

ENGLISH-LANGUAGE **ARTS** NETWORK

ELAN Response to Questions Raised by the CRTC at the Community TV Hearing, April 30, 2010

1) Response to Commissioners Arpin, von Finckenstein, and Katz about Videotron, VOX, and the Official Language Minority in Quebec

As we said in our original intervention, 93% of Quebec Anglophones live in the Videotron service area, yet Videotron does not have an English-language community channel, nor any English-language community programming on its Montreal system.

We also pointed out in our intervention that:

“under the *Broadcasting Act*, 1991, Section 3(1)(t)(iv), 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. The initiative by Videotron and the oversight by the CRTC have been inadequate in this case, and the Quebec OLMC has been ignored.”

At the community TV hearing, Commissioner Arpin asked Eric Fournier, General Manager of Videotron’s VOX community channel, whether they broadcast English programs. Here is the transcript of that exchange.

1774 CONSEILLER ARPIN: Maintenant, faites-vous des émissions en anglais?

1775 M. FOURNIER: À VOX Montréal, on n'a pas de demande d'émissions en anglais. Il n'y a pas d'émissions en anglais à VOX Montréal. Il y a certaines régions qui ont eu des groupes qu'on aide à faire leur production qui ont des émissions en anglais. Mais il y a pas beaucoup d'émissions en anglais sur notre réseau présentement.

1776 CONSEILLER ARPIN: Parce que vous en sollicitez pas, parce que vous avez quand même des abonnés de langue anglaise...

ELAN • 460 St-Catherine Street West, Suite 610 • Montreal, Quebec H3B 1A7
(514) 935-3312 • admin@quebec-elan.org • www.quebec-elan.org

1777 M. FOURNIER: Oui.

1778 CONSEILLER ARPIN: ...plus particulièrement à Montréal et ici en Outaouais. Il n'y a pas--

1779 M. FOURNIER: C'est ma surprise personnelle, Monsieur, qu'il n'y ait pas plus d'émulation de ce côté-là pour pouvoir être représenté sur notre onde, mais il n'y a pas de politique particulière d'exclusion ou de non-participation de la communauté anglophone sur nos ondes.

M. Fournier implied that the fact there is no English-language programming on Videotron's French-language community channel was not a matter of policy, but a lack of initiative from members of the anglophone community. Videotron does not seem to have taken any initiative in this matter despite collecting fees from English-speaking subscribers for a service that is not being provided.

Later in the week, during the appearance of ELAN's Executive Director Guy Rodgers, Commissioners von Finckenstein and Katz brought up the comments of M. Fournier.

We quote the exchange:

5509 THE CHAIRPERSON: I see. Okay.

5510 And ELAN, we had VOX here earlier this week. I don't know whether you saw them when they were here, and my colleague Mr. Arpin --

5511 MR. RODGERS: I did hear about it.

5512 THE CHAIRPERSON: Yes. And my colleague, Mr. Arpin, asked them about English-speaking programming and they basically said that we have very little, but that's the problem is that there is no supply, we have not been contacted, in so many words, by English-speaking programmers to make use of our community channels.

5513 Presumably you have approached VOX and have you been turned down, or does VOX know of your existence?

5514 MR. RODGERS: VOX has had no communication with the English-speaking community.

5515 When CFCF owned the cable channel there was a dialogue between the community and the post.

5516 We had understood that when CF was sold and closed down that there was no longer access to English language distribution.

5517 We were both surprised and pleased to hear what VOX had to say and we will certainly be entering into discussions with them.

5518 THE CHAIRPERSON: Okay. I was just going to say, you should phone them and take them by their word because they said --

5519 MR. RODGERS: Definitely.

5520 THE CHAIRPERSON: -- right in this very room that they're quite prepared to do it but they have not been contacted by the English artistic community of Montreal and been asked to air their programming.

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Immediately following our appearance on April 30th, and regularly over the last two weeks, ELAN has attempted to reach M. Fournier, and spoken repeatedly to his subordinates . We have emailed him, and left numerous telephone messages explaining our reason for calling. Though we have pointed out the importance of the CRTC deadline for additional submissions to this hearing, there has been no contact with M. Fournier.

Of course, we still can't say that VOX has turned us down. We can't say that some day they won't offer us a program on the fringes of their schedule. Yet, it seems clear to us that VOX does not want to discuss this issue despite anything implied by M. Fournier to the Commission at this hearing. They may not have a deliberate policy of exclusion but they do appear to have a policy of silence.

We are back to square one.

Namely, there is no English-language community channel anywhere in Quebec since Videotron bought CF Cable in 1997. However Videotron apparently allocates some community channel expenditures to "CF Cable" in its annual statements to the CRTC. In fact, among the CRTC's list of 136 community channels operating in 2008, eight of those channels are identified as "CF Cable" channels, including one located in Montreal. Since the only Montreal community channel operated by Videotron is their francophone VOX channel, we are mystified by these "CF Cable" community channel expenditures apparently reported to CRTC over the last 13 years.

Quebec's English-speaking community has no community content in English and raises four questions. 1) What have these expenditures been spent on? We would like Videotron or CRTC to make this clear. 2) What has Videotron been doing with the 2% of fees it has been collecting from English-speaking subscribers and why has Videotron not offered a service or made an outreach to the English-speaking community? 3) How can 12 years of accumulated revenues be used to set up a viable community cable channel for the English-speaking community ? 4) Will the CRTC now establish an independent arms-length community channel for the English-speaking community in Quebec?

We do not believe an acceptable solution to this problem can be achieved with a few public-access English-language programs on a French-language community channel. That would not constitute sufficient community programming for 700,000 English-speakers in Montreal, or 200,000 English-speakers outside Montreal. As the CRTC and the Commissioner of Official Languages have said in your recent reports on official-language minority broadcasting, there is insufficient “regional reflection” of the linguistic minority in Quebec.

Only the CRTC can solve this problem.

Unless there is an English-language community channel in Quebec, we do not believe the CRTC is fulfilling its obligations to the *Broadcasting Act* and the *Official Languages Act*. We believe the CRTC must require greater financial transparency, and more detailed and accurate information from the BDUs about these channels, or the lack of them.

On behalf of the official-language minority community of Quebec, we request that the CRTC establish a new regulatory regime making community channels as independent as possible from the cable licensees, and responsive to the communities being served. We believe an independent minority-language community channel in Quebec should be funded by 20% of the community programming expenditures now spent by the broadcast distribution undertakings on local expression. This percentage roughly represents the population of the minority community.

Based on 2008-9 expenditures of \$19.5 million by Videotron on its local expression in Quebec, and our estimate that COGECO spent about \$10 million on local expression in Quebec, this would mean about \$6 million annual funding should be earmarked for an independent English-language community channel carried by these BDUs. There are also accumulated, but unspent, revenues with Videotron that could help set up operations of this channel.

We believe it is time that the Commission fulfills its mandate under the *Broadcasting Act* and the *Official Languages Act* to provide nearly one million minority-language Quebecers with the regional reflection we need, and which is so noticeably absent from our television screens.

Leaving this responsibility in the hands of the cable companies has not worked, is not working, and we have no reason to believe it will work. It is time for the CRTC to establish the policies needed to create an independent English-language community channel for the official-language minority in Quebec.

2) Response to Question from Commissioner Katz about Advertising

Commissioner Leonard Katz asked the following question at the hearing:

5560 I do have a couple of questions on your original submission, specifically with regard to advertising. And in paragraph 29, if you have your document there, you indicate that you're opposed to advertising, but in paragraph 29 you say:

"We would urge the Commission to exercise caution before eliminating or reducing national advertising restrictions to support community channels." (As read)

5561 COMMISSIONER KATZ: And I emphasize the word national. Does that mean distinct from local advertising; you'd be supportive of local advertising but not national, or you're not supportive of any advertising?

5562 MR. RODGERS: As you understand, this brief was written by a committee of people from all different sectors and I'm trying to remember who did that particular clause.

5563 COMMISSIONER KATZ: Well, maybe you can expand upon it when you file your response.

5564 MR. RODGERS: We will indeed.

5565 COMMISSIONER KATZ: On May 17th --

5566 MR. RODGERS: We will indeed.

5567 COMMISSIONER KATZ: -- you can elaborate on it.

We believe that community channels should not become dependent on advertising revenue, nor seek to become competitive with ad-based media. Therefore, national or regional advertising should not be allowed on community channels. However, we understand there may be local businesses, such as a barber shop, local restaurant, or hardware store, which find it difficult to reach local consumers on television. Therefore, we suggested in our intervention some flexibility in community TV regulations that would allow some local advertising.

3) Response to Question from Commissioner Katz About LPIF

Commissioner Katz raised the question of LPIF at the hearing:

5568 And I guess just going on in paragraph 31, you indicate as well, that you request that:

"...independently operated community TV services be eligible for LPIF funding." (As read)

5569 COMMISSIONER KATZ: Is that regardless of whether there is an over-the-air broadcaster in the market or irregardless of that?

5570 MR. RODGERS: Well, the whole LPIF is a question that we're trying to clarify.

5571 At the moment English production in Quebec is not eligible under any production aspect, so we would like all legitimate production to have access to the LPIF so that it would not exclude other production.

5572 COMMISSIONER KATZ: Okay. Thank you very much.

We have consistently made several points in our interventions about the LPIF in CRTC PN 2009-411 and PN 2009-661. We would like to elaborate on them here.

First, broadcasters in English-speaking Montreal should be eligible for the LPIF based on a definition of English-speaker followed by Treasury Board and the entire Federal Government, except the CRTC in this one case. The linguistic definition used by CRTC for the LPIF seems only designed to ensure that English-language broadcasters in Montreal are not eligible for funding. This CRTC definition of the official-language minority in Quebec is incomprehensibly broad, anomalous, and the CRTC has not attempted to justify or explain it in any of its decisions.

Secondly, we believe the LPIF should continue at 1.5%, and be used to support local programming beyond broadcast news, including independent community channels. Thus, we do not believe BDU owned and operated community channels should be eligible for LPIF funding.

4) Response to Commissioner Morin on his Proposal to Fund Community Programming

In response to the questions put forward by M. Morin, and appended below, we would like to support his suggestion that community channels, as much as possible, should be independently licensed and funded. For that to be achieved, those channels must have access to the 2% of BDU revenues already established for this purpose.

That is the key question for all sides- what will happen to this 2%? Who will manage it?

We think it should be put into an arm's length independent fund and then released to licensed community channels according to the terms of their licenses, and CRTC policies. This independent fund management will improve transparency and accountability for these monies compared to the current opaque and conflicted system.

On the other hand, we do not understand M. Morin's proposal that a division of the 2% of BDU funding should be so heavily weighted against independent community channels in favour of cable companies. His proposal seems to require that community channels across Canada match 0.5% of this BDU funding. With this 2% of eligible revenues raising \$136 million last year, the Morin proposal would mean about \$35 million per year would have to be raised from outside sources by independent channels. At the same time, cable company channels do not have the same requirement under his proposal.

That is a lot of bake sales, bingo nights, and marathon donation drives to saddle on any volunteer-driven group. This is not only inequitable, we think this would mean the underpaid staff or volunteers at these independent channels would have to devote most of their time to fund-raising rather than producing innovative community programming.

The 2% allocation for local expression exists both as a quid pro quo "dividend" to support the public interest in the current cable regulatory regime, and to make funding secure for community programming. Community programming is one of the outcomes this public interest dividend takes, and should take.

M. Morin's proposal in its current form is unlikely to improve community programming. A revised proposal could, however, take a step towards an important goal- independently licensed community channels supported by the 2% fund.

We would like to see independent licensed community channels with base funding from the 2% of cable revenues, and given the opportunity to raise additional funding under established charitable tax rules. Perhaps a more realistic minimum level of such outside funding would be 15-25% of the base funding over the term of its license, rather than on a matching basis as M. Morin contemplates. The success of each channel would be reconsidered in a license renewal hearing, perhaps one hearing for all these channels.

Let community channels put their energies into experimentation with new media, but not consume that energy with fund-raising. The key is a secure funding base and independence from BDUs, even if they use the cable distribution system or other BDU facilities.

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APPENDIX

April 28-10 CRTC

Written Questions by Michel Morin about Community Programming

1) Assuming the Commission decided to grant community programming licenses throughout Canada, and assuming the Commission decided to grant half of one per cent (0.5%) of the contributions currently allocated to terrestrial broadcasting distribution undertakings (BDU) to community programming licensees (by serving area in accordance to an established schedule), would you agree that the Commission requires the new community programming entity to raise the equivalent of half of one per cent (0.5%) of the revenues of terrestrial BDUs in the form of individual or collective memberships (municipalities and non-profit organizations) before granting the other half of one per cent (0.5%) of subscriber revenues to the new community programming entity?

The idea behind this suggestion is that ultimately, and in accordance to a Commission-established schedule, one per cent (1%) of the current revenues of terrestrial BDUs be available for community programming licensees provided they directly participate in funding based on active, recurring and predictable membership.

For example, Télé-communautaire in St-Donat, Quebec would sell its bingo cards as memberships instead of selling them as part of one of many fundraising activities. Members would no longer be simple users; they could vote at the annual general meeting and also identify more with their community-programming-licensee community television.

2) Should other conditions be imposed on community programming licensees?

Here are some examples. If they obtained half of one per cent (0.5%), should they be required by the Commission to produce a minimum of five hours of programming per week? Why not emphasize quality over quantity? I ask the question because you have unique hands-on experience. I also ask the question to large terrestrial BDUs that are in touch with local communities (Shaw Communications, Rogers, Videotron, etc.).

Of course, if they obtained one per cent (1%) of BDU contributions, they would already have collected a first half of one per cent (0.5%) through membership. Should the required minimum of community programming be augmented?

To provide you with another example, six hours instead of four, as is the case in Quebec to obtain the provincial government grant.

3) You are now working on an interactive community website. Assuming the Commission implemented this revenue-sharing proposal between corporate community channels as they are now being run by the BDUs and access community programming undertakings, who would be in the best position to run this interactive website and why?

In other words, the underlying question is: Who between the corporate community channel and the community programming licensee should accommodate new technologies such as those related to interactivity (video on demand and websites)?

4) Should the Commission establish an access programming percentage at peak hours, as is the case now for all hours (between 30 % and 60 %)?

By the end of this hearing, on May 4, I may want to ask other questions to all terrestrial BDUs. However these questions are in fact for everyone (CACTUS, the Fédération, cooperatives, etc.). So I would ask you to pay attention to discussions in this hearing keeping in mind that often those who do not respond or express an opinion will always be wrong, as they say.

Thank you. These were all my questions, Mr. Chairman.