

April 22, 2014

John Traversy
Secretary General,
Canadian Radio-television and
Telecommunications Commission
Central Building Les Terrasses de la Chaudière 1
Promenade du Portage
Gatineau, Quebec K1A 0N2

**Re: 2013-1746-2
Non-compliance complaint regarding MATV
by Sabine Friesinger (OBCI)**

Dear Mr. Traversy,

1. If there is a public hearing on this subject, we would like to appear.
2. The English Language Arts Network (ELAN) represents over 8,000 English-speaking artists in Quebec. The Quebec Community Groups Network (QCGN) officially represents the 600,000 English-speakers in the Greater Montreal area but, in the complex realm of broadcasting, QCGN calls upon ELAN to use its expertise to intervene on behalf of the English-speaking community.

Official Language Minority Local Expression Deficit in Quebec

3. We want first say that under Chair Jean-Pierre Blais, the CRTC has become increasingly sensitive to the needs of the official language minorities. Quebec's English-speaking communities acknowledge and appreciate that sensitivity.
4. The official language minority communities (OLMCs) in Quebec, including the aboriginal communities, continue to have an overwhelming deficit in local expression. Our needs are not being met by conventional broadcasters, specialty channels, or community television.
5. In Quebec, 93% of Anglophones live in Vidéotron licence areas. At present the only community television they can access is MATv which is a 100% French language channel. The official language minority needs an English-language community channel.

6. ELAN has pointed out this problem to the CRTC on numerous occasions, including the community television hearings in 2010. At that hearing, we were encouraged by former CRTC Chair Konrad von Finkenstein to speak directly to Vidéotron to resolve this problem. ELAN approached the management of VOX, Vidéotron's French-language community television station at the time. They were not immediately receptive, but ELAN persevered. And persevered.

Quebecor English-language Community Television Solution

7. Quebecor Media (QMI) acknowledged that its OLMC subscribers were underserved, and took the initiative to resolve this problem. On August 30, 2013, QMI applied to the CRTC to set up an English-language community TV channel in the Montreal area where it holds seven Vidéotron cable licences. This application proposed to solve a long-standing problem that Vidéotron has had to meet the needs of its English-speaking and aboriginal subscribers.

8. QMI filed this application under the CRTC's BPR 2010-622 *Community TV policy*¹ and under Section 34 of the CRTC's *Broadcasting Distribution Regulations*.² The CRTC has established this policy and written these regulations to allow funding for a second community channel in the minority official language.

9. There are precedents for licensing a second OLMC community channel. This policy has been invoked in other cities with significant official language minority populations, such as Ottawa and Moncton.³ In addition, last year Bell Media filed applications to amend its two VOD IPTV channel licences to add OLMC channels in Montreal and Ottawa.⁴

10. These precedents were established by the CRTC because it is subject to the *Official Languages Act*.

11. This fact was reinforced by Federal Court Justice Luc Martineau in his precedent-setting *OCOL vs CBC* judgment.⁵ The Federal Court said that the *Broadcasting Act* (BA) does not have exclusive jurisdiction over the regulation of the broadcasting system, but has concurrent jurisdiction with the *Official Languages Act*. Therefore, the CRTC must take into consideration s.41 of the OLA in its

¹ Unnumbered paragraph: "Licensees that elect to distribute two community channels in a given market, one in each official language, may apply under section 29 of the Regulations for a condition of licence in order to allocate up to 2% of their required contribution to Canadian programming to each of the community channels."

² Section 34 was previously numbered Section 29, e.g. s.29 in BPR CRTC 2010-622.

³ For example, Rogers' licence renewal in Ottawa, CRTC 2007-230.

⁴ Bell applications 2013-0801-5 and 2013-0800-0 to amend CRTC 2011-737 filed June 4, 2013. ELAN notes that Vidéotron has been much more forthcoming in its OLMC consultations than Bell has been.

⁵ *Canada (Commissioner of Official Languages) vs CBC/Radio-Canada*, 2012 FC 650, May 29, 2012.

decisions. The Court said decisions of the CRTC must adhere to the spirit of both the BA and OLA in supporting the development of the OLMCs.⁶

12. With that in mind, on October 7, 2013, ELAN intervened in the application⁷ by Vidéotron to establish MYtv, its proposed Montreal English-language community TV channel. We offered our conditional support for that application precisely because it helps to resolve the problems the OLMCs in the Montreal area now face regarding local expression.

ICTV Complaints and Multilingual Community Television Solution

13. On December 11, 2013, the Independent Community Television (ICTV) Steering Committee filed a complaint against MATv and filed its own community TV application. The only rationale for the ICTV complaint against Vidéotron was to justify its own community TV application. We do not believe the ICTV complaint and the ICTV application can be separated.

14. In our view the complainant and many interveners in the complaint do not understand, or choose not to understand, the role of the *Official Languages Act* (OLA) in encouraging the growth and development of the OLMCs in the Montreal area. They do not seem to understand the OLA mandate of the Commission, or the importance of the OLA in the regulation of the broadcasting system. ICTV has conflated official language rights and Broadcasting Act access rights in their application for a new community channel.

15. ICTV's argument that it should replace Vidéotron's two community channel proposal with one multi-lingual community channel is based on two distinct complaints against MATv.

16. The first complaint is that MATv has not fulfilled its licence obligations⁸ to the official language minority communities, including the aboriginal community. The second complaint is that MATv is not fulfilling its obligations to the CRTC's community TV policy which required as of last year that at least 45% of its schedule be access programming.

17. On the first complaint, we do not believe Vidéotron met its regulatory obligations to official language minority communities (including aboriginals) under its 2006 licence. However, Vidéotron recognized and addressed that fault when it applied for a licence to operate an English-language community channel under the CRTC's two-channel policy in 2010-622-1.

18. If Vidéotron had not filed its application for an OLMC channel, then ICTV would be correct in this complaint. Since Vidéotron did file that application, it has taken positive actions to meet its official

⁶ Ibid, #56: "...it goes without saying that the expectations and conditions of licence set by the CRTC must be consistent with all of the applicable provisions of the BA and OLA, which includes ensuring adherence to the values and spirit of the BA and the OLA in promoting the equal status of both official languages and supporting the development of OLMCs".

⁷ CRTC application 2013-1216-5.

⁸ CRTC 2006-613, paragraph 41.

language minority obligations (as long as the CRTC accepts the MYtv application and issues appropriate conditions of licence). Therefore, we request that the CRTC reject ICTV's complaint because the MYtv application renders it moot going forward.

19. As for the second complaint, ICTV sampled the MATv schedule one week in late November, and decided there was no access programming at all.⁹ QMI responded¹⁰ that during that week, its access programming was in excess of the 45% requirement and actually was 59%. During 2012-13, Vidéotron said it spent 57% of its MATv budget on access programming. This discrepancy sounds like a matter of different definitions of access programming. We will leave that to the CRTC to sort out.

20. If ICTV is correct and MATv has not met its *Community Television Policy* obligation to provide a sufficient level of access programming, what is the remedy?

21. According to ICTV, the only remedy is to close down MATv and not grant a licence for the proposed English community channel. ICTV would then replace both of them with one multilingual ICTV channel, which Vidéotron would distribute on its cable system.

22. According to the *Community Television Policy*, this remedy is only possible if a community TV channel does not meet its regulatory obligations and a community group is able to demonstrate that its proposed community channel will operate "in accordance with this policy".

23. Should the CRTC decide that Vidéotron has failed in its obligations, ICTV's proposal is not the only community option. In fact it would be essential for Montreal's English-speaking communities to engage in a large public debate about the most appropriate and beneficial form of community television to serve its collective needs and interests.

ELAN Rejects the ICTV Multilingual Community TV Channel

24. ELAN does not believe the proposed channel that is ICTV's remedy will operate in accordance with the official languages mandate of the CRTC. Specifically, ICTV's channel would result in a great loss to viewers in both official languages. The Francophone majority would no longer receive the 100% French-language MATv channel. They would receive only ICTV's 50% French-language multilingual channel. We believe this would be unacceptable to the vast majority of Vidéotron's Francophone subscribers.

25. ICTV's channel would also result in the loss of the proposed English-language MYtv channel. Instead of a dedicated MYtv, the official language minority would receive ICTV's 20% English-language multilingual channel.

⁹ Steering Committee for ICTV/TVCI Montreal, "Appendix 1A, Supplementary Brief for a Community Channel To Be Operated by a Not-for-Profit Corporation To Be Called Independent Community TV (ICTV/TVCI) Montreal Within the Greater Montreal Cable Licence Area of Videotron", December 11, 2013, pp 3-4

¹⁰ Tabet, Peggy, QMI response to CRTC, March 17, 2014, pp 6-7

26. Furthermore, the ICTV model would result in the loss of funding for both French and English-language programming since the ICTV channel would have half the budget of the two channels it would replace. ICTV would receive up to 2% of eligible Vidéotron revenues while MAtv and MYtv would receive 2% each. MYtv would have a sufficient budget to offer programming opportunities to emerging filmmakers and others in our community that ICTV could not afford to offer.

27. Therefore, the ICTV channel would contravene s.41 of the OLA by exchanging an 80% or more English-language community channel¹¹ for a 20% English-language channel. With its lower budget, we believe the ICTV channel would not provide the OLMC with equivalent programming opportunities available on the MYtv channel. The ICTV channel contravenes the spirit of the *Community Television Policy* and its official language minority two-channel option.

28. As for other non-official languages, especially aboriginal languages, we believe they could be included within Vidéotron's two channel model. The CRTC should include them at the Vidéotron licence renewal and/or MYtv application through conditions of licence.

29. Therefore, we request that the CRTC reject the ICTV complaint as it applies to the official language minorities, and reject its community TV application. If CRTC should decide that Vidéotron does not provide a satisfactory service, Montreal's English-speaking community must to be empowered to create the best possible model.

Conditions of Support for MYtv Application

30. Now that we have seen both the MYtv and ICTV proposals, we continue to offer our conditional support for MYtv. In our view, the Vidéotron English-language community TV channel can best serve the needs of the official language minorities, including aboriginal communities.

31. While Vidéotron/VOX/MAtv have failed to serve their English-speaking subscribers for many years, QMI's application to create an English-language community channel (MYtv) demonstrates an understanding of the magnitude of the problem, and shows a serious desire to remedy the situation.

32. Vidéotron has announced that it will delay the start of MYtv while the ICTV complaints are being sorted out.¹² We request that its MYtv proposal be reviewed at the Vidéotron licence renewal hearing scheduled for this year. Whenever the CRTC considers the Vidéotron English community channel application, we request that conditions of licence be included.

33. ELAN supports Vidéotron's MYtv application subject to the following recommendations, which we respectfully request the CRTC impose as conditions of licence:

¹¹ We believe CRTC regulations would require a minimum of 60% English programming on MyTV. The balance could be more English and other languages including aboriginal languages. We believe MyTV should be 80% or more English.

¹² Montreal Gazette, "MYtv community channel put on ice as CRTC evaluates complaint", March 29, 2014, p.C2.

- (i) Programming for this new service will include at least 500 hours per year of original productions, at least 80% of which are in English, and aboriginal languages should have priority over the balance;
- (ii) The programming budget will include at least \$4 million in outside or cash expenses;
- (iii) Closed captioning or versioning should include aboriginal languages to the extent practical;
- (iv) Vidéotron will establish an independent MYtv Advisory Board with a mandate to oversee programming and versioning policies of the community channel. The Board will have access to relevant data including program logs and the MYtv budget;
- (v) The composition of the Advisory Board will be subject to the approval of key OLMC organizations.¹³ OLMC members should be in the majority, and the Board should reflect the diverse composition of the English-speaking community, including aboriginals, and meet at least quarterly;
- (vi) The Advisory Board will publish annual reports on the operation of the channel, and will have its reasonable expenses paid by Vidéotron. Vidéotron must respond in writing to these annual reports and any recommendations they might include in a timely fashion. These reports will be filed with the CRTC;¹⁴
- (vii) Vidéotron will work to establish partnerships with local OLMC organizations or social activist program producers with experience on the ground;¹⁵
- (viii) Vidéotron will encourage the establishment of OLMC and aboriginal non-profit TV corporations which will provide up to 20% of the programming schedule for an appropriate level of funding;¹⁶
- (ix) Vidéotron will use synergies and efficiencies operating two community channels to increase the percentage of its programming costs to 80% for MYtv;
- (x) Vidéotron will implement a plan to produce and distribute MYtv programming connecting English-language and aboriginal communities within its licence areas across Quebec.

¹³ Particularly ELAN, QCGN, QEPC, CUTV, and a proposed aboriginal TVC.

¹⁴ If there is a serious disagreement between the OLMC members of the Advisory Board and Videotron, the OLMC members can appeal for arbitration of the dispute under the *Code of Best Practices for Community Television Access Programming* CRTC BRP 2012-481, or for non-access programming, file a complaint directly with the CRTC. We hope such a process will not be needed.

¹⁵ Such as Concordia student TV (CUTV), Eyesteelfilm, Mohawk TV, Rezolution Pictures, or the NFB.

¹⁶ See CRTC 2010-622-1 "Where there is one or more local not-for-profit community television corporations (TVCs) in a given licensed area, up to 20% of the programming aired during each broadcast week by licensees shall be made available for access programs from these TVCs. Where more than one TVC is in operation in a licensed area, each must be guaranteed a minimum of four hours of access programs per broadcast week, upon request. This 20% is considered part of the access program requirements set out above."

34. We believe OLMC community television must be planned, licensed, and implemented with these concerns paramount.

35. Thank you.

Yours truly,

A handwritten signature in black ink, appearing to read "Guy Rodgers", with a long horizontal flourish extending to the right.

Guy Rodgers
Executive Director

cc- Peggy Tabet, Director, Regulatory Affairs, Quebecor Media, tabet.peggy@quebecor.com

Sabine Friesinger, Steering Committee for Independent Community TV (ICTV/TVCI) Montreal, info@tvci-ictv.org

APPENDIX

1. On February 25, 2014 the CRTC sent Québecor Media Inc. (QMI) the list of questions provided by (ICTV) in their complaint.
2. QMI provided a response on March 17, 2014. ELAN offers its comments on ICTV's complaints and QMI's responses in the paragraphs below.
3. *Question 1 - Explain how MAtv's programming reflects the cultural diversity of Greater Montreal, including English-speaking and Aboriginal communities and other linguistic minority and ethnic groups.*
4. As QMI notes in its response, ELAN began to raise these questions with Vidéotron/VOX during CRTC's public hearings on Community TV policy (Broadcasting Regulatory Policy CRTC 2010-622). ELAN noted that Vidéotron serves 93% of Anglophones but provides very little programming in English, and

none in the Montreal region where the majority of Anglophones reside. Aboriginal programming is hardly better.

5. VOX management in 2011 offered no explanation for why Vidéotron had failed to provide community television for English-speaking subscribers in Montreal since it acquired the old CFCF cable channel in 1997, and then closed it down two years later. They demonstrated no interest in broadcasting English-language content unless we could deliver a high rating 'blockbuster' free of charge. This sounded like commercial TV rather than community TV.

6. When Vidéotron's cable licence came up for renewal in 2013, ELAN approached senior management of its French-language community channel (MAtv) to ask how they planned to remedy the situation during the next licence period. MAtv's management team was immediately receptive to the idea of working with English-speaking producers and providing English-language content. Rather than simply reserving a few hours on the French-language channel, it proposed to create an entire English-language channel.

7. Isabelle Dessureault, president of MAtv, and Steve Desgagné, its director general, presented their ideas for the new channel at a public information session last September. They acknowledged that Vidéotron's English-speaking subscribers have been poorly served in the past, but they have demonstrated a serious desire to remedy the situation in the future by creating MYtv. Rather than belabour past failures by Vidéotron/VOX, ELAN preferred to work with MAtv's management to implement future solutions.

8. Question 1a - Describe the measures taken by MaTV since September 2011 to serve the needs and interests of official language minority communities (OLMCs).

9. ELAN believes that Vidéotron's application to create an English-language community TV channel (MYtv) is a clear and powerful measure to serve the needs and interests of Quebec's official language minority community.

10. Question 1b - What is the status of the dialogue between Vidéotron and OLMCs with respect to the community programming broadcast on MAtv?

11. When ELAN first approached MAtv in summer 2013, they were receptive to the idea of inserting English-language content on MAtv; however, they were also receptive to creating a new English-language channel, which we felt to be a better solution. ELAN believes that an independent English-language community TV channel will be a far more beneficial measure for Quebec's official language minority community than sharing time on MAtv. To this end, Vidéotron presented its vision of MYtv at a public meeting held by ELAN on September 23, 2013 at SHIFT Space in Montreal.

12. Question 2 - In the Community Television Policy (BRP 2010-622), the Commission indicates that it expects broadcasting distribution undertakings (BDUs) operating a community channel to offer a service that facilitates self-expression through free and open access by members of the community. In this respect, the Commission has established that BDU-operated community channels should meet (multiple) objectives. Please describe in detail how MAtv meets each of these objectives.

13. ICTV's complaint about "community access" is partly due to a difference in definition. For ICTV, it means open access for members of the community to produce their own programs; we believe MATv sees it in terms of creating programming of local interest for subscribers.
14. Vidéotron/MATv list numerous measures they have undertaken to *"engender a high level of citizen participation and community involvement in community programming; actively promote citizen access to the community channel and provide and promote the availability of related training programs; provide feedback mechanisms, such as advisory boards, to encourage viewer response to the range and types of programs aired; seek out innovative ideas and alternative views; provide a reasonable, balanced opportunity for the expression of differing views on matters of public concern; provide coverage of local events; and publicize the program schedule."*
15. ELAN agrees that all of these objectives are important and recognizes that MATv is in the process of changing its corporate culture to ensure that the community is deeply and actively involved in the development and delivery of content. ELAN notes that a number of MATv partners (particularly for the program *Montrealité*) are satisfied that MATv is providing significant community TV content.
16. ELAN appreciates that MATv management has promised to create a Community Advisory Board for MYtv to study programming and make recommendations about access projects. The nature and composition of this Advisory Board have not been defined and, while we understand the reluctance of MATv management to give this Advisory Board decisional powers, the Board must represent the diversity of the English-speaking community and have the authority to ensure that MYtv is fulfilling its obligations to the OLMC.
17. Questions 3 to 5 concern access programs and ELAN does not have sufficient data to evaluate QMI's responses.
18. Questions 6 and 7 concern financials and ELAN does not have sufficient data to evaluate QMI's responses.
19. Questions 8 to 10 concern outreach initiatives and MATv's efforts appear to be adequate.
20. Question 11 concerns MATv's program logs and program records. We leave it to the CRTC to sort out the matter of different definitions of access programming.
21. While ELAN agrees with most of ICTV's complaints about the past, we believe they can be resolved with the proposed new MYtv English-language channel if Vidéotron delivers the service it has promised and the Advisory Board has the authority to oversee those promises.
22. ICTV has proposed an alternative community-TV project, which we believe is inferior to Vidéotron's MYtv model for four principal reasons.
23. First, the ICTV model aims for 70% community access. Back in the 1970s, community TV played an important role by giving a voice to specific interests and causes that were absent on mainstream media. That niche has been filled by social media, including YouTube, which allow anyone to be a

publisher or broadcaster. The role of community TV, in an age of digitalization and globalization, is to provide a local perspective — but viewers expect quality programs, with strong community appeal. Half of MYtv’s production would be created by teams of professionals: for example, a series of programs about how English-speaking communities have contributed to building modern Quebec. These programs about important events and colourful characters could also be screened in schools.

24. Secondly, ICTV’s model proposes one multilingual station, which would replace Vidéotron’s proposed model of two distinct stations (MAtv in French, and MYtv in English). This model would reduce English-speaking community programming from more than 80% on MYtv to only 20%.

25. Thirdly, ICTV’s multilingual model would also reduce French-speaking-community programming from 100% currently broadcast on MAtv to only 50%. This would lead to unintended negative consequences between the linguistic-majority and linguistic-minority communities.

26. Lastly, ICTV’s production model is based on the work of unpaid volunteers, which makes sense for student TV but not for community TV. The MYtv model would contribute to keeping producers, filmmakers, artists and other creative people in Quebec.

27. Videotron states in its responses that it “wishes to draw the Commission's attention to a campaign of falsehood being waged by ICTV on social media against MAtv for the sole purpose of tarnishing MAtv's image and reputation. Videotron is deeply concerned about these slanders.”

28. ELAN also wishes to draw the Commission's attention to questionable communication strategies undertaken by ICTV.

29. On March 13 ELAN received an email from sender “CRTC” with subject line “28 jours de gauche à soutenir (sic) TVCI--28 days left to support ICTV”. On March 14 ELAN received another email from sender “CRTC” with subject line “20 millions de raisons pour appuyer TVCI - 20 million reasons to support ICTV”. ELAN contacted CRTC staff to notify them that ICTV was sending out emails that most people would falsely believe originated from CRTC. Sabine Friesinger of ICTV notified CRTC that she had sent an email to “clarify a logistical error on our part” and to “apologize for this error” which “may have been the source of much confusion.” Oddly, ELAN never received this corrective email. ELAN and CRTC did not have the authority to demand proof from ICTV that anyone else had received it.

30. On April 17 ICTV published an open letter on the Coop média de Montréal website, titled “ELAN betrayed our communities by selling out community TV to PKP's Vidéotron.” ICTV went on to make a number of inaccurate and inflammatory accusations intended to sway public opinion in their own favour and against Vidéotron and people who have conditionally supported the MYtv proposal. For example, in reference to an op-ed by ELAN in the Montreal Gazette: “Yet, in an effort to confuse the public into supporting the segregationist vision of Vidéotron in these times of increased racism and xenophobia, ELAN *incorrectly* cites ICTV’s proposed programming content by misrepresenting percentages.” ELAN took the data in question directly from ICTV’s complaint dated December 11, 2013. In the same letter, ICTV also implies that ELAN held an insufficiently “public” meeting at its offices. In addition to a meeting among a focused ad hoc group held at our offices on October 1, 2013, we have

held at least three open public meetings on the topic of community television: September 23, 2013 and June 17, 2013, both at SHIFT Space; and April 19, 2012 at Concordia University.

31. In addition, ELAN has received various lists of alleged ICTV supporters, some of whom have told us they were never contacted by ICTV, did not support them, and did not know why they were on such a list. This series of actions raises serious questions about ICTV's communication skills and business practices, which do not give us confidence they could run a community channel fairly and professionally if given the opportunity.

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