

**(TRANSLATION – ENGLISH-LANGUAGE VERSION NOT FILED WITH
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By facsimile transmission

July 23, 2004

Ms. Diane Rhéaume
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario
K1A 0N2

Dear Ms. Rhéaume:

Re: Broadcasting Public Notice CRTC 2004-38 – Proposed measures in support of French-language Drama

A. Introduction

1. The Quebec District Council of the Directors Guild of Canada (the *Guilde*) is writing to respond to the above-mentioned public notice concerning the CRTC's proposed measures in support of French-language dramatic productions.
2. The Guild represents 153 directors, production designers, art directors, production managers, production accountants and assistants working in Quebec's film and television production industry. In 1992, the *Commission de reconnaissance des associations d'artistes et des associations de producteurs du Québec* officially recognized the Guild as the exclusive representative of production designers and art directors who work in both English and French in the Province of Quebec. Additionally, in 1996, the Guild was recognized as the exclusive representative of directors working on English-language productions.
3. In Public Notice CRTC 2004-38, the CRTC proposed a number of incentives to ensure that original French-language Canadian dramas remain a key component broadcasters' schedules during the peak viewing period. The Commission also called for public comments with respect to a number of regulatory issues related to Canadian drama.
4. The Guild firmly opposes the Commission's suggestion that the adoption of incentives that merely maintain the key role of French-language dramatic productions in our system is sufficient. The Guild also opposes the Commission's proposal that grants time credits in the form of advertising minutes for all original French-language dramatic productions broadcast on television.

5. As mentioned in Public Notice CRTC 2004-38, the number of hours of French-language dramatic productions broadcast on television has significantly decreased during the past four years. This reduction amounts to 49%. In this regard, the Commission stated the following in Broadcasting Public Notice CRTC 2004-38:

“This downward trend in production could result in a decrease in the broadcast of original peak time television drama during upcoming seasons.”

6. In order to respond to this downward trend and to ensure that a greater number of hours of original French-language productions are broadcast on television, it is essential that the Commission adopt regulatory requirements, such as requiring broadcasters to air a minimum number of hours of original French-language dramatic productions each week.
7. The Guild is not opposed to the adoption of incentives based on the number of hours of dramatic productions broadcast, however, the model that we support is one that grants incentives to the number of hours of dramatic productions broadcast that are additional to the average number of hours of dramatic productions broadcast during the past three years. Our support for incentives is also conditional upon the adoption of the criteria that we set out in this brief.
8. Finally, the Guild supports the adoption of incentives as set out in this brief as a transitional mechanism only. These measures should only remain in effect until such time as the Commission has had the opportunity to adopt a new regulatory framework for the support of French-language dramatic productions. This new regulatory framework should be adopted as soon as possible, and no later than the next regulatory review of television broadcast licences.

B. The Objective of Broadcasting Public Notice CRTC 2004-38.

9. The objective that the Commission established for the support of French-language dramatic productions in Broadcasting Public Notice CRTC 2004-38 does not respond to the issues that French-language dramatic productions are currently facing.
10. The Commission’s objective is to “ensure that conventional French-language broadcasters continue to make a significant contribution to the production of original drama.” (par. 20, Broadcasting Public Notice CRTC 2004-38). The Commission adopted this objective based on broadcaster expenditure levels on drama and on the ratings that these programs attain. As stated in Broadcasting Public Notice CRTC 2004-38, the Commission’s objective for this public process is not to solve a problem, but to maintain the current situation in Quebec. The Commission is, therefore, proposing the status quo with respect to the broadcast of original French-language dramatic productions.
11. However, as mentioned, the number of hours of French-language dramatic productions broadcast is falling. Based on the figures that the Commission provided in Broadcasting Public Notice CRTC 2004-38, the number of hours of original French-language dramatic productions has fallen since the year 2000-2001 by 49%. In 2000-2001, the number of

hours of French-language dramas broadcast was 356, whereas in 2003-2004 the number dropped to 183 hours.

12. It is, therefore, essential that the objective of this public process consist of increasing the number of hours of original French-language dramatic productions broadcast on television, and not to maintain the status quo.
13. Consequently, the Guild supports the proposal of the Association des producteurs de films et de télévision du Québec (APFTQ) and suggests that the Commission amend the objective of this public process as follows:

“Support the production and the broadcast of a greater number of original French-language Canadian dramatic productions during the peak viewing periods.”
(Translation)

C. The CRTC’s Proposed Incentives

14. In Broadcasting Public Notice CRTC 2004-38, the Commission proposed incentives tied to the number of hours of original dramatic productions broadcast during the peak viewing period.

High-Cost Drama

15. The first part of the Commission’s incentive package applies to 10 point original Canadian dramas broadcast during the peak viewing period of 7:00 p.m. to 11:00 p.m. These productions must also have a production budget of at least \$800,000 per hour and a licence fee consistent with Canadian Television Fund (“CTF”) standards. For each hour of 10 point original dramatic productions broadcast during peak time, the Commission proposes to grant broadcasters three minutes of additional advertising time.

Other French-language drama funded by the CTF

16. The second part of the Commission’s proposed incentive model applies to all other 10 point original French-language dramatic productions that have production budgets below \$800,000 per hour and a licence fee consistent with the norms established by the CTF. For these productions, the CRTC proposes to grant a credit of two additional minutes of advertising for each hour of original dramatic productions broadcast during the peak viewing period.

Original French-language Drama Produced Without CTF Assistance

17. This third part of the Commission’s proposal applies to original French-language dramatic productions that are produced without CTF support and are not 10 point productions. For these programs, the CRTC proposes to grant a time credit of four minutes of advertising time, in addition to the two or three minutes mentioned above, for productions that are not financed by the CTF. The advertising revenue generated by the four additional minutes must be directed to producers.

D. The Guild's Observations Concerning the Commission's Proposed Incentives

18. The Guild is opposed to the incentives proposed in Broadcasting Public Notice CRTC 2004-38. The CRTC proposes to reward broadcasters for that which they are currently doing, which consists of reducing the number of hours of dramatic programs that they have broadcasted on their stations over the course of the past four years.
19. Additionally, we do not believe that the Commission's proposal will result in an increase in the number of hours of original French-language Canadian dramatic productions broadcast on television. As mentioned by the APFTQ in its brief relating to this public process, it is possible that the Commission's proposed measures may result in a further reduction in the number of hours of French-language dramatic programs broadcast on television.
20. The adoption of incentives, as proposed by the Commission would be extremely advantageous for broadcasters. They will be able to broadcast two to seven minutes of advertising (per hour) in addition to what they are presently permitted to do pursuant to regulatory requirements currently in place.
21. The Commission estimates that one minute of advertising in peak time can generate average revenues in the order of \$10,000. However, the research and analysis conducted by the APFTQ allows us to conclude that the average net revenue per minute of advertising during the peak viewing period is approximately \$40,000. Based on this number, television broadcasters could generate at least \$14,640,000 (2 minutes x 183 hours of dramas x \$40,000) by simply broadcasting the same number of dramatic productions that they broadcast during 2003-2004.
22. Further, the incentives proposed by the CRTC do not require broadcasters to use any - or even a portion - of the additional revenue generated by the advertising credits on the financing or acquisition of original French-language Canadian dramatic productions. Consequently, the additional revenue that broadcasters will receive as a result of the adoption of the Commission's incentive package will consist of net profits for television broadcasters.
23. It is also important to note that the increase in additional advertising inventory that certain broadcasters will enjoy as a result of the adoption of new incentives will be at the expense of specialty services and smaller television station in the French-language market. It is, therefore, necessary that the Commission limit the impact of its new incentives on licensees who will incur a reduction in revenues as a result of the adoption of a new incentive regime.

E. The Guild's Recommendations

24. As mentioned above, the Guild is of the view that regulatory requirements are necessary to ensure that French-language Canadian dramatic productions remain a key component of the programming broadcast during peak viewing periods. However, if the

Commission insists on adopting new incentives for television broadcasters, we recommend that it adopt the model set out in this brief.

25. It is important to reiterate that the Guild only supports the adoption of incentives on a transitional basis only. These measures should only remain in place until the Commission has adopted a new regulatory framework for original French-language Canadian dramatic productions. This new regulatory framework must include regulatory requirements, such as the obligation that broadcasters air a minimum number of hours of dramatic productions each week. This new regulatory framework must be adopted by the Commission as soon as possible, and no later than the next review of French-language broadcast licences.
26. With respect to the transitional measures that we propose, the Guild supports the APFTQ's recommendation that broadcasters should be granted a four minute time credit for the hours of dramatic productions that they broadcast in addition to the average number of dramas they aired during the past three years for productions that have budgets that exceed \$800,000 (per hour). We also support the APFTQ's recommendation that a time credit of two minutes be granted to broadcasters for each hour of dramatic productions that they broadcast in addition to the average number of hours of dramas that they broadcast during the previous three years for productions with budgets below \$800,000.
27. These incentives apply to productions that have licence fees that are consistent with CTF requirements. These measures should only come into force if the following criteria are also adopted:
 - First, the incentives should only apply to "original" productions. It is an increase in the presence of these productions that will help strengthen the French-language broadcasting system. It is also these productions that provide new opportunities for producers and artists, as well as diversify the television broadcasting landscape. Additionally, the incentives should only apply to original productions as broadcasters should not be rewarded for the broadcast of repeats.
 - At paragraph 72 of Broadcasting Public Notice CRTC 2004-38, the Commission mentions that:
 - "(...) 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 on English-language television, and maintaining a proper balance of peak time drama programming on French-language television, would have a direct and positive impact on the independent production sector and the employment of Canadian creative talent and crafts persons." (Emphasis added)
 - The Guild supports this Commission conclusion and recommends that new incentives only apply to original productions.
 - Secondly, the advertising time credit should only be granted for the hours of additional original French-language Canadian productions broadcast in addition to the average

number of hours that a licensee broadcast during the previous three years. For instance, if a broadcaster aired 150 hours in 2003-2004, it should only receive the time credit for the 151st hour broadcast during the year that the new incentive policy applies. As suggested by the APFTQ, if 10 of those 150 hours consist of high cost dramas, the time credit of four minutes would be granted for the 11th hour. If 140 of the 150 hours are low-cost dramas, then the two minutes would be granted for the 141st hour.

- Third, as suggested by the CRTC, the time credits should not apply to the broadcast of dramas that received funding as part of a benefits package arising from a transfer of ownership or a commitment made in the context of the issuance of a new licence. Broadcasters should not be rewarded for respecting their licensing obligations and Commission policy.
- Fourth, the incentives should only apply to 10 point dramatic productions as they provide the greatest of opportunities to French-language writers, directors and actors. It is also these productions that require regulatory support due to their high production costs.
- Further, the production of 8 and 9 point dramas in the French-language market are very rare. The Commission stated in Broadcasting Public Notice CRTC that it did not have sufficient information on hand to conclude that it was appropriate to adopt measures for French-language 8 and 9 point dramatic productions. Given the reality of the French-language market, the new incentives should only apply to 10 point dramas. As mentioned above, it is also important to limit the application of the new incentives in order to reduce the impact on the loss of revenues that other stations will face.
- Fifth, the new incentives should only apply to dramatic productions, such as documentaries. Dramatic productions are the cornerstone of the French-language broadcasting system. They allow us to share our experiences, enrich our culture and reflect our realities and imagination on the small screen. As stated in Broadcasting Public Notice CRTC 2004-38, it is also these programs that are the most popular with television audiences. However, the number of hours of original French-language dramatic productions broadcast has substantially fallen over the past four years. It is therefore essential that new incentives focus on increasing the number of hours of dramatic productions broadcast within our broadcasting system.
- Sixth, the incentives should only apply to dramatic productions that are broadcast during the peak viewing period of 7:00 p.m. and 11:00 p.m., with the exception of children's dramatic productions. It is during these hours that dramas reach their largest audiences. Moreover, we do not believe that incentives are required to help support the broadcast of dramas during time-periods that reach much smaller audiences.
- With respect to children's programs, we suggest that the hours that are appropriate for the broadcast of these programs consist of 4:00 p.m. to 9:00 p.m. Teletoon's licence defines children's peak viewing time as 4:00 p.m. to 10:00 p.m. We suggest that the Commission adopt that definition but removing the period after the peak hour after 9 p.m.

- The Guild also recommends that the Commission limit the number of hours of children's programming for which broadcasters may receive the advertising time credit to ensure that there will be a diversity in the type of new drama that is broadcast. To ensure this programming diversity, the Guild recommends that the Commission limit the proportion of programs directed to children for which broadcasters are eligible for the time credits to 15% of the total additional dramas broadcast. This limit should, however, not apply to specialty services focused on children's programming, such as Teletoon.
- Seventh, a broadcaster should not be eligible for the two minute time credit (that is the credit for low cost dramas) unless the program has a production budget of at least \$250,000 per hour. To grant the time credit of two minutes to a broadcaster for a program that has a production budget of \$100,000 would likely result in the broadcaster being granted a reward that is greater than the licence fee paid for the program. This will dilute the incentives and is to be avoided.
- Eighth, the Guild supports the Commission's proposal that specialty services may benefit from the incentives on the condition that their licences allow them to broadcast dramatic programs. These services, however, should only benefit from the time credit for the hours of original French-language Canadian dramatic productions that they broadcast in addition to the average number of hours of dramas that they broadcast during the past three years.
- Finally, the Guild supports the Commission's recommendation to limit the number of advertisements that a broadcaster can air to 14 minutes per hour. The CRTC made this recommendation in order to limit the impact of the incentives on the advertising inventory in the French-language market. It also made this proposal to limit the impact on viewers in the French-language market, who are not accustomed to the 14 to 16 minutes of advertising breaks.

F. Response to Questions set out in Broadcasting Public Notice CRTC 2004-38

28. The following are the Guild's responses to the Commission questions set out at paragraph 116 of Broadcasting Public Notice CRTC 2004-38.

(i) *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.

29. As mentioned above, the incentives should only apply to original Canadian French-language productions. However, the current definition excludes productions shot simultaneously in English and French ("double shoots"), such as *René Lévesque* and *Le Dernier Chapitre/The Last Chapter*.

30. It is our view that “double shoot” productions should be included in the definition of original programs, as they offer excellent opportunities for our French-language writers, directors and actors to practice their craft. We are also of the view that English and French-language broadcasters who air these productions should benefit from the advertising time credit. For example, if the SRC and the CBC broadcast a series that was shot in English and in French, the SRC should benefit from the time credit for the broadcast of the French-language production, and the CBC should benefit from the time credit for the English-language broadcast.
31. The definition of original broadcast set out in Public Notice CRTC 1999-97 for specialty services includes programs that are shot in English and translated into French. If the incentives are to apply to specialty services, the Guild is of the view that programs shot in English and then translated into French should be excluded from the definition of original programs as they offer no professional opportunities to our French-language artists.
32. We, therefore, propose the following definition of 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. Original programs include productions that are broadcast in the language in which they were shot and productions that are shot simultaneously in English and French.

(ii) 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?

33. The Guild supports the Commission’s proposal 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). As set out in Broadcasting Public Notice CRTC 2004-38, children’s dramatic productions are an important and popular type of Canadian production. Incentives should, therefore, be in place to encourage broadcasters to air programs targeting the younger viewers.
34. We suggest that the hours that are appropriate for the broadcast of these programs consist of 4:00 p.m. to 9:00 p.m., as previously discussed. Teletoon’s licence defines children’s peak viewing time as 4:00 p.m. to 10:00 p.m. We suggest that the Commission adopt that definition, but that it remove the period after the peak hour of 9 p.m.
35. Further, the Guild recommends that the Commission limit the number of hours of children’s programming for which broadcasters may receive the advertising time credit. This restriction will ensure that there will be a diversity in the type of Canadian dramas broadcast. In order to ensure this diversity, the Guild recommends that the CRTC limit the proportion of programs directed to children for which broadcasters will be eligible for time credits to 15% of the total amount of additional dramatic productions broadcast.

This limit, however, should not apply to specialty services that focus on the broadcast of children's programming, such as Teletoon.

(iii) *Is three minutes of additional advertising for each original hour of high-cost, 10-point Canadian French-language drama broadcast in peak time an appropriate incentive reward? If not, what would be the appropriate incentive?*

36. The Guild recommends that the Commission grant a time credit of four minutes for each hour of high cost original French-language Canadian drama broadcast in addition to the average number of hours broadcast by the licensee during the past three years. These productions must have a production budget of at least \$800,000 per hour, and a licence fee consistent with CTF requirements.

(iv) *Is two minutes of additional advertising in peak time for original Canadian French-language 10-point drama with a budget of less than \$800,000 per hour an appropriate incentive reward? If not, what would be the appropriate incentive?*

37. The Guild recommends that the Commission grant a two minute time credit for each hour of low-cost drama broadcast in addition to the average number of hours broadcast by the licensee during the past three years. This productions must have a budget below \$800,000 per hour, but above \$250,000, and a licence fee consistent with CTF requirements.

38. As mentioned above, 8 and 9 point Canadian dramatic productions should not be eligible for the advertising minute time credit. The productions of these types of programs in the Province of Quebec are rare, and the CRTC admits in Broadcasting Public Notice CRTC 2004-38 that it does not have sufficient information at its disposal to conclude that it is appropriate to adopt incentives for these types of productions. Due to the necessity of limiting the negative impact of new incentives on the broadcasting system, we recommend that the Commission exclude 8 and 9 point productions from the incentive regime.

(v) *Should the proposed incentive of four additional minutes of advertising for drama not funded by the CTF apply to the French-language market?*

39. Very few productions in the Province of Quebec are made without the support of the CTF, with the exception of feature films. However, feature films face separate issues from those of dramatic productions. We, therefore, suggest that the Commission initiative a separate public process for feature films, as suggested by the APFTQ.

40. Since there are very few French-language television dramas that would benefit from such an incentive, we do not think that it applies to the French-language market.

(vi) *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?*

41. If the incentive which grants four additional minutes for dramas not subsidized by the CTF as proposed by the Commission is adopted, it is essential that the revenues gained from the sale of these four additional minutes be directed to producers.
 42. The Guild is of the view that rigorous accounting measures must be adopted in order to ensure that the revenues generated by the sale of these minutes are effectively forwarded to producers.
 43. The Guild is aware that the information concerning rates charged by broadcasters for specific programs is confidential, since rates for particular programs can vary considerably depending on the level of demand and other factors. However, we believe that it should be possible to provide an auditable number that represents the average net revenue per minute that a station group derives from sales of minutes on programs where additional inventory is sold under the CRTC incentive plan. Since that number is an aggregated number over a number of programs over the entire year, it should be able to be disclosed to producers, and be backed up by worksheets that are filed with the CRTC and can be kept confidential.
 44. In order to ensure that this is done, broadcasters should be required to report to the Commission annually the total revenues that they generate from advertising sales on the programs where they sold additional minutes. It is our understanding that broadcasters have at their disposal information about the total number of minutes sold per program and the total revenues that they generate per program. This information should be set out in a confidential annual report to the Commission. From this information, the average revenue per additional minute may be determined.
 45. Broadcasters should also report the number of additional minutes that they sold over and above the 12 minute limit, as well as identify which of those minutes fall into the different incentive categories. The number of additional minutes that fall into the four additional minute category multiplied by the average revenue per minute for all additional minutes should be the amount of money that flows to producers from the broadcasters.
- (vii) 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?*
46. The incentives proposed by the CRTC will have a negative impact on the entire Canadian broadcasting system. Most original French-language Canadian dramatic productions are broadcast on conventional television stations. The advertising revenues of these broadcasters will increase exponentially if the Commission adopts its incentive package. However, the revenue increases for conventional stations will be diverted from other services as the advertising inventory in the French-language market will remain constant. It is therefore essential that new incentives adopted by the Commission grant advertising credits only for the hours of productions that exceed the average number of hours broadcast by a licensee during the past three years.

47. By limiting the application of the incentives as set out above, the Guild does not believe that the incentive program will have a significant negative impact on other categories of programs such as long-form documentaries as these programs will still be benefited by the priority programming rules.

(viii) How should the Commission ensure that broadcaster equity investments are demonstrably at risk investments? Should the Commission consider other measures in order to provide safeguards?

48. The Guild has long opposed allowing recouped equity to count as expenditures because the market power of broadcasters allows them to insist on recoupment or participation conditions that erode the position of the producer, and make it difficult if not impossible for producers to be commercially viable. (Unrecouped equity is treated as an expenditure under current CRTC rules in Public Notice 1993-93 and the Guild does not object to this.) By extracting unreasonable recoupment conditions, broadcasters can minimize if not eliminate risk.

49. Pending the development of equitable Terms of Trade, the Guild proposes that a broadcaster equity investment should not count as an expenditure unless (a) the broadcaster licence fee is at least the minimum licence fee established by the CTF, and (b) the terms and conditions of the equity investment are no more favourable to the broadcaster than those that are required by Telefilm Canada in its equity investments. In particular, no broadcaster equity investment should be permitted to be recouped in preference to the equity investment made by the producer, nor should the broadcaster be permitted to recoup any part of its investment in advance of the producer recouping any deferred fees.

The Guild is pleased to have had the opportunity to provide you with our comments within this public process.

Yours truly,

Michel Poulette
President