRTC and information provided by the eligible stations. This would be done once a year.
2. Request and collect contributions from BDUs, using a list of BDUs that are required to contribute, provided by the CRTC. This would be done every month.
3. Distribute funding every quarter to eligible stations.
4. Receive annual reports from recipient stations on their utilization of the funds.
5. Adjust funding allocations once a year, based on recipients' utilization of funds in the previous year.
6. Report annually to the LPIF Board on funding activities and administration costs.
7. Respond to questions and inquiries from BDUs, broadcasters, and the public.
8. Provide information, as required, to the CRTC.
9. Serve as a Secretariat to the Board of Directors, which would meet approximately three times per year (likely more in the pre-launch phase of the Fund).

It is estimated that, in its first year of operation, approximately 100 stations will be eligible for funding. In subsequent years, the CRTC could allow new entrants to access the Fund, although the type and number of potential new entrants is not clear at this time. It is further estimated that the Fund Administrator would collect funds from up to 100 BDUs.

## **Criteria for Selection of the Fund Administrator**

The CAB will review the proposals submitted pursuant to this RFP and make a recommendation to the CRTC regarding the Fund Administrator. The final determination of a Fund Administrator will be made by the Board, and will require CRTC approval.

The CRTC, in its PN 2008-100, stipulated that the Administrator must meet the following criteria:

- experience in fund management
- knowledge of each of Canada's official language communities
- familiarity with the BDU and OTA sectors

- ability to manage the LPIF with minimal cost

In addition, the CAB will assess proposals against the following criteria:

- Confidentiality: the capacity to keep all information provided by broadcasters confidential, with the exception of information necessary for annual (public) reporting to the CRTC
- Credibility: the administrator's proven experience in dealing with broadcasters and/or BDUs, and these organizations' perception of the effectiveness of the administrator. The administrator's ability to provide service to both public- and private-sector broadcasters and BDUs in English and French.
- Cost: the administrator's ability to manage the LPIF at a cost that is reasonable given the administration costs of other broadcasting industry funds.

### **Content of Proposals**

Brief proposals (about 2 pages) submitted to the CAB should provide the following information:

- how the organization meets the criteria described above
- costs for providing the services described in the section "The Work of the Fund Administrator", broken down into: itemized set-up costs prior to year 1; and itemized administration costs for years 1, 2 and 3 of the Fund

### **Deadline**

Proposals must be received by the CAB by start of business on February 9, 2009. The CAB is required to submit its plan and identify the recommended Fund Administrator to the CRTC by February 17, 2009. The CRTC intends for funding to be available in the 2009-10 broadcast year (commencing September 1, 2009).

### **Contact Person**

Questions concerning this RFP, and proposals, should be directed to:

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