



Aboriginal Peoples
Television Network

Sharing our stories with all Canadians.

FILED ELECTRONICALLY

February 18, 2008

Robert A. Morin
Secretary General
Canadian Radio-television and
Telecommunications Commission
1 Promenade du Portage
Gatineau, Quebec
J8X 4B1

Dear Mr. Morin:

**Re: Notice of Public Hearing CRTC 2007-15
Proceeding on the Canadian Television Fund Task Force Report**

1. Aboriginal Peoples Television Network Incorporated (“APTN”) is pleased that the Commission has held this hearing regarding its Task Force report on the Canadian Television Fund.
2. This proceeding has demonstrated that there is profound, far-reaching and passionate support for the CTF and for its mandate. This proceeding has also demonstrated that CTF is very-well managed and does an admirable job in balancing competing interests in the industry.
3. In this last submission, we wish to focus on the key issue for APTN and for Aboriginal Peoples raised in the CTF Report: the idea of “splitting” the fund into so-called “public” and “private” streams.

Executive Summary

4. In summary form, our view is the following:
 - Splitting the fund, and pushing APTN to access the so-called “public”, government funded stream, will marginalize APTN and Aboriginal Peoples. It sends a strong message: APTN is not a full player in the broadcasting system. Aboriginal Peoples are just a “special initiative” and should look to government alone for support. We reject this proposal, and the message behind it, completely.
 - There is no policy reason to split the fund into private and public streams.
 - Splitting the fund will put APTN’s mainstream and popular programming – including our **mandatory, CRTC-required, priority programming** at risk. This will be a large step back for APTN.

- Aboriginal Language Initiative funding is simply not meant to produce the same kind of broad-based popular appeal programming that is funded through the CTF's BPE funding streams. The ALI is not large enough for that purpose, and it would not be appropriate to take resources away from ALI initiatives to fund English- and French-language drama, for example.
- When the federal government contribution was much larger than the CRTC-mandated BDU contribution, private broadcasters didn't object – they were in favour of sharing resources. Now, private broadcasters want to keep all of this so-called “private” money for their own projects. We believe, therefore, the motivation to split the fund is simply to direct more money to fewer, private players.
- If the CRTC decides to split the CTF, then it should not split the CTF on the basis of where its funding comes from. Rather, it should split on the basis of allocating its pooled resources to different objectives, on a principled basis. Under this scenario, APTN would support an allocated funding stream for APTN and Aboriginal productions of a minimum of 5% of total funding – based on the CBC model.

Marginalizing APTN

5. The idea to split the Fund is, simply put, bad policy. From our perspective and the perspective of Aboriginal Peoples, it sends the following message: *“Aboriginal Peoples are not a part of the mainstream. Get your money from the government. You're not like us “private” sector participants. We get the “private” money. Aboriginal Peoples need to remain dependent on federal government funding so you should go talk to the federal government.”* Strong words? Yes, they are.
6. But this proposal is fundamentally contrary to our understanding, until now,
 - that APTN has a role to play within the broadcasting system as a full player, with meaningful access to the same kinds of supports that others enjoy; and
 - that the CTF is supposed to fund programming in order to meet important broadcasting policy objectives, which are undoubtedly **public policy objectives**.
7. It is important to underscore, again, the reason that there is a CTF, indeed, the reason why we have a CRTC: to achieve broadcasting policy objectives. The CTF, and the funds it administers – especially, the CRTC-mandated funds – are derived straight from the CRTC's authority under the *Broadcasting Act*. To the extent the CTF is supported by CRTC-mandated contributions, the CRTC must ensure that the CTF is intended to meet broadcasting policy objectives for Canada as set out in the *Broadcasting Act*.
8. We respectfully submit that the Task Force recommendations that the CTF be guided to operate primarily on the basis of audience success measures, and on the basis of potential and actual returns on equity, are not valid broadcasting policy objectives in and of

themselves. The CRTC must take these regulatory tools and apply them solely with a view to implement the broadcasting policy for Canada set out in the Act, if it is appropriate, and to the extent it is appropriate, to do so.¹

9. Until now, we at APTN have thought that the objectives that we at APTN are supposed to pursue – including advancing the place of Aboriginal Peoples in the broadcasting system as a whole – were viewed as important objectives for Canadian broadcasting policy and for the system as a whole. We have relied on the CTF – a key part of our broadcasting system, as a whole – in meeting our objectives. We have said that we have been treated fairly.
10. Now, this proposal, will undercut our ability to access the so-called “private” stream and will push to relying on the so-called “public” stream. We think this is a regressive policy. We believe strongly, in fact, that the policy does not reflect an intent to promote broadcasting policy objectives.

No Policy Reason for Splitting the Fund

11. APTN does not understand the policy reason that would motivate the CRTC to split the fund. There is no direct policy link between the CRTC requiring BDUs to make a contribution to the production of Canadian programming, and the direction of this contribution to the most audience driven programs that can be produced, by “private” broadcasters only – to the exclusion of others.
12. The point that APTN, and others, have made is that the monies contributed by BDUs are monies derived directly from subscribers. These subscribers are a proxy for the Canadian public at large. It is appropriate, therefore, that these monies find their way back to the public in programming that reflects, at least to some reasonable extent, the needs and aspirations of the actual diverse, stratified, Canadian public – and not just, for example, the urban 18 to 54 audience that is so often chased after for ratings.
13. Our *Broadcasting Act* reflects this approach in numerous different provisions. We have broad policy goals:
 - there are public, private and community elements in the broadcasting system (3(1)(b));
 - English and French-language broadcasting are recognized as having different requirements (3(1)(c));
 - our broadcasting system should provide “a wide range of programming” and serve the needs and interests of Canadian men, women and children in our multicultural society and the special place of Aboriginal Peoples (3(1)(d));
 - programming provided in the system should “be varied and comprehensive”, “be drawn from local, regional, national and international sources”, include educational and

¹ *Broadcasting Act*, s. 5(1).

community programs, and include a significant contribution from the Canadian independent production sector (3(1)(i));

- programming should reflect Aboriginal cultures (3(1)(o));
 - programming should be accessible to disabled persons (3(1)(p)); and
 - private broadcasters should be responsive to the evolving demands of the public (3(1)(s)).
14. There are different ways in which these objectives are achieved in the broadcasting system. Our point is simply that there is no principled reason why this particular objective identified by the CTF Task Force – achieving a mass audience – should be singled out as being by its nature the sole objective for monies that BDUs are required to contribute to Canadian programming. The “mass audience” does not make an appearance in the *Broadcasting Act* at all. The closest that the *Broadcasting Act* comes to this notion is the reference to the “demands of the public”, referred to above, which has a much more nuanced meaning – it is apparent in phrases such as, “in the public interest”.
15. Returning to the CTF Task Force recommendations, the goal of assisting broadcasters to meet public demand could be an objective for the CTF. It is our view that this goal is already met by the CTF as follows:
- Broadcasters allocate BPEs to the programs they themselves select;
 - BPEs take into account audience measurement as a determining factor (now at 40%);
 - Broadcasters have “flex” within their BPE envelopes to allocate funds to different genres of production;
 - Broadcasters are always free – indeed they have an incentive – to allocate additional licence fees to more expensive and potentially more popular programs and receive credit in future BPE allocations for these larger licence fees;
 - BPEs may be allocated within a corporate group; and
 - BPEs may be “traded” by Broadcasters to increase allocations to particular productions in order for Broadcasters to respond to demand.

Also, within the framework of the BDU contributions themselves, room is left for the BDUs to allocate a portion of their contribution to independent production funds other than CTF. Presumably, these BDUs, like Shaw does with the Shaw Rocket Fund, can pick an area of programming that best meets their commercial objectives (such as children’s programming – an area in which Shaw has made significant commercial investments on the broadcasting side).

16. At the same time, let us not discard all of the other elements that the CTF takes into consideration in allocating funds – including language, regional allocations, above-average licence fees paid by the broadcaster (i.e. the level of broadcaster risk in a project), and historical access – which is particularly important for planning purposes for broadcasters and independent producers alike.
17. These other factors represent other objectives that the CTF takes into consideration in allocating funds – all in the interests of achieving actual broadcasting policy objectives – such as ensuring regional representation, programming and cultural diversity in the system, and increased support to the independent production sector. Why would the CRTC wish to set aside these other significant broadcasting policy objectives?

Splitting the Fund puts more “Main Stream” Aboriginal Programming at Risk

18. APTN has noted in this proceeding that we already access CTF’s BPE stream of funding. The following table shows the BPE made available to APTN over the past four funding years:

APTN English BPE 2004-08				
Genre	2004-05	2005-06	2006-07	2007-08
<i>Children’s & Youth</i>	\$429,342.00	\$546,302.00	\$903,477.00	\$1,257,580.00
<i>Documentary</i>	\$298,013.00	\$336,885.00	\$339,486.00	\$317,164.00
<i>Drama</i>	\$0.00	\$0.00	\$679,918.00	\$741,767.00
<i>Variety & Performing Arts</i>	\$0.00	\$9,157.00	\$82,036.00	\$21,412.00
Sub-Total	\$727,355.00	\$892,343.00	\$2,004,917.00	\$2,337,924.00
<i>Flex amount</i>	\$128,357.00	\$157,472.00	\$353,809.00	\$412,575.00
Total BPE Amount	\$855,712.00	\$1,049,816.00	\$2,358,726.00	\$2,750,499.00

APTN French BPE 2004-08				
Genre	2004-05	2005-06	2006-07	2007-08
<i>Children’s & Youth</i>	54,591\$	51,005\$	76,579.00\$	189,990.00\$
<i>Documentary</i>	132,504\$	155,014\$	301,043.00\$	293,368.00\$
<i>Drama</i>	0\$	0\$	0\$	0\$
<i>Variety & Performing Arts</i>	\$ 4,965\$	6,373\$	15,812.00\$	32,739.00\$
Sub-Total	192,060\$	212,392\$	393,434.00\$	516,097.00\$
<i>Flex amount</i>	33,893\$	37,481\$	69,430.00\$	91,076.00\$
Total BPE Amount	225,953\$	249,873\$	462,864.00\$	607,173.00\$

19. APTN’s allocations reflect, among other things, our historic access to the CTF, our willingness to pay the licence fees that are required to maximize contributions, our commitment to regional productions and, yes, increased audiences over time.
20. APTN is very concerned that a focus on audience share to the exclusion of other important factors will have a large negative impact on the funding that APTN is able to access through the BPE. APTN simply does not have the resources or the mandate to compete with the very largest commercial broadcast groups. Nor, for that matter, do we have the same advantages. To illustrate:

- We do not have multiple broadcasting windows and media outlets to cross-promote our programming.
- We do not simulcast US programming in prime time (such as the Superbowl, for example) and use broadcaster availabilities to promote Canadian programming.
- We do not have the same profile on the cable channel line up as local OTA signals – which is a matter of significant concern for us and our viewers.
- We do not have the same scheduling luxury, giving our mandate, to sandwich Canadian programs between or just after US hits.
- Some large cable companies – including Shaw – do not even carry our regionally appropriate feed with time appropriate programming – despite our repeated requests.

APTN is different. But we are supposed to be different – so why penalize APTN and the independent production community we support through a regressive CTF funding scheme?

21. **APTN needs to be absolutely clear that the split of the fund into two streams – one with supposedly “public” objectives and one with supposedly “private” objectives – represents a direct challenge to APTN’s funding through the BPE and puts productions supported with this envelope at risk.**
22. This represents a substantial amount of programming. Our current season of programming includes the following programs supported by BPE contributions:

APTN English BPE 2007-08 -- Total Hours	
<i>Children's & Youth</i>	16.5 hours -- 3 different series
<i>Documentary</i>	10.5 hours -- 2 x 1 hour and 2 series
<i>Drama</i>	10.5 hours -- 3 different series
<i>Variety & Performing Arts</i>	8.5 hours -- 1 special and 1 series
Total Hours	46 hours

APTN French BPE 2007-08	
<i>Children's & Youth</i>	3 hours -- 1 series
<i>Documentary</i>	9.5 hours -- 3 stand alone productions and 1 series
<i>Drama</i>	1.0 hour -- 1 special
<i>Variety & Performing Arts</i>	2.5 hours -- 3 specials
Total Hours	16 hours

Almost 20 hours of the productions noted above (19.5 hours, or more than 30%) access more than one CTF envelope for funding. (Usually one primary envelope, with a secondary envelope for versioning.)

23. For the 2007-2008 funding cycle, \$3.3 million of CTF funding in the BPE envelopes triggered 62 hours of original production – leveraged by APTN’s own licence fees of \$4.74 million. This represents significant amounts of original programming. This kind

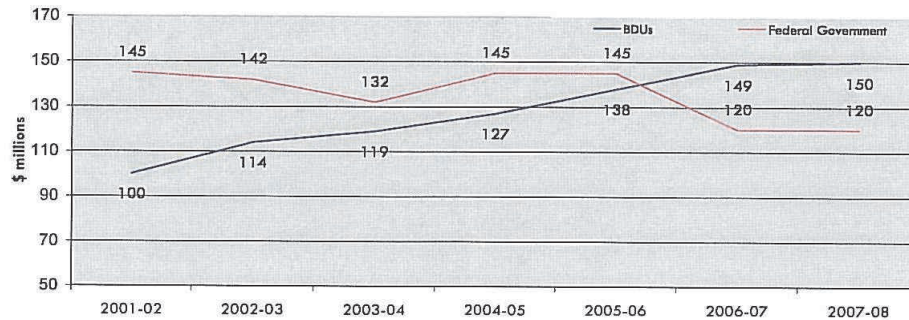
of programming, that reflects Aboriginal Peoples on screen and behind the screen, is not available in any consistent sense, anywhere else in the broadcasting system.

24. APTN's anticipated BPE envelope allocation (2008/2009) reflects a similar allocation of dollars and, to the extent possible, a focus on new drama programs. This strategy matches our plans, as set out in our most recent licence renewal application, to reach out to the broadest audience possible by offering high quality dramatic programming for Canadian audiences.
25. As we have said elsewhere, it is critically important – and we believe a core part of our mandate – to reach out to all Canadians with high-quality programming reflecting the input and perspectives of Aboriginal Peoples. This is part of what our broadcasting system can and should do to build understanding leading to reconciliation among different Peoples.
26. A significant change to the existing BPE allocation process will, quite simply, put exactly this kind of popular, general audience-driven programming at risk and set APTN back to where we were before our last licence renewal – with great plans but no resources to participate as a fully functioning broadcasting service.
27. **We will, for example, be very hard pressed to fulfill our obligations with respect to the broadcast of priority programs in prime time as set out in our conditions of licence.² To meet these obligations, we will be forced to replay or repurpose existing productions, which have already received significant exposure in the broadcasting system. How are we supposed to build audiences with repurposed, overexposed programming? We do not see how we can do what the Commission has licensed us to do if we are not treated fairly, as an integral part of a single broadcasting system.**
28. The Aboriginal Languages Initiative does not come near to meeting the funding requirements for this kind of popular programming – nor should it. That funding stream is intended to support Aboriginal language programming, not necessarily programming that is targeted to a more general, broader audience.

The Motivation to Split the Fund is Money

29. Since we cannot find any principled policy reason to segregate BDU funds from funds contributed by the department of Canadian Heritage, we are led to conclude that the private sector is motivated, principally, to get a bigger piece of the funding pie.
30. It is clear that the BDU portion of the CTF fund is gradually increasing. The Canadian Heritage portion has stayed level in recent years, but is somewhat down over previous years' contributions. The CTF has presented the figures in tabular form in its most recent stakeholders' report:

² Contrary to the assertion by CTVglobemedia to the CRTC (see transcript from presentation on February 8, 2008 at line 6295) that broadcasters with public policy objectives do not have priority programming obligations, we absolutely do.

CTF Revenues from BDUs and the Federal Government

31. We ask the CRTC to consider the following: when Canadian Heritage funding surpassed BDU contributions, we did not hear private broadcasters urging the CTF, the federal government and the CRTC to make sure that “private” BDU funds were segregated from government funding. To the contrary.
32. In 1996 when the federal government first announced funding for the then Canada Television and Cable Production Fund, the funding broke down as follows³:

Federal Government:	\$100 million (EIP) \$ 50 million (LFP)
BDU Contributions:	\$ 44.3 million

Three-quarters of the funding came from government. Here is what the CAB had to say when this initiative was announced:

*“The Fund is great news for the broadcasting system and great news for Canada. Clearly viewers are the big winners” ... “Poll after poll confirms viewers want more and better Canadian shows” . . . “**Private and public broadcasters**, specialty services, independent producers and other players consistently demonstrate their ability to produce it.”*

The new money, along with the CRTC’s proposed 5% contribution from cable, DTH and other distributors, would support the CAB’s vision for a Canadian Programming public policy . . . ⁴ (emphasis added)

We did not hear private broadcasters say that the government contribution should be allocated to public broadcasters, and the private broadcasters should rely solely on the BDU contributions. It was, to the contrary, an “all for one and one for all” approach. Now, when the shoe is on the other foot, when government funding seems less certain

³ Annual Activity Report of CTCPCF (1996 – 1997) – www.pch.gc.ca/progs/ac-ca/fct-ctf/pubs/arpt/index_e.cfm.

⁴ CAB Press Release, September 9, 1996 – www.cab-acr.ca/english/media/news/96/Sept9_nre.shtm.

than BDU contributions, we witness private broadcasters claiming entitlement to BDU contributions ahead of “public” broadcasters, such as APTN. Furthermore, while APTN is “public” in some sense, it is important to point out that we do not operate with government funding but with subscriber fees and advertising revenues, like other private broadcasters.

33. This is clearly not about principle – it is not about broadcasting policy. It is simply about money and who gets it.
34. We believe it would be contrary to good broadcasting policy for the CRTC to abandon all that is achieved with a combined CTF funding mechanism in place of an artificially segregated funding envelope. This would place broadcasters like APTN **on the outside** of the funding system.

Segregated Funding for APTN

35. APTN is prepared to concede that funding could be directed to so-called public and private objectives based on different criteria. What we do not accept is that the so-called public objectives should be funded solely from dollars contributed directly by the federal government. Rather, funding should be aggregated – as it has been since 1996, with the blessing of the private sector.
36. We recommend, if a private/public funding approach is adopted, that funding for APTN be set at a pre-determined level – which is the approach followed for the CBC. We believe that an appropriate level would be **5% of available funding**, which will reflect the proportion of the population that consists of Aboriginal Peoples, and will reflect the importance of the objective of full participation by Aboriginal Peoples in the broadcasting system. Our current proportionate funding level, including our access to the Aboriginal Languages Initiative, is approximately **2%**. We feel that this is not an adequate envelope, and does not show adequate commitment to the objective of ensuring Aboriginal Peoples participate fully in the broadcasting system.

Conclusion

37. Thank you for this opportunity to make our views known on this important matter of public policy. We have summarized our main points on the first page above. We have also attached, as an appendix, our recommendations regarding the CTF.

Yours truly,



Jean LaRose
Chief Executive Officer

APTN Recommendations Re CTF – Appendix

APTN makes the following recommendations in response to the CTF Task Force Report:

1. The CRTC should, by policy, affirm the important contribution made by the CTF to the achievement of broadcasting policy objectives.
2. The CRTC should recognize that the measurement of audiences, and the assumption of risk through higher licence fees, are already tools used by the CTF in its allocation of funds.
3. The CRTC should recognize that audience success is one appropriate measurement that the CTF may use to further broadcasting policy objectives; but that it must balance this measurement tool against its overall policy objectives, as informed by the *Broadcasting Act*. The CTF's reliance on other factors, including regional production, above-average licence fees and historic access to the CTF should be maintained.
4. The *Broadcasting Distribution Regulations* should be amended to require monthly remittances by BDUs to the CTF.
5. The CRTC and the Department of Canadian Heritage should enter into a formal protocol pursuant to which objectives for the CTF – as informed by broadcasting policy – will be mutually established and recorded in the Contribution Agreement governing the CTF. This protocol will allow for public input and will require public reporting by the CRTC and the Department regarding the positions adopted by each, and the outcome of discussions.
6. The CTF's governance structure should be provide for a smaller, independent board of directors. All stakeholders, including those that are not currently represented on the CTF board, will make representations to the board and management of CTF regarding the structure of CTF programs and the allocations of funds.
7. CTF funds should be pooled for the purposes of allocations. Allocations should be made on the basis of broadcasting policy objectives.
8. If so-called “private” and “public” funding streams are established, then 5% of available funding should be set aside in an envelope ear-marked for Aboriginal independent productions – based on the CBC model for set asides.
9. Funding for new media initiatives could be administered through the CTF, but such funding should come from new funding sources. New media funding should not be at the expense of existing funding for broadcast productions.
10. Lastly, more flexible funding mechanisms for BDUs (e.g. VOD, new media initiatives and audience-measurement tools), if desired, should be implemented through the BDUs' own independent production funds or from funding that would otherwise be allocated to community expression, for which the CRTC could allow more latitude.