



FILED ELECTRONICALLY

July 26, 2007

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

Dear Mr. Morin:

Re: Canadian Television Fund ("CTF") Task Force Report  
Broadcasting Public Notice CRTC 2007-70

1. Aboriginal Peoples Television Network Incorporated ("APTN") is pleased to file these comments in response to the recommendations and proposals made by the CRTC's Task Force on the CTF. APTN notes that the Commission indicates in its notice that the Commission "is in preliminary agreement" with the Task Force recommendations and intends to implement those recommendations that fall within its powers.
2. The Commission has asked a number of specific questions on which it is requesting comments, but it has also stated that it welcomes comments on the Task Force report as a whole. APTN will first provide general comments on the report, and will then focus on those matters that are of particular concern to APTN in terms of implementing the Report's recommendations.
3. APTN is concerned that the thrust of the Task Force recommendations overlook – too frequently – the reason there is a CTF. The CTF exists to fulfil broadcasting policy objectives. Market forces can certainly play a role in the achievement of objectives. APTN has no difficulty with the CTF taking advantage of market forces to achieve certain ends. But, it is important that the ends be known in advance so that we can measure the success of the market approach.
4. The CTF is not, of course, a market entity. It is a fund that is inextricably linked to the CRTC's regulations and other government policy. The CTF is a tool of government intervention in the market. Therefore, pursuit of market objectives, for their own sake, is not and has never been the CTF's purpose.
5. APTN believes that the CTF could and should employ market forces to its advantage, when appropriate, but it should not be confused with what the CTF is

actually supposed to do – help achieve the broadcasting policy for Canada set out in the *Broadcasting Act*.

### Background

6. Just for background, it is important to put on the record the fact that APTN, like most broadcasters, accesses the CTF for a number of our programs. APTN is not, as some might possibly think, limited to accessing funding from the Aboriginal language envelope. APTN does access that envelope, to be sure, but APTN also produces programming in English (and accesses the English-language envelope) and in French (and accesses the French-language envelope).
7. For 2006/2007, APTN accessed approximately the following amounts under its broadcaster performance envelope:

English productions: \$2,360,000 (funding to 20 programs, some multiple series)  
French productions: \$ 460,000 (funding to 11 programs, some multiple series)

A large number of these programs were also licensed by other broadcasters, and their production was made possible only through APTN accessing its own broadcaster envelope.

8. APTN also accessed the Aboriginal-language envelope for approximately \$1,775,000 for 13 different programs (some multiple series). APTN is easily the single largest broadcaster licensing and exhibiting Aboriginal-language productions.
9. What do these figures mean? For Aboriginal-language production, APTN is easily the most important broadcaster for these kinds of productions. Without this specific envelope, and APTN, this programming would probably not exist. The dire position of many Aboriginal languages in our societies – due in part to the corrosive influence of mass media in dominant European languages – requires no further elaboration on our part for the CRTC.
10. APTN's share of CTF non-Aboriginal-language production dollars, in 2006/2007, represented only 1.4% of the English-language envelope and 0.6% of the French-language envelope. While the English-language and French-language envelopes are quite small, overall, APTN's presence in the system has led directly to a much greater presence of Aboriginal Peoples on screen and in production roles than has ever been the case. APTN's contribution and our broadcast window is often the missing component that gets an Aboriginal production to air.
11. Accessing CTF funding – from the Aboriginal language component and the mainstream broadcaster envelope – has been an absolutely vital part of APTN's success. These funds have helped APTN to fill our mandate to foster and protect Aboriginal languages, to provide a voice for those Aboriginal Peoples who,

tragically, have lost their own Aboriginal language and, indeed, to reflect the experiences of Aboriginal Peoples in Canada to all Canadians.

12. APTN is concerned that the proposed changes to the fund – which place great emphasis on market forces, returns on equity and audience share – could erode the support that is currently in place for Aboriginal production and Aboriginal reflection in Canadian production. This would be a regrettable and, in APTN's view, counter-productive if not tragic outcome that would negate the Commission's tremendous role in ensuring the enhancement and growth of the Aboriginal production community and productions in Aboriginal languages.
13. Great caution should be exercised in improving the CTF to ensure that the changes made are, in fact, improvements and do lead to a desired outcome. It would be a loss, APTN believes, to the Canadian broadcasting system if the proposed changes to the fund diminished at all the presence of Aboriginal Peoples in the system.

#### General Comments

14. APTN is well aware of the challenges that all broadcasters – and producers – face in an increasingly competitive environment. In general, the Task Force has identified responding to this competitive environment as one of its key objectives for changes to the CTF. The key mechanism identified by the Task Force to respond to competitiveness is that "the current objectives of the CTF be broadened to include more support for Canadian television programs that succeed with Canadian audiences."
15. APTN recognizes in this statement something that APTN has itself been striving to do now since our launch – provide high-quality popular programs for all Canadians. APTN has, of course, a number of other important objectives to fulfil – including, for example, promoting Aboriginal languages. But, in all of our programming, we strive to succeed with our audiences. The term "audiences", it is to be noted, is plural. There is not one monolithic Canadian audience for all programs.
16. APTN is confident that there is likely no broadcaster or program producer that does not strive to produce a successful program for Canadian audiences – whatever particular audience is being targeted.
17. Also, the Task Force notes that part of the funding administered by the CTF originates from a contribution made through the Department of Canadian Heritage (the "Department"), and that this contribution would continue to be subject to whatever funding terms may be required by the Department. Accordingly, the primary focus of the Task Force's recommendations, if APTN understands correctly, is the so-called "private sector" funding stream.

18. This "private sector" funding stream is, of course, the mandatory contribution that broadcasting distribution undertakings make pursuant to the *Broadcasting Distribution Regulations*, together with contributions made pursuant to mandatory benefits contributions. It is something of a misnomer to consider these monies to be, in any real sense, "private sector" monies that should be dedicated only to "private sector" objectives.
19. Without a mandatory requirement, no BDU would make a contribution to the CTF. This is a regulated duty that BDUs fulfil. They do so because the Commission has viewed the CTF, and the funding it provides, as a key mechanism to achieve broadcasting policy objectives, as set out in the *Broadcasting Act*. Reference to these objectives is, of course, the only rationale for the Commission's requirement that BDUs make a contribution to the CTF and achievement of these objectives must be the yard stick against which the CTF is measured. "Popularity" and "competitiveness", as such, are not broadcasting policy objectives. Our *Broadcasting Act*, quite properly, has much greater ambitions for our single system, as a whole.
20. That being said, there is, of course, sufficient room within Canadian broadcasting policy to support the notion that the mandatory contributions made by BDUs and others to the CTF should be spent wisely and should support programs that Canadians want to watch.
21. APTN believes strongly that the Commission needs to be clear, for the benefit of all concerned, as to what its objectives are for CTF contributions in reference to the broadcasting policy for Canada set out in the *Broadcasting Act*. Otherwise, the impression is made that the notions of "popularity" and "competitiveness" are overriding objectives in and of themselves to which other objectives are secondary – which is manifestly not how our broadcasting policy is framed in the *Broadcasting Act*.
22. Moreover, it needs to be made crystal clear that the reason for the contributions is to achieve broadcasting policy objectives – the contributions are not "private" in the sense that they should be targeted to fund "private" as opposed to "public" objectives. The contributions are made to the benefit of the broadcasting system to achieve broadcasting policy objectives, and should be viewed in that light.

### Specific Proposals

23. APTN has no difficulties with many of the specific recommendations made by the Task Force. The Task Force has clearly looked deeply into the workings of the CTF and listened carefully to many different interests. This is no simple task!
24. In this submission, we will focus on those areas where we have concerns, or where we feel greater clarity is required.

25. Our comments relate primarily to the Task Force's recommendations regarding the objectives for the CTF, and some of the particular requirements and allocations suggested by the Task Force.

*A "market-oriented" approach*

26. With respect to the question of the CTF's objectives and its administration, APTN does not object to a more market-oriented approach for CTF contributions that are made by BDUs and others under CRTC requirements – in order to better fulfil broadcasting policy objectives. APTN does, for the reasons noted above, believe that the phrase "private sector funding stream" is a misnomer and should be avoided.
27. APTN also believes that a market-oriented approach is not an "end in itself" for dollars contributed to the CTF under a CRTC requirement. After all, if a "market approach" were truly what was desired, and required, then the logical step would be to remove the requirement for BDUs and others to make any contribution to the CTF! The "market" would then determine how those dollars would be spent.
28. This would not, of course, be a desirable outcome since it would have an immediate and profound impact on the level of Canadian programming produced and available in the system and on the livelihoods of Canadians from all backgrounds and regions.
29. The reference, in recommendation "9" to the CTF providing an annual report on the "BDU contributions" should, we believe, be rephrased to require a report on all contributions made to the CTF under CRTC requirements. Contributions to the CTF by BDUs are not voluntary. The contributions have to be made because the CRTC requires that they be made. If there were no requirement, there would be no contributions. Accordingly, while it is absolutely appropriate to look at how these contributions are allocated, the purpose of the report should be to link the contributions that are made to the fulfilment of broadcasting policy objectives – which is the reason the contributions are made. Audience and commercial success, while one important factor, is not and should not be the only factor.
30. In fact, while some programming that is considered audience and commercial successes may generate high numbers on their own, when one looks at all the other programming playing concurrently and drawing audiences, the combined audiences to those other programs almost always exceed the audiences to the successful programs. Why? Again, audiences are not a single, monolithic group. There are many interests and tastes within the Canadian viewing public and these need to be satisfied with a range of programming from a variety of genres. Some of this programming looks beyond mass "audience and commercial success", but rather seeks to be popular and achieve high ratings with a more targeted audience. The Canadian specialty services industry, for example, which is quite successful financially and a credit to the broadcasting system, follows this model.

31. While a "market-oriented" approach suggests that more emphasis should be given to programs that reach larger audiences, we would also note that there is an underlying corollary to the effect that "non-market" elements should be funded through a separate "non-private", "non-market" funding stream.
32. Followed logically, this could be interpreted as saying something to the effect of: "Programming that will be popular and market-oriented should be funded by the CRTC mandated portion of the fund. The Department should pay for everything else." If this is the Task Force's intention, then APTN disagrees with that intention fundamentally.
33. The CRTC has the primary duty to ensure that all aspects of broadcasting policy are fulfilled. It would be an abdication of that duty to allocate CRTC-mandated funding to only those elements of the system that are "market-oriented" while leaving the rest of the broadcasting policy objectives to the Department and other levels of government.
34. APTN does not, however, believe that such a one-dimensional approach was intended by the Task Force. It is important that the CRTC give some expression, however, to all of the dimensions of broadcasting policy underlying the CTF and the CRTC-mandated contributions that are made to it.
35. For example, a couple of years ago, "audience measurement", on its own, would naturally have resulted in a focus on reality-based and sports special programs to the exclusion of all other genres. We recognize that reality and sports are not CTF-funded genres, but the point is that those genres that are funded by the CTF are funded for reasons other than market-forces and popularity alone. It is important that the CRTC articulate these reasons in its new policy and regulatory framework. The objective is not, as we have said above, market-forces and popularity for their own sake.

#### *Audience Success*

36. Moving specifically to look at the question of audiences, the Task Force recommends that the CRTC should establish "audience success" as the primary criteria for continued funding.
37. The CRTC should be extremely careful about entrenching a system by which programs that reach the largest audiences, and that achieve the highest returns receive the bulk of the CRTC-mandated contributions to the CTF. This would turn the entire notion of a subsidizing scheme (which CTF is) on its head and add little in terms of incentives to broadcasters and producers alike. Few if any broadcasters or producers go into a production in order to make an unpopular production or not to make a return on their investment.

38. Different broadcasters reach different audiences – and are intended to do so. All of those audiences make a contribution to the CTF indirectly through their payment of subscription fees just like all other Canadians. The CRTC's policies should recognize all of these audiences interests in establishing its market-oriented approach. Otherwise, the criteria of "audience success" will become a criteria of homogeneity and mass appeal.
39. It is important that different audiences be measured and that broadcasters, such as APTN, that have a different core audience than mainstream broadcasters not be penalized by the system. APTN believes that the criteria of audience success must be shaped to reflect the diversity of Canadian audiences. There is no such thing as a single audience and whatever measurements are devised by the CTF and supported by the CRTC should reflect that fact.
40. Moreover, as the CRTC is well aware, APTN is particularly disadvantaged in the area of audience success for a number of reasons. First, and most importantly, traditional audience measurements do not include Aboriginal Peoples. This is an issue that we addressed in our licence renewal application so we will not repeat all of that discussion here. It is sufficient to point out that BBM confirmed, in writing to the Commission, our experience that the Aboriginal audience is not measured.
41. Second, APTN, although it is a basic level of service, is found "in the stratosphere" of many cable channel lineups and has had to endure numerous movements within those lineups. There is no doubt that channel placement has had an impact on APTN in establishing and building our audience. It would be appropriate, we believe, if important funding mechanisms are going to be made even more dependent on audience share that the issue of APTN's channel placement be resolved and that Canadian audiences be able to find APTN in a reasonably decent channel position in order to experience our undoubtedly unique and attractive programming.
42. Third, APTN does not offer a complete schedule of "popular mass appeal" programs of one type, in one language, or of one quality. APTN has a duty to offer a broad range of programming from a variety of different sources and in many different Aboriginal languages, as well as in English and French. APTN has a high Canadian content requirement.
43. Consequently, APTN's audiences are necessarily lower than the audience of, for example, an "English-only" network that sandwiches one popular Canadian program between U.S. hit evening prime time drama simulcast across a number of different cable channels. APTN will not win based on this kind of comparison – and it is an unfair comparison. We believe that a CTF funding system that does not take into account the impact that these kind of fundamental differences between services have on audience would be an unfair funding system. It would also unfortunately bring into question the very spirit and intent of the

*Broadcasting Act*, which wanted to create a unique system that reflected the wide diversity and interests of the Canadian audiences.

44. Let us take into account market forces and audiences, by all means. But, let us not be blind to how market forces work and which audiences are being served by the system, and which are not.
45. Accordingly, if the CRTC is to impose the objective of audience success on CTF funding, then it should do so as follows:
  - success among the target audience should be one criteria for continued funding, not the only one, and
  - service to diverse target audiences reflecting Canada's multicultural and multiracial composition, and the special place of Aboriginal Peoples should be a criteria for initial funding.

*Increase in Broadcaster Licence Fee and Equity Investment*

46. It is suggested that the CTF increase the level of licence fees to trigger CTF funding. The rationale for this increase is, apparently, that broadcasters should assume greater risk. At the same time, it is also suggested that the CTF should take equity positions in productions – especially after they have become successful!
47. Overall, APTN is not convinced that an increase in the level of the broadcaster licence fee is necessary. Broadcaster licence fees, in APTN's case, are based almost entirely on our available budget, which is always spent. This is because APTN is a not-profit charitable organization. There is no "at risk" evaluation. All of our dollars are "at risk" all of the time.
48. If the CTF does, therefore, look to broadcasters to assume greater risk for individual productions, it should also make provision for charitable or non-profit organizations like APTN that are not motivated to assume risk in the interests of achieving a return. Rather, APTN is motivated by the desire to produce as much high-quality programming reflecting Aboriginal experiences and talent as it can within the available budget.
49. The proposed approach to equity financing by CTF is anything but a market-based approach; in fact, it turns market economics on its head. The appropriate time for CTF to take an equity position, if it were to do so, would be when the risk is highest – that is, when the broadcaster contribution is low, or when the success of the production, and the chances of return, are unknown. For popular productions, in a market scenario, an investor that comes in after the success has been proven has to pay comparatively more for equity and, at that point, the

- producer may well no longer be looking for equity investment since the risk profile allows the producer to raise money through debt.
50. If, therefore, the CTF were to increase the level of broadcaster contribution (which, incidentally, would lead to fewer productions), then it would also be appropriate for the CTF to share in the risk through higher equity contributions to those productions.
  51. Perhaps reflecting the notion of equity investments, the Task Force recommends that the key objectives for the CTF should include a "return on investment" provision. It is stated, "Actual and potential return on investment must be a factor in allocating funding while taking into account the different realities of English and French markets."
  52. This is a completely inappropriate criteria as a leading criteria for all funding decisions. It should certainly not be placed ahead of other far more important factors such as achieving actual broadcasting policy objectives. It might be one among many criteria that the CTF could consider.
  53. Most Canadian programs do not result in a "return on investment" – and especially do not do so in the Canadian market alone (except over a very long period of time). Also, when the criteria states that the return should take into account the differences between English and French markets, it begs the question about other smaller markets and target audiences – such as the Aboriginal market.
  54. We believe that this criteria misses the point as far as the CTF is concerned. The CTF is not an end in itself. The objective is to fulfil the broadcasting policy for Canada. That policy should be front and centre. A return on equity is a tool only that might be used to meet the objectives. APTN is not clear how that tool might be used, but it could, possibly, be used by the CTF among others. The use of that tool (equity investment) should not be confused with an objective for the CTF (a return on the investment). This is a closed circle: "The CTF should make equity investments in productions with the object of achieving a high return on its investment." Where is the broadcasting policy objective in this closed circle? What is the point of a funding agency making a return on investment if it doesn't lead to the achievement of a policy objective?

#### *New Media Funding*

55. It is proposed that the CTF allow funding of new media projects on new media platforms.
56. APTN supports this initiative, subject to the following, important observation made by the Task Force:

. . . the Task Force recognizes that CTF funds are limited and over-subscribed. Any support for new media projects should come from new revenue sources and/or be capped so that the CTF's primary goal of supporting television programming be maintained.

57. In any event, new media initiatives should not, in real monetary terms, diminish the level of funding that CTF provides to television programming. Television programming remains the strongest driver of new media delivery mechanisms and, especially for Aboriginal Peoples, is far more important for expression and representation than new media in development.
58. APTN also believes that "VOD" is not a "new media" platform. It is a mode of distribution. "VOD" should not be funded from new media initiatives since VOD does not result in different modes of media deliverable by alternative distribution technologies.
59. APTN is aware that some distributors have expressed concern that VOD should be funded through the CTF. VOD is, of course, a BDU function. Accordingly, if the Commission considers that this is an important area for programming contributions to be made by BDUs, then the Commission should permit BDUs to redirect some of the contribution (2%) that they are already permitted to make to their own community channels to VOD programming.
60. It seems to APTN that this is the appropriate location for the trade off for VOD to be made – at the level of the contributions that BDUs make to the system to fund their own programming, not at the level of the contributions made by BDUs to the benefit of other players in the system.

#### *Self-Administered Benefits*

61. APTN agrees with the proposal the Broadcaster Performance Envelope should take into account CRTC-required self-directed benefits administered by broadcasters. At the same time, the CRTC should also consider giving the benefits system more structure.
62. APTN has outlined such a proposal in our submission in the "Diversity of Voices" proceeding. Specifically, APTN believes that benefits should be allocated 1/3 to independent production funds (which could be the CTF), 1/3 to particular broadcasting policy priorities (as determined by the CRTC and which, in APTN's view, should include Aboriginal broadcasting initiatives), and up to 1/3 to self-directed initiatives.
63. If a choice were to be made between a "grind down" on the BPE due to self-administered benefits, and a more structured benefits policy overall, APTN would prefer the more structured benefits policy. Such a policy would be more transparent and consistent in terms of its impact on the system. APTN, therefore,

supports the recommendation that "an appropriate portion of tangible television benefits be directed to the CTF."

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We thank the Commission for this opportunity to present our views on the Task Force's recommendations. We would be pleased to offer any additional information that the Commission may require.

Yours truly,

A handwritten signature in black ink, appearing to read "Jean LaRose", is positioned to the left of a vertical red line.

Jean LaRose  
Chief Executive Officer