Broadcasting Public Notice CRTC 2006-11

Ottawa, 27 January 2006

Viewing and expenditure incentives for English-language Canadian television drama

In this public notice, the Commission reviews the comments received in response to Viewing and expenditure incentives for English-language Canadian television drama – Call for comments, *Broadcasting Public Notice CRTC 2005-81, 10 August 2005 (Public Notice 2005-81), and sets out the targets for the viewing and expenditure components of the Commission's drama incentive program.*

The Commission has decided to implement the proposals outlined in Public Notice 2005-81.

Background

1. In *Proposed incentives for English-language Canadian television drama – Call for comments*, Broadcasting Public Notice CRTC 2004-32, 6 May 2004 (Public Notice 2004-32), the Commission sought comment on a proposed package of incentives designed to: a) increase the expenditures on, and the production of, high quality, original, Canadian drama broadcast by English-language television licensees; and b) encourage increased viewing to such programming.

2. The Commission set out its incentive program designed to increase the production and the broadcast of, the viewing to, and the expenditures on, high quality original Canadian drama programming in *Incentives for English-language Canadian television drama*, Broadcasting Public Notice CRTC 2004-93, 29 November 2004 (Public Notice 2004-93). In the same notice, the Commission stated that it would issue a further public notice in the 2004/05 broadcast year to announce its proposed targets for both the viewing and expenditure components of the incentive program. This was undertaken in *Viewing and expenditure incentives for English-language Canadian television drama – Call for comments*, Broadcasting Public Notice CRTC 2005-81, 10 August 2005 (Public Notice 2005-81).

3. In Public Notice 2005-81, the Commission examined the 2003/04 data provided by BBM Canada and Nielsen Media Research with respect to viewing to Canadian drama, and called for comments on a proposed industry viewing objective as well as on viewing targets for the ownership groups participating in the incentive program for English-language Canadian television drama. The Commission also reviewed the 2003/04 data with respect to expenditures on English-language Canadian drama programming by individual, private, conventional television services and by the largest conventional ownership groups, and called for comments on proposed expenditure targets.

Review of the issues

4. The Commission appreciates the comments received in response to Public Notice 2005-81 and has summarized the record around the following issues:

   1. Proposed drama expenditure targets for English-language conventional television services.

   2. Separate viewing targets for English-language conventional and specialty television services.

   3. Proposed viewing objective for English-language conventional television services.

   4. Proposed methodology for the viewing incentive for English-language conventional television services.

   5. Proposed viewing targets for specialty television services.

   6. Requests by CTV Inc. for the carry over of advertising minutes and for bonus advertising minutes.

Proposed drama expenditure targets for English-language conventional television services

5. In Public Notice 2004-32, the Commission proposed to establish an overall industry objective for expenditures on Canadian drama that would represent 6% of the total revenues earned by the Canadian private conventional television industry, to be achieved over a five-year period. Each ownership group would be encouraged to increase its Canadian drama expenditures over five years by an amount equal to the percentage difference between the current industry average and the industry objective of 6% of total revenues. The Commission noted that, in each of the 2002 and 2003 broadcast years, private, English-language conventional television licensees expended a combined average of approximately 4%, excluding the Canadian Television Fund (CTF) top-up, of their total revenues on Canadian drama.

6. Under the Commission’s proposal set out in Public Notice 2004-32, all ownership groups would have been required to increase from their current levels at the same percentage rate in order to meet their targets. Groups starting from a higher percentage of expenditures on Canadian drama would have had higher targets to achieve in each of the years.

7. In Public Notice 2004-93, the Commission noted that it would review the financial results for the 2003/04 broadcast year for each of the ownership groups before setting the incentive targets for each group for the five-year period commencing with the 2004/05 broadcast year. The Commission indicated that expenditures on drama programs funded in whole or in part as a result of commitments at the time of licensing or as a result of ownership transfer benefits would be excluded from the calculation of the expenditure incentive. CTF top-up funding would also be excluded from the calculations under the expenditure incentive.

8. In Public Notice 2005-81, the Commission proposed a change to the manner in which the expenditure incentive would be implemented. The Commission stated that, since the three large conventional ownership groups achieved similar spending results in the 2003/04 broadcast year, the simplest and most equitable manner in which to proceed would be to apply the same targets to each of the groups. As previously noted, the Commission's objective for spending on Canadian drama by the private, English-language conventional television industry is 6% of total revenues, to be achieved over a five-year period. The difference between the 6% objective and the current industry average of 3.3% is 2.7 percentage points. In order for the industry to increase its spending by that amount of total revenues over five years, an annual increase of slightly more than one-half of a percentage point would be required, excluding CTF top-up and benefit-related spending. Accordingly, the targets for expenditures on Canadian drama as a percentage of total revenues for each of the ownership groups for the five-year period would be as follows:

Broadcast year	Canadian drama programming expenditures as a percentage of gross revenues
2004/05	3.9%
2005/06	4.4%
2006/07	4.9%
2007/08	5.5%
2008/09	6.0%

Positions of parties

9. The Canadian Film and Television Production Association (CFTPA) recommended that the 6% target be achieved over a three-year time frame or by the end of 2006/07. The CFTPA explained that its proposed three-year time period is necessary in part, because of the urgency of ensuring sufficient shelf space and funding for original Canadian drama in prime time. It also indicated that the broadcast industry has already been on notice for almost two years that increased Canadian drama production is of importance to the Commission.

10. The Canadian Association of Broadcasters (CAB) noted that the Commission had proposed an 80% increase in both viewing and expenditures over a five-year period. The CAB suggested that a 40% increase in viewing would be a more reasonable and attainable industry objective. It also indicated that, for the expenditure incentive to be attainable, a similar range of expectation would be appropriate. The CAB suggested that

an annual increase of 0.3% in the industry expenditure objective, rather than the 0.5% and 0.6% levels proposed by the Commission, would be more realistic. CHUM Limited (CHUM) concurred with the CAB in suggesting that 40% increases over the 2003/04 level in both the viewing and expenditure targets over five years would be more appropriate. CanWest Mediaworks Inc. (CanWest) was also of the view that the 80% increase in viewing would be difficult to achieve.

11. The Coalition of Canadian Audio-visual Unions (CCAU) supported the expenditure benchmark of 6% of conventional broadcasters' gross revenues on Canadian drama. In addition, the CCAU indicated that it would support an increase over time to 7%, to be imposed as a requirement at the next licence renewal.

Commission's analysis and determination

12. The 2003/04 broadcast year expenditures on Canadian drama by the English-language private conventional services represented 3.3% of the industry's total revenues, excluding CTF top-ups and benefit related spending. The Commission's 6% objective for spending on Canadian drama represents an approximate 80% increase over the 3.3% achieved in 2003/04. The 3.3% represents a decrease from the 3.7% level of spending on Canadian drama achieved by the industry in the 2002/03 broadcast year. The 6% benchmark is a 62% increase over the 3.7% achieved in 2002/03.

13. The 6% Canadian drama expenditure objective was developed by the Commission in consideration of the incentive program for original drama. Broadcasters taking advantage of the incentives for original drama production are able to recoup part of their expenditures on drama through the additional advertising minutes. Their recouped drama funding investments will count toward the expenditure incentive. In addition, the Commission also changed its policy in regard to equity investments as part of the incentive program in order to allow at risk equity investments in Canadian drama programs to count as an eligible Canadian program expenditure. Finally, as noted in Public Notice 2005-81, the amounts expended on Canadian drama are directly within the control of the conventional services.

14. In regard to the Commission's proposal that all groups would have the same benchmarks, one of the reasons for the revised methodology set out in Public Notice 2005-81 was that the base year (2003/04) spending percentages were similar for the different ownership groups. In contrast, the original methodology set out in Public Notice 2004-32 was based on the spending results for the 2002/03 broadcast year in which the expenditure percentages varied widely between the ownership groups. In addition, in the Commission's view, the revised methodology is fairer for the groups that have historically expended more on Canadian drama.

15. The Commission has therefore decided to maintain the expenditure targets outlined in Public Notice 2005-81.

Separate viewing targets for English-language conventional and specialty television services

16. In Public Notice 2004-32, the Commission stated that it would review the viewing results from the metered databases for the 2003/04 broadcast year with a view to setting an overall industry objective in the 2004/05 broadcast year, to be achieved over a five-year period. It also proposed that the viewing incentives for each ownership group be based on the level of viewing to English-language Canadian drama broadcast by the conventional and specialty television services that form part of an ownership group, calculated as a percentage of all of the drama programming aired on those services.

17. In Public Notice 2005-81, the Commission proposed to modify the general approach to the viewing incentive outlined in Public Notice 2004-32 by establishing a common industry objective that would apply only to English-language conventional television services. Specialty services would be treated separately.

Positions of parties

18. The CAB agreed that it is appropriate to establish separate viewing and expenditure targets for conventional station groups and for specialty services to recognize each sector’s distinct regulatory regime and approach to scheduling and licensing Canadian drama programming. Both CTV and CHUM concurred with the CAB.

19. The CCAU also supported the Commission’s proposal to develop separate viewing targets for conventional and specialty television services.

Commission’s analysis and determination

20. The Commission notes that no party to the proceeding was opposed to the establishment of separate viewing targets for conventional and specialty services. The Commission agrees with the CAB that separate targets are appropriate for conventional and specialty services given the distinct regulatory regimes and approaches to scheduling and licensing Canadian drama programming.

21. Accordingly, the Commission has decided to adopt the proposal to have separate viewing targets for conventional and specialty television services.

Proposed viewing objective for English-language conventional television services

22. In Public Notice 2005-81, the Commission stated that, as an overall industry objective, it would be reasonable to expect private, English-language conventional television services to increase to 16.5%, over a five-year period, the level they achieve in viewing to English-language Canadian drama, expressed as a percentage of viewing to all drama broadcast by such services.

23. An increase to 16.5% would equate to an increase of approximately 80% over the 2003/04 industry average of 9.2%. The 80% increase also equates to the objective of 6% set by the Commission in Public Notice 2004-32 with respect to increases in expenditures by conventional television services on Canadian drama, relative to the 2003/04 industry average of 3.3%.

Positions of parties

24. The CFTPA recommended that the 16.5% target be met over a three-year time frame or by the end of 2006/07. The CCAU generally supported the 16.5% benchmark proposed by the Commission.

25. The CAB submitted that the 80% increase is unrealistic and unlikely to be attained and, instead, recommended a 40% increase from 9.2% to 12.9% over five years. CHUM and CanWest concurred with the CAB that a 40% increase would be more appropriate.

Commission's analysis and determination

26. The Commission's objective of increasing viewing to English-language Canadian drama on English-language private conventional television services from the current average of 9.2% to 16.5% over 5 years, representing an 80% increase, was based on a comparison with the expenditure objective in relation to the current industry average.

27. The Commission agrees with the CAB that the 80% increase over five years will be a challenge for the conventional groups. However, it considers that the increase is achievable if the groups take advantage of the incentive program for the production of original Canadian drama. Furthermore, the Commission notes that the viewing and expenditure incentives are bonuses that are related to the additional advertising minutes accumulated for the production and broadcast of eligible original Canadian drama. In the Commission's view, the targets for obtaining the bonus advertising minutes relating to the viewing and incentives bonuses should be challenging.

28. Accordingly, the Commission has decided to maintain the viewing objective for Canadian drama programs by conventional television services at 16.5% of total drama viewing over a five-year period as well as the methodology set out in Public Notice 2005-81 for calculating the percentages.

Proposed methodology for the viewing incentive for English-language conventional television services

29. The methodology proposed by the Commission in Public Notice 2004-32 for establishing the targets to be met by the individual ownership groups was to be based on a comparison of the current level of viewing to Canadian drama across the industry and the overall industry objective. According to the Commission's original proposal, in order to qualify for a viewing incentive reward, each ownership group would have been required to achieve specific minimum annual increments in the level of viewing to Canadian drama across all of the conventional and specialty television services in the group

relative to the percentage of viewing to all drama aired by those services. The required annual percentage increase was to be set at a level of 20% of the difference between the current industry level and the industry objective.

30. Under the Commission's initial proposal, all groups would have been required to increase at the same percentage rate from their current levels in order to meet their targets. Groups starting from a higher level of viewing to Canadian drama would have had higher targets to achieve in each of the years.

31. Given that the actual levels of viewing to English-language Canadian drama in the 2003/04 broadcast year by the three largest ownership groups were similar, the Commission modified its original proposal in Public Notice 2005-81. In order to obtain the annual incentive under the modified proposal, the conventional television services within an ownership group would be required to record an annual increase that represents one-fifth of the difference between the industry objective and the overall level achieved by the stations in 2003/04.

32. Under this proposal, all of the ownership groups would have the same year five objective. In order to earn the incentive, those ownership groups whose English-language conventional television stations achieved levels of viewing to Canadian drama in 2003/04 that were lower than the levels attained by other such groups would be required to obtain larger annual increments in the overall level of viewing to Canadian drama.

Positions of parties

33. CTV Inc. (CTV) was of the view that the revised methodology is fairer and more effective than the original proposal.

34. CanWest submitted a proposal that would require each group to increase its viewing percentage by 3.5% over a five-year period.

Commission's analysis and determination

35. Given that all three of the large ownership groups are starting from a similar level, the Commission considers that its revised approach that establishes a common year 5 objective for each of the groups is fairer and more effective than its original proposal, which resulted in more onerous requirements for the services with higher historical percentages. Accordingly, the Commission adopts the proposal of a common year 5 objective of 16.5% for each group.

Proposed viewing targets for specialty television services

36. In Public Notice 2005-81, the Commission proposed that the viewing incentive for English-language specialty services that broadcast drama programming be treated on an individual basis and separately from conventional television services. The Commission noted, that given the different regulatory requirements under which each of the specialty services operate, and given the wide range in the levels of viewing to Canadian drama by

individual English-language specialty services in the 2003/04 broadcast year (from as low as 1% to as high as 44%), a single industry objective for all services would be impracticable. Instead, the Commission considered that it would be reasonable to expect a specialty service to increase, by 7.5% over a five-year period, the level of viewing to English-language Canadian television drama as a percentage of all drama on the service.

37. The Commission was of the view that a 1.5% annual increase would be reasonable and consistent with the increases that would, under its proposal, be required of the conventional television services of each ownership group in order to qualify for the incentive.

Positions of parties

38. CHUM supported the 1.5% annual increase for all specialty services. The CAB agreed with the Commission's proposal for the specialty services, but noted that such an increase is more challenging for the services with existing lower percentages.

Commission's analysis and determination

39. The Commission notes that no party to the proceeding was opposed to the five-year target of a 7.5% increase in the viewing to Canadian drama programming as compared to all drama viewing by individual specialty services. The Commission remains of the view that the 1.5% annual increase is reasonable and, accordingly, adopts the proposal.

Requests by CTV for the carry over of advertising minutes and for bonus advertising minutes

40. The Commission's drama incentive program requires that additional advertising minutes resulting from the production and broadcast of original drama be used in the year the incentive was earned. The additional minutes relating to the viewing and expenditure incentives are required to be aired in the year following the broadcast year in which the drama programs that led to the reward were broadcast. The time limits were put in place to maintain some control over the incentive program.

41. CTV submitted that an allowance for a one-year carry over of advertising minutes would provide flexibility and would enhance the effectiveness of the incentive program. It was CTV's opinion that the effectiveness of the incentive program is reduced when advertising minutes earned cannot be monetized. CTV explained that "scheduling drama in a manner that maximizes its audience and exposure involves analysis of time period viewing, competition and various other factors, all of which are extremely fluid." In addition, CTV stated that it would be difficult to fully monetize extra advertising minutes during the "slow summer ad sales season" for original drama broadcast in the spring.

42. CTV also requested that the incentive program be enhanced to provide for additional advertising minutes for individual programs or series that achieve particularly high viewership. As well, whatever the individual program viewership target is for CTV and Global Television Network Inc., a 15% discount could be applied to CHUM to account for its more limited reach.

Commission's analysis and determination

43. In Public Notice 2004-93, the Commission noted that an incentive program focused exclusively on hit programs would penalize those broadcasters that air original Canadian drama programs despite the fact that such programs are unlikely to achieve the level of a "hit." The Commission indicated that it had determined not to introduce a separate incentive for hit programs "at this time."

44. In the Commission's view, there may be merit in CTV's proposals. However, the Commission also notes that the proposals relating to the carry over of advertising minutes and the enhancement of the viewership incentive were not addressed by the Commission in Public Notice 2005-81. All interested parties have therefore not had an opportunity to comment on the proposals.

45. The Commission intends to review the incentive program on an annual basis to determine if adjustments are required and expects to issue a future public notice to discuss means to improve the program, including the proposals put forward by CTV. Given that the final incentive program for the production of original Canadian drama was issued during the 2004/05 fiscal year and given the lead times required to plan and produce drama programming, the Commission is of the view that it is too early to reach conclusions on the effectiveness of the current package of incentives.

Secretary General