

# ENGLISH-LANGUAGE **ARTS** NETWORK

September 14, 2009

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

Dear Secretary General,

**Re: CRTC 2009-411**

**Policy proceeding on a group-based approach to the licensing of television services and on certain issues relating to conventional television**

1. ELAN is the English-language Arts Network of Quebec and we represent English-speaking artists in Quebec. We began in 2004 and now have over 1,800 members, including about 250 members in the film and television sector. For more information, see [www.quebec-elan.org](http://www.quebec-elan.org).
2. ELAN would like to appear before the Commission at the public hearing on November 16, 2009, to discuss in more detail the issues we raise in this intervention.

## **A. Summary**

3. The Anglophone minority in Quebec doesn't lack access to English-language programming via satellite channels and cable distribution, but "regional reflection" and "local expression" are inadequate and decreasing. That is especially the case for the 200,000 Anglophones outside the greater Montreal area who have virtually no regional reflection.
4. The reason can be traced to the lack of regional services available to the official language minority community (OLMC) in Quebec. There is no English-language educational channel, similar to TFO in Ontario, nor is there an English regional channel, nor a community channel.

5. The CRTC has the mandate under the *Broadcasting Act* and the *Official Languages Act*, to support minority programming for both official-language communities. In its March 30<sup>th</sup>, 2009, report on OLMC broadcasting, the CRTC acknowledged the problem of regional reflection and stated its belief that solutions lie with the CBC and new media.

6. New media may help deal with the problem of distribution to the widely-dispersed Anglophone communities throughout the province, as would a regional digital category 1 satellite channel, but improved distribution would not provide a significant solution to the primary problem, e.g. funding the production of regional reflection. CBC is unable to solve the problem unless its budget is significantly increased.

7. ELAN believes regional reflection can be significantly improved through OLMC envelopes within broadcast distribution undertaking (BDU) production funds. These would include:

(a) OLMC envelopes from existing cable BDU funding and proposed satellite BDU funding for regional reflection or local expression and/or community channels, and

(b) OLMC envelopes in the newly established Local Programming Improvement Fund (LPIF).

## **B. CRTC Mandate for Official Language Minority Communities**

9. The CRTC mandate to support official language minority communities (OLMCs) is stated in the *Broadcasting Act* and the *Official Languages Act*.

10. The *Broadcasting Act*, 1991, says:

“5. (2) The Canadian broadcasting system should be regulated and supervised in a flexible manner that

(a) is readily adaptable to the different characteristics of English and French language broadcasting and to the different conditions under which broadcasting undertakings that provide English or French language programming operate;

(b) takes into account regional needs and concern;”

11. The CRTC *Communications Monitoring Report*, August, 2009:

“Pursuant to section 41 of the *Official Languages Act* (OLA), the Commission has the responsibility to take positive measures to enhance the vitality of the Anglophone and Francophone linguistic minority communities in Canada and support and assist their development as well as foster the full recognition and use of both English and French in Canadian society. In addition, because the Commission is a designated agency under section 41 of the OLA, it files a three-year plan to implement section 41 of the OLA and

an annual achievement report. The Commission intends to continue its efforts, within the limits of its mandate, in promoting linguistic duality and in strengthening the vitality and fostering the development of the English- and French-language minority communities in Canada.” (p.13)

12. In his July 29, 2009, intervention to the CRTC re: 2009-411, Commissioner of Official Languages Graham Fraser said:

“During my previous interventions, I mentioned that Part VII of the *Official Languages Act* (OLA) applies to all activities and decisions of the CRTC, and I am encouraged by your efforts to address the interests and needs of the OLMCs. I still think that the requirements of section 41 of the *Official Languages Act*, which concerns linguistic minorities, are much more explicit than the requirements of the *Broadcasting Act*, and that the former should therefore be taken into consideration during the CRTC’s policy – and decision-making process.”

13. Despite the CRTC's sensitivity to the position Parliament has given official language minorities within the broadcasting system, there has not been any noticeable progress in solving the problem of regional reflection for the OLMC in Quebec.

### **C. Regional Reflection**

14. The official language minority in Quebec has access to an abundance of TV channels on cable or satellite that carry English-language programming. Videotron subscribers with digital service can receive 69 or more English-language channels out of the 700 channels that the CRTC has licensed in Canada. In Quebec we don't have an educational, specialty, or even community channel in English; and content that reflects and represents our stories, news and information is extremely limited. Our situation is analogous to a sailor dying of thirst in the middle of an ocean full of 'water'.

15. Therefore, the 1:10 rule set out in CRTC Public Notice 2008-100 that will require BDUs to distribute one Canadian specialty service in the minority language for each ten services distributed in the majority language, does not address the needs of Anglophones in Quebec. Our need is regional reflection which has been demonstrated in various policy reviews, especially your March 30, 2009 report.

16. In addition, the report of the Commissioner of Official Languages, *Shadows Over the Canadian Television Landscape: The Place of French on the Air and Production in a Minority Context*, January, 2009, states in Recommendation 2:

“The Commissioner of Official Languages recommends to the Canadian Radio-Television and Telecommunications Commission that it:

a) develop a specific policy which will:

- Clarify the concept of regional reflection;
- Distinguish between the production of regional programs in the majority official language and the production of regional programs in the minority official language;

b) encourage all Canadian broadcasting services to make commitments regarding the development and acquisition of French-language programs

produced outside Quebec and English-language programs produced in Quebec, including a certain percentage produced outside Montreal.” (emphasis added)

17. Several months later on March 30, 2009, in your *Report to the Governor in Council on English- and French-language broadcasting services in English and French linguistic minority communities in Canada*, the CRTC pointed out the importance all the OLMC interveners assigned to regional reflection.

“ All of the official-language minority community representatives who participated in the hearing- the Ad Hoc Quebec Production Committee, the Alliance des producteurs francophones du Canada (APFC), the English-language Arts Network (ELAN), the FCFA, the FCCF, the Fédération des francophones de la Colombie-Britannique (FFCB), the Quebec Community Groups Network and the Voice of English-speaking Quebec- as well as TV5, TFO, the Commissioner of Official Languages and the delegated ministers from the MCCF, consider regional reflection to be the barometer for the quality of minority television services available to minority communities. They demanded that measures be implemented to expand the representation of these communities within the Canadian broadcasting system, in news and in all other types of programming, and to better meet their needs in terms of local and regional programming.” p.8 (emphasis added)

18. And that:

**“The Commission considers that the representation of communities on screen is essential to ensuring a suitable quality of service. The Commission intends to study this issue, among others, and where appropriate, in the context of licence renewals for Canadian English- and French-language services, and more particularly for the CBC and major Canadian broadcasting groups.”** p.9 (emphasis in original text)

19. In the conclusion to this report, the Commission underlined the importance of regionally-produced programming for minority language communities:

“Moreover, the challenges regarding equitable representation of these communities in the programming of services available within the broadcasting system are set out in this report, as are possible solutions, from which emerged the importance of supporting, acquiring and broadcasting regionally-produced programs.” P.22 (emphasis added)

20. Exactly how are regionally-produced OLMC programs going to be acquired, broadcast and - most importantly - funded? This CRTC report suggests that possible solutions to OLMC regional reflection would be greater use of new media and better funding for the CBC.

21. New media may help with the problem of distribution, but they cannot provide a significant solution to inadequate and decreasing production funding for the CBC.

## 1) Canadian Broadcasting Corporation

22. Can the CBC provide a solution to the problem of regional reflection as the CRTC suggests?

23. Not unless there is a sea change in Government attitude towards funding the public broadcaster. The CBC has been reducing the extent of its English-language coverage of Quebec as it has come under increasing financial pressure, and like all broadcasters, it has centralized its English program decision-making in its head office in Toronto. The Montreal station is no longer able to make the programming decisions it once did.

24. The CRTC commented on this problem in PN 2008-100:

“370. The CBC has, over the past two decades, been unable to maintain - much less make significant improvements to - local television programming. Following its last licence renewal in 2000, <sup>33</sup>the CBC significantly reduced the quantity of local programming in markets across the country. The government, through its contributions to the CTF, has made earmarked funding available for the CBC to acquire independently produced priority programs such as drama. No such earmarked funding has been made available to support CBC-produced local programming.

<sup>33</sup>< See Decisions [2000-1](#) and [2000-2](#).”

25. Unfortunately, the CBC no longer has earmarked funding from the Canada Media Fund (as the CTF is now called). The progressive decrease in CBC's budget has led to increasing commercialization of the schedule, and has had a disproportionate negative impact on official language minorities.

26. Another example of the impact of CBC's declining budget on OLMCs is their request for a revised mandate for the “bold” channel (CRTC PN 2009-437). As “Country Canada”, this channel was licensed to originate programming for rural audiences, such as the 200,000 Quebec Anglophones outside Montreal. Now the CBC is asking for an amended license which will continue to aim this channel at rural audiences. However, despite the program's national mandate, it can no longer afford to produce original programs.

27. Given the absence of alternate sources, official language minority communities remain dependent on CBC services in television, internet and radio. Therefore, ELAN supports the CRTC in its conclusion stated in the March 30<sup>th</sup> report that:

**“The Commission considers it important that the CBC have the means to continue serving these communities. The government may wish to take note of the challenges that the CBC will have to contend with over the following years and encourages it to consider solutions that would enable it to provide the best possible service to official-language minority communities.”** (p.22, emphasis in the original text)

28. ELAN believes the CRTC must strongly point out to the Governor-in-Council that CBC funding has to be increased to provide reasonable service to the official-language minorities, and without increased funding, the CBC cannot fulfill its obligations to Parliament under the *Official Languages Act* and the *Broadcasting Act*.

## **2) Private Over-the-Air Broadcasters**

30. Official language minorities cannot turn to commercial broadcasters for a solution to the problem of regional reflection. The priority for commercial broadcasters is advertising revenue, which is much greater for foreign and, in particular, American programs. Since the minimum Canadian expenditure requirement was eliminated by the CRTC in its 1999 *TV Policy*, these foreign costs have skyrocketed. As we can see from the CRTC's data below, domestic production has been cut back to pay for foreign programs.

31. In the long run, it is evident that the funding problems for English-language Canadian content, whether regional or national, will not begin to be solved until the loss of production dollars to Hollywood is brought under control. Again, we quote from CRTC PN 2008-100:

“342. The Commission's own data demonstrate that private broadcaster spending on local programming has been flat since 1998. Between 1998 and 2007, the spending on local programming by English- and French-language commercial broadcasters increased by 22.8%. However, as the growth in the consumer price index (CPI) during this period was 22.1%, there was no real increase in local spending. This contrasts with spending on non-Canadian programming, which, after adjusting for CPI growth, increased by 61%, as well as spending on other Canadian programming, which increased by 8.3% over the same period. The data indicate an inability or unwillingness on the part of over-the-air [OTA] broadcasters to invest in their local stations. ...

345. “It is clear that the business case for local OTA television has changed significantly through the expansion of Canadian and non-Canadian viewing choices offered by direct-to-home [DTH] undertakings, digital terrestrial BDUs and other digital media. This fragmentation of viewing and advertising revenues is a major reason for the increased consolidation of the industry over the past decade as the owners of OTA services have acquired more profitable specialty services and have explored ways to monetize viewing through the Internet and other new media platforms. However, one of the consequences of consolidation appears to have been that the larger ownership groups have achieved operating synergies through concentrating production resources in major centres, at the expense of smaller local markets.”

32. The concentration of production resources in major centres negatively impacts smaller local markets as well as medium-sized markets like English-speaking Montreal. In addition, the Anglophone population outside Montreal has never had the demographic density to justify over-the-air local broadcasting. With the exception of CBC re-broadcast transmitters, this minority depends on terrestrial and satellite broadcast distribution undertakings to receive TV programs. Similarly, the English-

Quebec minority must depend on BDUs to generate program funding for regional reflection.

### **3) Terrestrial BDUs - Videotron**

33. We focus on Videotron in this discussion of terrestrial BDUs because, according to the CRTC's Brynaert Report, Videotron offers cable service to every English-language community in Quebec with more than 20,000 population by census division. It also serves many smaller communities. 93% of the total English population of Quebec falls within Videotron's service area.

34. In 2008, Quebec's cable companies (including but not exclusively Videotron) contributed \$49.4 million to Canadian programming. Out of this amount, \$24.8 million was contributed to the Canadian Television Fund and independent production funds, and another \$24.6 million was spent on "local expression" or community channels.

35. Videotron's Quebec community channel is VOX, whose programming is entirely in French with the exception of three programs. *English Essentials Globish* and *Township's Talk* are available on the Sherbrooke VOX channel. The VOX channel on the south shore of Montreal presents a program on school life called *Riverside Television* produced by students at Heritage Regional High School.

36. There is no English program on the Montreal VOX channel, much less an English-language community channel anywhere in Quebec. While these three regional VOX programs show the energy and initiative of the volunteers behind them, this is insufficient Anglophone reflection on a cable system serving 93% of the Anglophone population.

37. There are no official-language minority requirements for community channels in the CRTC's *Broadcasting Distribution Regulations*. ELAN believes the CRTC should amend these regulations to make them consistent with the OLMC obligations of the BDUs.

### **D. Funding Official-Language Minority Production in Quebec**

38. The lack of funding for regional reflection of the official-language minority communities could be addressed by creating OLMC envelopes which would include:

- an OLMC envelope within the newly established Local Programming Improvement Fund (LPIF). This will require changes in LPIF eligibility regulations discussed below;
- an OLMC envelope within the amount spent by cable companies, or terrestrial BDUs, on "local expression" or community cable channels; and

- an OLMC envelope within the funding for “local expression” or community channels that satellite BDUs should establish.

39. We will examine these options below.

### **1) Local Programming Improvement Fund and the Quebec Official-language Minority**

40. Considering the mandate of the CRTC under both the *Broadcasting Act* and the *Official Languages Act*, ELAN believes that the CRTC should take into consideration the needs of both official language minority communities in its design of the Local Programming Improvement Fund (LPIF).

#### a) LPIF Eligibility: Defining English-speaking Montreal

41. The official language minority in Quebec is completely denied access to the LPIF due to the definition of official language that has been adopted. We quote from CRTC 2008-100:

“360. The fund will be made available to stations serving markets in which the population with a knowledge<sup>32</sup> of the official language of the station (i.e., English or French) is fewer than one million. Accordingly, the metropolitan markets of Vancouver, Calgary, Edmonton, Toronto, anglophone Ottawa-Gatineau, and Montréal do not qualify, and stations serving those markets will therefore not qualify for funding from the LPIF.

<sup>32</sup> According to the definition by Statistics Canada”

42. The CRTC confirmed this unusual definition of official languages in CRTC 2009-406 which says:

“<sup>2</sup> The definitions of metropolitan and non-metropolitan markets are the same as those set out in Broadcasting Public Notice [2008-100](#). Accordingly, metropolitan television markets are those television markets in which the population with a knowledge of the official language of the station (i.e., English or French), as defined by Statistics Canada, is one million or more and non-metropolitan markets are those television markets in which the population with a knowledge of the official language of the station is less than one million.” (footnote 2)

43. This definition of the Anglophone population of Montreal as “knowledge” of English contradicts longstanding Federal Government policy and the *Official Languages Act*. The only definition approved by the Federal Government for communications or services to official language minority communities is “First Official Language Spoken” (FOLS).

44. First, while Statistics Canada has several definitions of language understood or spoken which it uses in collecting census data, it considers “knowledge” of a language

far too broad and ambiguous for purposes of the *Official Languages Act*. In the Census Dictionary, Statistics Canada notes that “First Official Language Spoken” is a derived variable based on census questions 13, 15 and 16 and that “this variable was derived within the framework of the application of the *Official Languages Act*.”

45. Second, the Treasury Board of Canada Secretariat issued directives in 1991 that the “First Official Language Spoken” should be the standard definition used by the Federal Government to identify official language minorities. See *Regulations respecting communications with and services to the public in either official language*, registered on December 16, 1991, in accordance with section 85 of the *Official Languages Act*, R.S.C., c. 32 (4th suppl.)

46. Third, the Department of Canadian Heritage “uses the First Official Language Spoken definition, based on the information people give in Stats Can Census data”. This explanation of PCH policy is quoted from ADM Hubert Lussier’s communication to me, August 6, 2009.

47. Consequently, the CRTC’s definition of “knowledge of” English instead of “first official language spoken” is inconsistent with Treasury Board policy, Statistics Canada policy, Canadian Heritage policy, the *Official Languages Act*, or indeed any position we could find that has been used by the Federal Government on this subject.

#### b) LPIF Eligibility: Population of English-speaking Montreal

48. If the CRTC follows Federal Government policy and changes LPIF eligibility to metropolitan areas with fewer than one million people defined as “first official language spoken”, then English-speaking Montreal becomes eligible to access the Fund.

49. As we can see from Table 1 below, the English-speaking population of metropolitan Montreal is 800,600 according to the 2006 census for first official language spoken. This calculation includes an adjustment for bi-lingual or multi-lingual respondents. Otherwise, the FOLS population of Montreal is closer to 700,000.

50. In fact, the CRTC uses the FOLS definition for its own research on OLMCs. It commissioned a report on TV, radio, and internet services available to OLMCs from Brynaert and Associates last year for its 2008-12 hearing. Brynaert’s research was entirely based on “first official language spoken” statistics for both English and French minorities. Their report defined the Anglophone population of Quebec in 2006 as 994,725. Their research also identified the Anglophone population of Greater Montreal to be “over 700,000” representing 76% of the province’s Anglophones.

51. On the other hand, the “knowledge of English” population of Montreal is over 2.1 million and would include many people who do consider themselves part of the English-speaking community.

Table 1

Region	Total population	First Official Language Spoken (English adjusted)		Mother Tongue (English adjusted)		Knowledge of English	
		number	% of total population	number	% of total population	number	% of total population
Quebec	7,435,905	994,723	13.4%	606,971	8.2%	3,354,650	45.1%
Montréal	3,588,520	800,600	22.3%	448,298	12.5%	2,124,740	59.2%
Quebec, less Montreal	3,847,385	194,123	5.0%	158,673	4.1%	1,229,910	32.0%

Source: Statistics Canada, 2006 Census of Canada

Note: "Adjusted" means that multiple responses have been assigned equally among declared languages

52. BBM is the most reliable source of statistics for television audiences. Table 2 shows the TV population defined by BBM as “extended market” Montreal. BBM does not break out English data for Montreal alone, but for the entire province. According to BBM, the “extended market” population of Quebec Anglophones is 960,000, which is still smaller than Kitchener or Quebec City. Yet, these cities are eligible for the LPIF.

53. If we ignore population, and instead look at the metropolitan markets by actual TV viewing we capture cross-over viewing of English channels by Francophones. In that case, we see in Table 2 that viewing of all English-language TV stations available in Montreal is smaller than total viewing in Quebec City, Kitchener, and Winnipeg. Yet, these cities are eligible for the LPIF and English Montreal isn't.

Table 2

Extended Television Markets 2008-09			
Extended TV Market Area by Population 2+		Total Weekly TV Hours by Viewers 2+	
Toronto-Hamilton	7,037,000	Toronto-Hamilton	135,634,000
Montreal (French)	3,578,000	Montreal (French)	78,046,000
Vancouver-Victoria	3,355,000	Vancouver-Victoria	62,049,000
Edmonton	1,553,000	Edmonton	30,073,000
Calgary	1,495,000	Calgary	28,011,000
Quebec City	1,048,000	Quebec City	23,964,000
Kitchener	1,000,000	Kitchener	19,378,000
Ottawa-Gat (Eng)	985,000	Winnipeg	19,118,000
Montreal (Eng)	960,000	Montreal (Eng)	18,443,000
Winnipeg	933,000	Ottawa-Gat (Eng)	18,081,000

Source: BBM TV Extended Market Statistics, Fall, 2008

54. The data all point to the same conclusion. English-speaking Montreal, defined as “first official language spoken”, has a population substantially less than one million. In fact, in all Quebec, there are fewer than one million Anglophones.

55. Therefore, ELAN believes that the CRTC must revise its definition of Anglophones from “knowledge of” English to “first official language spoken”.

### c) Funding Official-language Minority Programming: LPIF Envelopes

56. The Standing Committee on Canadian Heritage report *Issues and Challenges Related to Local Television*, June, 2009, said:

“ Recommendation 1 The Committee recommends that any programs designed to assist local broadcasting be open to both private and public broadcasters, including CBC/Radio-Canada, Aboriginal broadcasters, educational broadcasters, community television, and small broadcasters representing official language minority communities.” (emphasis added)

57. Unfortunately, as Table 1 shows, nearly 200,000 Anglophones in Quebec live outside Montreal and are unserved by local broadcasters. In addition, the entire English speaking population of Quebec is unserved by an educational broadcaster similar to TFO in Ontario, nor is there an English-language specialty channel or community channel in Quebec. Local reflection is inadequate, and for Anglophones outside Montreal, it is non-existent.

58. Despite this obvious need for local reflection, the current design of the LPIF means the official language minority in Quebec is completely cut off from this source of local programming support. There are no LPIF-eligible “small broadcasters representing official language minority communities” in Quebec, to use the hopeful language of the Parliamentary Committee.

59. The Ministerial Conference on the Canadian Francophonie (MCCF) represents every provincial and territorial government. As the CRTC March 30, 2009, report says:

“The MCCF recommended that a part of the money available in the funds overseen by the Commission, including the new LPIF, be reserved for productions from official-language minority communities.” (p.12)

60. The Commissioner of Official Languages Graham Fraser again raised this issue in his letter of July 29, 2009, to the CRTC. He said:

“It is my opinion that the LPIF allocation process should ensure a fair distribution of funding between Canada’s Anglophone and Francophone OLMCs. I therefore suggest using a mechanism that would allocate funding according to the regional needs of OLMCs. The funding could be divided into two envelopes intended for Anglophone and Francophone OLMCs, respectively. . . .

“Regarding services available to Quebec Anglophones, upon reviewing the LPIF eligibility criteria, I notice that the new funds will not benefit any of the English-language minority community television stations. . . . I would recommend that the CRTC include Anglophone minority communities in its criteria for LPIF eligibility and to help these stations and any future English-language stations in Quebec as they reflect and reach out to the province’s entire English-language minority.”

61. ELAN supports the recommendations of the Ministerial Conference and the Commissioner of Official Languages. Dedicated envelopes should be established within the LPIF and other production funds to ensure official language minority access to funding, and balanced funding between the linguistic communities.

62. In Quebec, the OLMCs outside Montreal need a means to access this funding for local reflection. Clearly, local reflection for the entire official language minority in Quebec cannot be achieved through in-house Montreal broadcast news production only.

63. While emphasizing the importance of local news, the CRTC said in PN 2008-100, #359, that the objective of the LPIF is to “improve the quality and diversity of local programming” broadcast in smaller markets. It would seem that the CRTC considered the need for flexibility when it established the LPIF by naming it the “programming” improvement fund, and not simply the “news” improvement fund.

64. However, the regulations to access LPIF need to be re-designed to meet the real needs of each of the official language minorities.

65. In addition to equity and balance between OLMCs, a Quebec OLMC envelope may be justified by the limitations in production funding faced by English-language producers at the provincial level. For example, we note that there is a 20% ceiling on total non-Francophone production funding by SODEC. We also note that there is a more beneficial Quebec tax credit rate for French-language feature films and documentaries than is available for equivalent English-language productions.

66. In fact, a survey of English-language Quebec producers by the Quebec Film and Television Council in 2008 discovered that half of their production was being produced outside of Quebec due to the uncompetitive structure of provincial support for English production.

67. The absence of English-language regional or educational broadcasters in Quebec is another major weakness. The importance of a provincial or educational broadcaster can be seen by the experience of Francophone producers outside Quebec. Over 40% of their total television license fees in the last five years were paid by TFO. Since there is no regional or educational broadcaster in Quebec, nearly all English-language television production must be “green lit” by national broadcasters in Toronto, or producers or co-producers in the U.S. or Europe. External interests limit the capacity of English-Quebec producers to tell local stories even when they are producing inside the province.

68. For these reasons, we need flexible OLMC envelopes that are accessible to independent producers for all genres of programming. This flexibility would encourage production and reflection outside Montreal. As currently designed, the LPIF does not have that flexibility since only broadcast news production is eligible. If the LPIF is to support regional reflection throughout Quebec, it should be open to independent producers working in any genre.

69. Furthermore, ELAN supports the current CRTC requirement that 75% of priority programming should be made by independent producers. Thus, it would be consistent if 75% of this proposed OLMC envelope in the LPIF is used to support and encourage regional reflection by independent producers in all genres, and 25% is used to support regional reflection and news by eligible Montreal broadcasters.

70. With the needs of the official language minorities in mind, at a minimum, the LPIF should continue to be funded at 1.5% of eligible BDU revenues. Unless a higher rate is used, the LPIF should not be used as a revenue source for distribution projects such as Bell's "freesat" proposal.

71. A reasonable target for the OLMC envelope in Quebec is 20% of the total English-language LPIF.

## **2) Terrestrial Broadcast Distribution Undertakings**

72. Broadcast Distribution Undertakings (BDUs) have special responsibilities under the *Broadcasting Act*, 1991, which says:

"3. (1) It is hereby declared as the broadcasting policy for Canada that

(t) distribution undertakings

(i) should give priority to the carriage of Canadian programming services and, in particular, to the carriage of local Canadian stations,

(ii) should provide efficient delivery of programming at affordable rates, using the most effective technologies available at reasonable cost,

(iii) should, where programming services are supplied to them by broadcasting undertakings pursuant to contractual arrangements, provide reasonable terms for the carriage, packaging and retailing of those programming services, and

(iv) may, where the Commission considers it appropriate, originate programming, including local programming, on such terms as are conducive to the achievement of the objectives of the broadcasting policy set out in this subsection, and in particular provide access for underserved linguistic and cultural minority communities. (emphasis added)

73. Subsection (iv) says the BDUs “may” originate local programming and “in particular provide access for underserved linguistic and cultural minority communities”. However, this OLMC mandate for BDUs is left up to the initiative of the BDU and the oversight of the CRTC. Since The BDUs are among the most profitable elements of the Canadian broadcasting system, there would seem to be financial room for the CRTC to exercise its powers in this section of the *Broadcasting Act*.

74. Thus, the CRTC could require the Quebec BDUs allocate 20% of the funds spent on “local expression” to OLMC expression. An amount could be deducted from this 20% to reimburse BDUs for English-language programs that they present on VOX or other community channels. ELAN believes the balance of these funds should be contributed to an independent OLMC Quebec regional reflection envelope discussed below.

### **3) Satellite Broadcast Distribution Undertakings**

75. In addition to the cable industry’s long-standing obligation to community channels, there are recent proposals from the satellite industry to establish their own community channels. These proposals will soon be under consideration by the CRTC at the community TV hearings, and they are potentially of great importance to OLMCs.

76. In 2008, the direct-to-home satellite industry (MDS/DTH) contributed \$93.2 million for CTF and other program funds, but spent only \$20,000 on “local expression”. The CRTC has not required that these national services support community channels. However, last year these BDUs requested permission from the CRTC to offer their own national “community” channels.

77. We quote from CRTC PN 2008-100:

“215. During the proceeding, DTH undertakings proposed that they be permitted to offer community channels under similar terms and conditions as terrestrial BDUs.

216. The Commission recognizes the advantages of harmonizing, as much as possible, the rules for DTH undertakings and terrestrial BDUs. Nevertheless, it considers that the question of DTH undertakings operating a "community" channel should be considered in the broader context of the Commission's community media policy. The Commission will therefore consider this proposal as part of its review of community media policies.”

78. A 20% Quebec OLMC envelope established from MDS/DTH funding for “local expression” on these services, could generate much needed revenues for regional reflection. A significant portion should be allocated to independent production in any genre.

79. These revenues should be put into an independent OLMC envelope. Alternatively, the MDS/DTH industry could use some of this money to provide the technical means for distribution of an English-language Quebec OLMC satellite channel on their facilities. This would be part of their contribution to “local expression” and “regional reflection”.

80. An English-language channel of regional reflection in Quebec equivalent to TFO needs to be explored.

81. In addition, the satellite industry should contribute funding and/or distribution facilities to an independent Quebec OLMC envelope as part of its request to establish its own community channels.

## **E. Recommendations**

82. In consideration of the above, ELAN recommends that the CRTC:

- 1) adopt the “first official language spoken” definition of official language minorities to determine LPIF eligibility, and as a result, make English-speaking Montreal eligible for the LPIF;
- 2) change the design of the LPIF to better support regional reflection of the official-language minority community in Quebec, including at least a 20% envelope for Quebec OLMC production, 75% of which would be accessible to independent producers working in any genre;
- 3) continue funding the LPIF at a minimum of 1.5% of eligible BDU revenues;
- 4) recommend to the Governor-in Council that the CBC budget be increased so it can fulfill its mandate under the *Official Languages Act*;
- 5) re-establish a Canadian content minimum expenditure requirement for English-language over-the-air broadcasters to achieve at least a 1:1 ratio of domestic to foreign program expenditures;
- 6) require Quebec terrestrial BDUs contribute at least 20% of their “local expression” funding to an independent OLMC fund;
- 7) require that at least 20% of any satellite BDU “local expression” funding be contributed to an independent OLMC fund, less expenses to distribute such an OLMC channel; and
- 8) amend the *Broadcasting Distribution Regulations* to clarify the obligations of BDUs towards the production and distribution of OLMC regional reflection.

Sincerely,  
Guy Rodgers  
Executive Director, English-language Arts Network of Quebec

\*\*\* End of Document\*\*\*