



ASSOCIATION DES
PRODUCTEURS DE
FILMS ET DE
TÉLÉVISION DU
QUÉBEC

September 18, 2008

Via CRTC comments/interventions form

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

Dear Mr. Morin:

Re: Broadcasting Public Notice CRTC 2008-71, Item #1 – Application by Teletoon Canada Inc. to amend the licence of the national specialty programming undertaking known as Teletoon (Application No. 2008-0749-8)

1. The Canadian Film and Television Production Association (the “CFTPA”) and the Association des producteurs de films et de télévision du Québec (the “APFTQ”) (or collectively the “Associations”) provide these **joint comments** on the above-referenced application.
2. The CFTPA represents the interests of almost 400 companies engaged in the production and distribution of English-language television programs, feature films, and interactive media products in all regions of Canada. The APFTQ represents more than 130 independent film and television production companies in Quebec, acting on behalf of its members with government and industry organizations and encouraging close cooperation among all stakeholders.
3. Our member companies are significant employers of Canadian creative talent and assume the financial and creative risk of developing original content for Canadian and international audiences. Independent producers develop projects, structure the financing, hire the creative talent and crews to help turn stories into programs, control the exploitation of the rights, and deliver the finished product. We create high-quality programming in the financially risky genres of drama, comedy, documentary, children’s and youth, and variety and performance programming – largely what the CRTC calls “priority programming” – as well as other programming genres. We also create feature films for theatrical release and content for new digital platforms.
4. Independent producers provide Canadian television viewers with a Canadian perspective on our country, our world, and our place in it. Through the content we produce, we help foster Canadian cultural choices and reflect the rich diversity of this country. As such, the independent production sector plays a vital role in the Canadian broadcasting system, as recognized in the *Broadcasting Act*.

The Application

5. Teletoon Canada Inc. (“Teletoon” or the “applicant”) is the licensee of Teletoon, a national specialty programming undertaking providing both an English- and French-language feed. Teletoon has filed an application to amend the condition of its licence relating to reporting of Canadian programming expenditures (CPE) to a cash method from the existing amortization method. Specifically, the applicant is seeking to replace condition of licence 3(b), which reads:

3(b) In the broadcast year beginning 1 September 2004 and in each subsequent broadcast year of the licence term, the licensee shall expend on the acquisition of and/or investment in Canadian programs a minimum of 47% of the gross revenues derived from the operation of this service during the previous broadcast year.

with

3(b) In the broadcast year beginning 1 September 2004 and in each subsequent broadcast year of the licence term, the licensee shall expend on the acquisition of and/or investment in Canadian programs, ***on a cash basis***, a minimum of 47% of the gross revenues derived from the operation of this service during the previous broadcast year. [*proposed changes in bold and italics*]

6. Teletoon requests that the proposed amendment be made retroactive to the broadcast year commencing September 1, 2007 (i.e., the most recently completed broadcast year) and claims that it would have no negative impact on Teletoon’s CPE.

The CFTPA / APFTQ’s Comments

7. At the outset, the CFTPA and APFTQ acknowledge that Teletoon has made significant contributions to Canadian programming and has been a strong supporter of the independent production sector over the years. Moreover, we are aware that a number of licensed Canadian specialty and pay television services are already permitted to use the cash method rather than the more common amortization method in reporting CPE to the CRTC. However, to our knowledge, such a change in reporting methodology has never been made in mid-licence term or made retroactive, as Teletoon is requesting.
8. The Associations are concerned that the proposed amendment would have a negative impact on CPE, particularly if the Commission grants Teletoon’s request to make it retroactive to the broadcast year commencing September 1, 2007. For the reasons set out below, we therefore **oppose** Teletoon’s specific request to make the change in reporting CPE retroactive.
9. We note that in a deficiency letter to the applicant dated July 2, 2008, CRTC staff asked Teletoon why it was seeking this retroactivity and why it would not be appropriate to apply the change in reporting CPE to the new broadcast year. In its response letter dated July 11, 2008, Teletoon stated that since it was operating in the fiscal and broadcast year commencing September 1, 2007 (which ended August 31, 2008), and it had yet to file an annual return to the CRTC for this period, it did not consider its request to be retroactive. It added that using the cash method for reporting CPE “recognizes how Teletoon has been managing cash flows and expenditures” since September 2007.
10. The Associations strongly disagree with Teletoon’s position that its request is not retroactive in nature. The fact that Teletoon has been managing cash flows and expenditures using the cash method since September 2007 is *prima facie* evidence of the retroactive nature of the request. In any event, Teletoon’s operational decisions should have no bearing on how it is required to report CPE under the conditions of its current licence, which is by using the amortization method. In our view, and as a matter of principle, any change in reporting of CPE should only be permitted on a going-forward basis (i.e., in a future fiscal period).

11. The analysis provided by Teletoon in Appendix A of its application letter dated May 28, 2008 shows that Teletoon has taken advantage of the 5% CPE flexibility rule by underspending on required CPE (within the 5% allowable range) in almost each year for which data is provided. We note that in the “retroactive year” (i.e., the broadcast year commencing September 1, 2007 and ended August 31, 2008, or fiscal year 2008), the projected shortfall in CPE using the amortization method is \$2 million. However, the projected shortfall drops to \$500,000 using the cash method. Accordingly, the effect of granting Teletoon’s request would appear to be to give the licensee a one-time reduction in CPE of some \$1.5 million for the current licence term in the year in which it transitions from the amortization to cash CPE reporting method, or the “retroactive year”.
12. The fact that data provided by Teletoon in Appendix A for the “retroactive year” are only projections and not actual totals only heightens our concerns because it is quite possible that actual totals may reveal a greater shortfall in CPE. Making such a significant change with respect to the reporting of CPE on the basis of projected numbers rather than actual numbers would be akin to rolling the dice on Canadian programming spending. Any CPE shortfall would constitute an unanticipated loss to the Canadian broadcasting system that would never be recovered.
13. Moreover, in analyzing the data provided by Teletoon in Appendix A, it is not clear to us why the Canadian Television Fund top-up projections drop considerably in each of fiscal year 2008, 2009, and 2010 when moving to the cash method from the amortization method for reporting CPE. We would urge Teletoon to offer a detailed explanation in its response to interventions so the Commission can be assured that the data provided is sound.
14. The CFTPA and APFTQ note that the projected shortfall in CPE for the “retroactive year” is consistent with what some of our animation producer members have been telling us – that Teletoon has been relatively quiet with respect to ordering new episodes of existing programs or commissioning new programs. This raises the following question: is Teletoon delaying licensing content from producers in the short to medium term until the CPE numbers under the cash method require greater expenditure in order to meet conditions of licence? If so, we submit that this is not in the public interest or in the interests of independent producers.
15. As the CFTPA and APFTQ are not privy to detailed financial information including amortization schedules for Canadian programming and outstanding payment terms of broadcast licensees, the Associations are unable to conclude that there won’t be a one-time reduction in CPE for Teletoon as it adjusts to the cash reporting methodology. In the absence of a detailed analysis of the potential impact and adequate tracking, independent producers are forced to conclude that there would be a decline in production orders in fiscal year 2009, and a material and unrecoverable reduction in Teletoon’s actual spending on Canadian programming over the current licence term. We urge the Commission to undertake a thorough analysis of the application to ensure that there is indeed no negative impact on CPE.
16. The Associations are also concerned that approving Teletoon’s application as is would set a dangerous precedent whereby other broadcasters could apply for a change in reporting CPE from the amortization to the cash method specifically to reduce their required CPE in the transition year. This could potentially result in a reduction of multiple millions of dollars in CPE, which would have a significant negative impact on the production of Canadian programming in general and the independent production sector specifically. It would also short change Canadian television viewers.

17. Given the foregoing concerns, we believe it would be appropriate for the Commission to either 1) deny the application at this time and only consider the proposed amendment at the time of licence renewal or 2) deny the applicant's specific request to make the change in reporting CPE retroactive to the broadcast year commencing September 1, 2007 (i.e., only permit the change to take effect with the broadcast year commencing September 1, 2008). If the Commission proceeds with the second option, we believe that the Commission should also require Teletoon to track and report CPE on the basis of both the amortization and cash methods so that any discrepancies can be identified and released publicly, and if material, addressed by the Commission at licence renewal and in the next licence term.
18. A final comment the CFTPA and APFTQ would like to make on the cash method vs. amortization method of reporting CPE is that allowing more and more licensees to report CPE using the cash method would be inconsistent with the manner in which the CRTC publicly reports financial data of specialty and pay television licensees in its statistical and financial summaries and even how publicly traded broadcasters report financial results (as per GAAP), which is using the amortization and not the cash method. To ensure the highest level of transparency, and as a matter of principle, we believe that the method of publicly reporting broadcasters' financial information should be consistent with how licensees actually report CPE.

Conclusion

19. In closing, the CFTPA and APFTQ are concerned that granting Teletoon's request would give the licensee a one-time significant reduction in CPE for the current licence term. Accordingly, we urge the Commission to undertake a thorough analysis of the application to ensure that there is indeed no negative impact on CPE.
20. The CFTPA and APFTQ appreciate the opportunity to comment on Teletoon's application. A true copy of this intervention has been sent to the applicant.

All of which is respectfully submitted.

Sincerely,

[Original signed by Guy Mayson]

Guy Mayson
President and CEO

[Original signed by Claire Samson]

Claire Samson
President and CEO

cc: Teletoon Canada

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