



## Broadcasting Public Notice CRTC 2008-62

Ottawa, 14 July 2008

### Notice of consultation

#### Call for comments on proposed amendments to the benefits policy set out in *Building on Success: A Policy Framework for Canadian Television*

*The Commission calls for comments on a proposal to amend the benefits policy set out in Building on Success: A Policy Framework for Canadian Television, Public Notice 1999-97, so that a percentage of future television benefits would be directed to the Canadian Television Fund. The procedure for filing comments is set out at the end of this notice. The deadline for the receipt of comments is 8 September 2008.*

### Background

1. On 20 February 2007, the Commission created a task force to investigate issues related to the funding of Canadian programming and the governance of the Canadian Television Fund (CTF). On 13 April 2007, the Commission issued Broadcasting Notice of Public Hearing 2007-5 announcing that it would conduct a proceeding on diversity of voices. In that notice, the Commission stated that it would consider how possible changes to the benefits policy could increase the diversity of voices in the broadcasting system.
2. Following intensive consultations with all sectors of the television broadcasting industry, *The Report of the CRTC Task Force on the Canadian Television Fund*, issued on 29 June 2007 (the Task Force Report), recommended that the Commission amend its benefits policy so that an appropriate portion of tangible television benefits would be allocated to the CTF (Recommendation 22). The Task Force Report further recommended that the CTF explore new means of permitting broadcasters and producers to exploit new media platforms related to CTF projects (Recommendation 8).
3. The Commission sought comment on all of the Task Force Report recommendations in Broadcasting Public Notice 2007-70, also issued on 29 June 2007.
4. During the public hearing for the Diversity of Voices Proceeding held during the week of 17 September 2007, the Commission considered proposals to amend its benefits policy. However, in the Diversity of Voices Regulatory Policy set out in Broadcasting Public Notice 2008-4, issued 15 January 2008, the Commission indicated that it had decided to make no changes to the benefits policy at that time.
5. After reviewing the public comments on the Task Force Report received in response to Broadcasting Public Notice 2007-70, the Commission announced, in Broadcasting Notice of Public Hearing 2007-15 issued 5 November 2007, that it would hold an oral hearing to review issues related to the CTF. The hearing would take place during the week of 4 February 2008, and interested parties were invited to express their views.

6. Following this public hearing, the Minister of Canadian Heritage announced that the government had asked the CRTC to prepare a report and to make recommendations on the CTF, in accordance with section 15 of the *Broadcasting Act*.
7. On 5 June 2008, the Commission submitted its *Report to the Minister of Canadian Heritage on the Canadian Television Fund* (the CTF Report). In the CTF Report, the Commission noted the Task Force Report recommendation that the CRTC take action to ensure the financial stability of the CTF. The Commission further stated that it was now prepared to amend its benefits policy so that tangible benefits could be directed to the CTF. The Commission committed to begin a written process by way of a public notice to amend its benefits policy.
8. With respect to funding for new media platforms, the Commission noted in the CTF Report that the majority of parties from all sectors of the industry supported the concept of a new funding stream for new media, provided that the current CTF funds were not used for that purpose and provided that there was a direct link connecting the CTF funds to the creation of Canadian content for the regulated sector.
9. The Commission also noted the CTF's intention to launch a new media pilot program. Under this program, the triggering parties (i.e., those parties eligible to draw from a CTF new media fund) would continue to be CRTC licensees. The Commission recommended that the CTF establish this new funding stream to support Canadian programs designed for new media platforms, and stipulated that the money for this stream should come entirely from new funding sources such as equity investments, benefits packages or dedicated government contributions.
10. Moreover, the Commission stated that it would immediately issue a public notice to amend its Certified Independent Production Funds policy set out in Public Notice 1997-98 in order to provide such funds with greater flexibility to support new media projects. The Commission issued a call for comments on such amendments in Broadcasting Public Notice 2008-58.
11. On 27 March 2008, the Commission issued Broadcasting Decision 2008-69, in which it approved the transfer of effective control of BCE Inc. to a corporation to be incorporated and a consequential change in ownership of CTVglobemedia Inc. In that decision, the Commission revised the value of the transaction, and as a result, increased the tangible benefits required from \$10.96 million to \$21.91 million. The Commission stipulated that the applicant must invest \$10.5 million of these additional benefits in an interest-generating fund.
12. The Commission further stipulated that the revenues from the interest-generating fund must be transferred each August 1st to the Canada New Media Fund administered by Telefilm Canada in accordance with the terms of Telefilm Canada's New Media Fund. The next August 1<sup>st</sup> following the date on which the CTF has established its own new media fund (and every August 1st thereafter), all revenues from this interest-generating

fund must be transferred to the CTF New Media Fund, to be disbursed in accordance with the terms of the CTF New Media Fund.

13. In light of the above, the Commission considers that it would be appropriate to amend the criteria set out in Public Notice 1999-97 (the 1999 Television Policy) in order to allow a percentage of future benefits contributions to the CTF to be used to support Canadian programs designed for new media platforms.

### **The benefits policy**

14. The Commission created and first set out its benefits policy in Public Notice 1989-109 to oversee the transfer of ownership or control of broadcasting undertakings and to ensure that the public interest is served in such instances. To that end, the benefits policy stipulates that a percentage of the value of the transaction must be allocated to incremental spending (i.e., not part of the normal responsibilities of the existing licensee) that will benefit audiences in the market(s) served and the Canadian broadcasting system as a whole.
15. In the 1998 Commercial Radio Policy set out in Public Notice 1998-41, the Commission required that parties seeking to acquire ownership or control of profitable radio undertakings make Canadian Talent Development (CTD) commitments in the form of tangible benefits of no less than 6% of the value of the transaction. The Commission stipulated that the radio tangible benefits must be distributed as follows:
  - 3% to the Radio Starmaker Fund or Fonds Radiostar to market and promote Canadian music;
  - 2% to the Foundation Assisting Canadian Talent on Recordings (FACTOR) or MUSICACTION, at the discretion of the purchaser; and
  - 1% to either of the above initiatives, to other CTD initiatives, or to other eligible third parties as described in Public Notice 1995-196.
16. In the 1999 Television Policy, the Commission amended its benefits policy regarding all transfers of ownership or control involving television broadcasting undertakings, including conventional, pay, pay-per-view and specialty television undertakings. In light of this amendment, the Commission expected applicants to make commitments to clear and unequivocal television tangible benefits representing a financial contribution of 10% of the value of the transaction, as accepted by the Commission.
17. Unlike the Commercial Radio Policy, the Commission's benefits policy for television does not specify the approach that must be taken regarding the administration of benefits packages. In the past, one of three approaches has been taken: third-party capital funds, third-party non-capital funds and self-administered funds.

### **Third-party capital funds**

18. The Commission has approved the creation of third-party entities to administer and allocate benefits monies. Under this approach, the third party invests the funds and uses the interest generated from the capital to provide stable, long-term funding. The third party disburses the proceeds independently and in perpetuity rather than over a finite time period such as five years. An example is the Independent Production Fund (IPF) – a permanent fund established as a result of a 1989 transfer of ownership from Selkirk Communications Limited to Maclean Hunter Limited, which the Commission approved in Decision 89-766. The IPF was established in 1991 with capital endowments of \$29.2 million. Since 1991, the IPF has invested close to \$43.5 million in television series, according to the IPF's annual report. The fund's 2007 investment in series production was \$2.3 million.

### **Third-party non-capital funds**

19. The Commission has also approved third-party funds that are not invested; therefore, no interest is generated from the benefits and the initial capital is spent. Under this approach, the funds are finite and administered independently over a finite period such as five years. An example is the Canadian Western Independent Producers (CWIP) Fund, established as a result of CanWest Global's purchase of WIC Western International Communications Ltd. – a transaction approved in Decision 2000-221. A total of \$23.9 million over five years was distributed to qualifying production companies based in Manitoba, Saskatchewan, Alberta and British Columbia. These funds were dispersed in the form of non-recoupable contributions to production budgets.

### **Self-administered funds**

20. In 2000, the Commission approved self-administration of a benefits package when BCE Inc. acquired effective control of CTV Inc – a transaction approved in Decision 2000-747. Under the approach set out in that decision, BCE Inc. provided funds predominantly to independent producers over a seven-year period. A \$230 million benefits package included \$146.5 million for the development and production of incremental priority programming, intended for broadcast on CTV.

### **Commission's proposal**

21. In light of the above, the Commission proposes to amend the benefits policy set out in the 1999 Television Policy so that the applicant, (i.e., the purchaser of a television broadcasting undertaking) would be required to direct an appropriate percentage of its total benefits package to the CTF. The proportion of the benefits package to be allocated to the CTF would be at the discretion of the applicant, in consideration of the nature of the transaction, and subject to the Commission's approval. For example, a transaction involving a local television station may result in a lower percentage of its tangible benefits package contributed to the CTF. The Commission would expect a higher contribution to the CTF from a transaction involving the acquisition of undertakings, such as conventional networks or pay and specialty services, which benefit from CTF-funded programming.

22. Furthermore, the applicant could propose to direct its CTF contribution to either the CTF's proposed New Media Fund, the CTF's regular fund in support of original television programming, or to both the new media and television funds.
23. The Commission's CTF Report also recommended that the CTF's funding be split into private- and public-sector streams. Therefore, should this recommendation be implemented, an applicant could propose to direct its CTF benefits to either the private-sector stream, the public-sector stream, or to both.
24. All proposed allocations would be in consideration of the nature of the transaction, and subject to the Commission's approval.

### **Call for comments**

25. The Commission invites comments on the proposed amendments to its television benefits policy set out in this notice. The Commission will accept comments that it receives on or before **8 September 2008**.
26. 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**

27. Interested parties can file their comments to the Secretary General of the Commission:

- **by using the**  
[Broadcasting Intervention/Comments Form](#)

OR

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

OR

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

28. Submissions longer than five pages should include a summary.
29. 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.

## **Important notice**

30. Note that all information that you provide as part of this public process, except information granted confidentiality, whether sent by postal mail, facsimile, e-mail or through the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca), becomes part of a publicly accessible file and will be posted on the Commission's website. This information includes your personal information, such as your full name, e-mail address, postal/street address, telephone and facsimile number(s), and any other personal information you provide.
31. The personal information you provide will be used and may be disclosed for the purpose for which the information was obtained or compiled by the Commission, or for a use consistent with that purpose.
32. Documents received electronically or otherwise will be put on the Commission's website in their entirety exactly as you send them, including any personal information contained therein, in the official language and format in which they are received. Documents not received electronically will be available in PDF format.
33. Please note that the information you provide to the Commission as part of this public process is entered into an unsearchable database dedicated to this specific public process. This database is accessible only from the webpage of this particular public process. As a result, a general search of our website with the help of either our own search engine or a third-party search engine will not provide access to the information which was provided as part of this public process.
34. The Commission encourages interested parties to monitor the public examination file and the Commission's website 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**

Toll-free telephone: 1-877-249-2782

Toll-free TDD: 1-877-909-2782

Central Building  
Les Terrasses de la Chaudière  
1 Promenade du Portage, Room 206  
Gatineau, Quebec K1A 0N2  
Tel.: 819-997-2429  
Fax: 819-994-0218

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

205 Viger Avenue West  
Suite 504  
Montréal, Quebec H2Z 1G2  
Tel.: 514-283-6607

55 St. Clair Avenue East  
Suite 624  
Toronto, Ontario M4T 1M2  
Tel.: 416-952-9096

Kensington Building  
275 Portage Avenue  
Suite 1810  
Winnipeg, Manitoba R3B 2B3  
Tel.: 204-983-6306  
TDD: 204-983-8274  
Fax: 204-983-6317

Cornwall Professional Building  
2125 - 11<sup>th</sup> Avenue  
Room 103  
Regina, Saskatchewan S4P 3X3  
Tel.: 306-780-3422

10405 Jasper Avenue  
Suite 520  
Edmonton, Alberta T5J 3N4  
Tel.: 780-495-3224

530-580 Hornby Street  
Vancouver, British Columbia V6C 3B6  
Tel.: 604-666-2111  
TDD: 604-666-0778  
Fax: 604-666-8322

## Secretary General

### Related documents

- *Call for comments on proposed amendments to the criteria of the Certified Independent Productions Funds policy for broadcasting distribution undertakings*, Notice of Consultation, Broadcasting Public Notice CRTC 2008-58, 30 June 2008
- *Report to the Minister of Canadian Heritage on the Canadian Television Fund*, 5 June 2008
- *Transfer of effective control of BCE Inc. to a corporation to be incorporated and a consequential change in ownership of CTVglobemedia Inc.*, Broadcasting Decision CRTC 2008-69, 27 March 2008
- *Diversity of voices*, Regulatory policy, Broadcasting Public Notice CRTC 2008-4, 15 January 2008
- *Report of the CRTC Task Force on the Canadian Television Fund*, 29 June 2007
- *Proceeding on the Canadian Television Fund (CTF) Task Force Report*, Broadcasting Notice of Public Hearing CRTC 2007-15, 5 November 2007
- *Call for comments on the Canadian Television Fund (CTF) Task Force Report*, Broadcasting Public Notice CRTC 2007-70, 29 June 2007
- *Transfer of effective control of CTV Inc. to BCE Inc.*, Decision CRTC 2000-747, 7 December 2000
- *Acquisition by CanWest Global Communications Corp., through its wholly-owned subsidiary CW Shareholdings Inc., of the ownership interests held previously by WIC Western International Communications Ltd. in various conventional television stations and in certain other broadcasting undertakings*, Decision CRTC 2000-221, 6 July 2000
- *Building on success – A policy framework for Canadian television*, Public Notice CRTC 1999-97, 11 June 1999
- *Commercial Radio Policy 1998*, Public Notice CRTC 1998-41, 30 April 1998
- *Contributions to Canadian Programming by Broadcasting Distribution Undertakings*, Public Notice CRTC 1997-98, 22 July 1997

- *Contributions by radio stations to Canadian Talent Development – A new approach*, Public Notice CRTC 1995-196, 17 November 1995
- *Elements assessed by the Commission in considering applications for the transfer of ownership or control of broadcasting undertakings*, Public Notice CRTC 1989-109, 28 September 1989
- *39 Applications (Agenda Reference 1a., Part A) MH Acquisition Inc. - 40 applications (Agenda Reference 1b., Part B)*, Decision CRTC 89-766, 28 September 1989

*This document is available in alternative format upon request, and may also be examined in PDF format or in HTML at the following Internet site: <http://www.crtc.gc.ca>.*