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—
Chair

Mr. Gary Schellenberger

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• (1530)

[English]

The Chair (Mr. Gary Schellenberger (Perth—Wellington, CPC)): Seeing the clock at 3:30, I will open the meeting of the Standing Committee on Canadian Heritage, meeting number 19.

Today, pursuant to Standing Order 108(2), we are studying the Canadian Radio-television and Communications Commission, CRTC, mandate and priorities.

I will welcome today the witnesses here from CRTC. Chairman Dalfen, I would like you to introduce the people with you and please make your presentation. Thank you.

Mr. Charles Dalfen (Chairman, Canadian Radio-television and Telecommunications Commission): Thank you, and good afternoon, Mr. Chairman and committee members.

My name's Charles Dalfen and I am chairman of the Canadian Radio-television and Telecommunications Commission. With me today from the CRTC are Diane Rhéaume, secretary general, and Scott Hutton, acting associate executive director of broadcasting.

• (1535)

[Translation]

Good afternoon, Mr. Chairman and members of the Committee. I'm very pleased to be with you to respond to your request for an overview of the CRTC's mandate and priorities. I'll get right to that now, and when I've concluded, my colleagues and I would welcome any questions you may have.

[English]

With respect to the operation of the CRTC and its mandate, the basic aspects are the following. The CRTC is an independent public authority; it regulates and supervises Canadian broadcasting and telecommunications. It does so within the framework of authority granted by Parliament through the CRTC Act, the Broadcasting Act, and the Telecommunications Act. The commission reports to Parliament through the Minister of Canadian Heritage.

While the CRTC's mandate covers telecommunications as well as broadcasting, I will focus my remarks today on broadcasting, as it is that part of our work that is the primary focus of your committee.

Among the main tasks that the commission undertakes are the following: issuing, renewing, and amending licences for broadcasting undertakings; reviewing changes of ownership and control in the industry; developing and implementing regulations and policies to meet the objectives of the Broadcasting Act; resolving disputes and complaints that arise under our legislation and regulations;

ensuring compliance with our legislation and regulations; and approving the distribution of foreign broadcasting services in Canada and issuing reports annually on the status of the different sectors of the industry.

The commission is a quasi-judicial tribunal and so in carrying out its responsibilities, it follows the rules of natural justice to ensure our decision-making is characterized by access, transparency, and openness to input from the public. Guiding all our work are the objectives of the broadcasting policy for Canada and the regulatory policy set out in sections 3 and 5 of the Broadcasting Act. We measure every decision and action the CRTC takes against the likelihood that it will serve these objectives as set out by Parliament.

The gist of these policy objectives is that our broadcasting system should be, and should remain, distinctively Canadian. That's easily said, but those few words describe a mandate that is as challenging as it is important. The act makes it clear that keeping the broadcasting system distinctly Canadian is about, among other things, reserving a special place on radio and television for Canadian content, programs produced by and about Canadians that showcase the talents of Canadian creators and performers and that tell stories and provide information to Canadians about our country and ourselves;

[Translation]

encouraging programming that reflects our Anglophone and Francophone roots, the place of Aboriginal people in our society, and the multicultural, multi-ethnic reality of 21st century Canada;

[English]

and encouraging programming that respects Canadian values with respect to matters such as equality and human rights.

In setting those objectives, Parliament recognized that protecting the uniquely Canadian nature of our broadcasting system will occur under constantly changing circumstances and that a regulatory approach must recognize this. For example, the act says that our broadcasting system should be adaptable to scientific and technological change and that the commission should regulate broadcasting in a way that does not inhibit the development of information technologies.

[*Translation*]

Often these cultural and technological objectives operate comfortably, side by side. But there are also times when they are, or may appear to be, in conflict. You can go right back to the beginning of broadcasting in Canada — long before the current legislation was in place — to find evidence of this. When radio came along, there were concerns, for example, that it would mean the death of live musical performances, and that its borderless nature would be a threat to Canadian culture.

Waves of succeeding technological innovation — over-the-air television, cable TV, satellite broadcasting — have all raised similar kinds of concerns. But the gloomy predictions have not materialized. In every case, we have been able to leverage technology to the advantage of Canada and Canadians.

[*English*]

We've adapted our regulations in a way that has allowed new technologies to flourish—giving Canadians one of the most advanced broadcasting systems in the world—while also remaining true to the core values written into the legislation and preserving the uniquely Canadian nature of our system.

I want to use this same thought as a way to move to the second area in which you have asked us to engage with you today, and that is the commission's current priorities.

Many of our current priorities in broadcasting are related to regulating in a way that embraces change without compromising fundamental principles that Parliament identified in our legislation. The change that we must embrace is not only technological but also demographic. Ethnic and racial minorities now account for at least one-third of the population of Vancouver and Montreal, and more than half of the population of Toronto. Cities such as Edmonton, Saskatoon, Regina, Winnipeg, and Ottawa are home to growing aboriginal populations.

[*Translation*]

The Broadcasting Act says that our broadcasting system should reflect Canadian reality back to Canadians; if so, then our regulatory approach must be sensitive to shifts in the composition of our population.

[*English*]

All of these technological and social factors are very much on our minds as we work currently on the first priority that I want to draw to your attention, which is our review of commercial radio policy that was announced in January.

A primary concern in the review is to ensure that regulation stays up to date with changing circumstances and continues to create conditions for a strong commercial radio sector, in both official languages, that is capable of contributing to the policy objectives set out in the act. We want to be sure that we are regulating in a way that gives Canadians a commercial radio sector that can meet its obligations related to, among other things, Canadian content, cultural diversity, local news and information, and technological sophistication. We expect to complete the commercial radio review by the end of this calendar year.

Six months after we announced the commercial radio review, we launched a similar exercise for over-the-air, or conventional, commercial television. Two important factors converged to affect the timing of this review. First was our recognition that the same technological and demographic factors that are affecting radio broadcasters are also having a significant impact on conventional TV broadcasters. The emergence of new viewing platforms for television—iPods and cellphones, for example—and the rapidly growing market share of pay and specialty TV services are forcing conventional broadcasters to rethink their business model and causing the commission to rethink some of its approaches to regulation.

So, too, are new forms of television advertising that are made possible by digital technology. As well, we know that demand from Canadian viewers for high-definition television is growing, but the supply of HD programming from conventional broadcasters is lagging.

● (1540)

[*Translation*]

And on top of these issues, you have the changing composition of Canadian society that is putting new demands on conventional, commercial television broadcasters in terms of satisfying viewer demand and meeting their obligations under the Act.

[*English*]

Amidst this flux in the market, the major conventional broadcasters have their licences coming up for renewal. Rather than deal with these issues, which affect all conventional broadcasters, through a series of one-off licence renewal hearings, we felt it would make more sense to clear the air prior to the renewals by reviewing our regulations on a selected set of crosscutting themes. Once the review is completed, the commission, the conventional broadcasters, and other interested parties could then, from a clear policy basis, approach the question of how licensees could best meet their obligations under the act.

We have received written comments for the conventional television review, and will hold public hearings at the end of November. The review has four objectives.

[*Translation*]

To ensure that conventional television broadcasters contribute in the most effective way to the production, acquisition and broadcast of high-quality Canadian programming that attracts increasing numbers of viewers.

[*English*]

to give conventional broadcasters greater clarity regarding the regulations that affect costs and revenues, so that they're in a position to propose maximum contributions to the production, acquisition, and broadcast of high-quality Canadian programming; to examine the most effective means of delivering high-definition television to Canadians; to examine the current and future economic status of small-market television, a sector that has felt a particularly strong impact from the changes in the broadcasting environment over the past decade and more.

We will also examine whether or not the quantity and quality of closed-caption programming is meeting the needs of the deaf and the hearing impaired.

We expect to complete this selective review of conventional broadcasting by mid-2007. Simultaneously, we are responding to a request from the Governor in Council, under section 15 of the Broadcasting Act, to prepare a report examining the future environment facing the entire Canadian broadcasting system. Section 15, as you are probably aware, provides for the Governor in Council to ask the commission to hold hearings or prepare reports on any matter within its jurisdiction under the act.

For this report, the government has indicated that it is especially interested in the likely impact of new audiovisual technologies on the Canadian broadcasting system. We've been asked to focus on how Canada can continue to be a world leader in the development and use of communications technology, while also having a broadcasting system that supports cultural choices and offers broad public access to a diverse range of programming.

[Translation]

This report, which must be provided to the government by December 14 of this year, obviously has issues in common with our selective review of conventional television, and I expect that each exercise will benefit from the other.

[English]

Another priority I want to mention has to do with pay and specialty services. The share of viewing for these services has grown rapidly, to the point at which it is now roughly equal to the share of viewing of conventional television. The increasing importance of pay and specialty suggests that we should examine whether our current regulatory approach remains well tuned to the objectives of the Broadcasting Act, so we plan to undertake a review of our policies with respect to these services in the upcoming fiscal year.

Finally, I would note that following the review of pay and specialty services, we are planning to undertake a review of our regulations concerning broadcast distribution undertakings.

I trust that this is giving a sense of the key tasks facing the commission, Mr. Chairman, of the broadcasting side of the house over the short to medium term. I haven't gone into any of these matters in great detail, but I would be happy to do so in response to any questions you might have.

Before closing, I want to note that it's all too easy to take our broadcasting system for granted, precisely because it works so well. We have the capacity to meet the challenge of Canada's vast land mass and dispersed population.

• (1545)

[Translation]

We have an immense variety of programming in both official languages and many other languages as well.

[English]

We have a regulatory framework that supports Canadian values and culture, and we have a level of technological sophistication to rival that of any other broadcasting system in the world. This kind of

achievement doesn't happen on its own. It results from the strength of our broadcasting industry, along with decisions taken by Parliament and successive governments, and the work of the commission. Although there's no room for complacency, there's also no harm in stopping for a moment to recognize that there is much of which we can be proud.

My colleagues and I are ready and pleased now to address any matters you would like to raise. Thank you very much. *Merci beaucoup.*

The Chair: Thank you.

Before we go to questions, I would let you know that our questioning will go to about quarter after five, because we do have another issue to deal with. This is to let everyone know we will start that meeting at 5:15 p.m.

Mr. Simms.

Mr. Scott Simms (Bonavista—Gander—Grand Falls—Wind-sor, Lib.): Mr. Dalfen, it's good to see you again in this session, as it was in the last as well.

I have a very quick question off the top and I'm hoping you can pare it down for me, because time is of the essence. Do you feel that the CRTC is there for the industry stakeholders or for the consumer?

Mr. Charles Dalfen: The CRTC is there to give effect to the objects of the Broadcasting Act, which are to benefit Canadian consumers, ultimately. In doing so, a healthy sector is required. In effect, there are stakeholders in the system, and their interests need to be balanced under the objectives of the act. I hope that's responsive.

The answer is, ultimately, it has to be for the consumers. It has to be for Canadians, both as consumers and as citizens, because they have to be informed, and the act stipulates that they ought to be well informed.

Mr. Scott Simms: Technology seems to be speeding up at an impressive rate, exponentially, in the past five or six years. Now, in light of that study, at what point do you think you have gone too far and you're micromanaging?

Mr. Charles Dalfen: I suppose it's in the eye of the beholder.

Mr. Scott Simms: Let's say you're the beholder in this case.

Mr. Charles Dalfen: From my perspective, no. The answer to your question is an easy no. It's always a balancing act. We always have to calibrate the degree of involvement you maintain, but I think we maintain the appropriate balance. But you'd expect me to say that.

Mr. Scott Simms: Good point.

I want to bring up an example of one of the decisions made in the past little while with regard to satellite radio. I want to talk about Canadian content rules. I'll use an example so we can pare it down to that particular example, and that is satellite radio

. Let's say 30% is our Canadian content number. You have chosen to do it so certain channels are full Canadian content and certain channels are not, Correct? Why would you go that way instead of saying, like conventional radio, each individual station, each individual channel, has to have a 30% Canadian content? What I'm looking for is, why do we need this threshold of Canadian content?

Mr. Charles Dalfen: The quick answer is that it isn't conventional radio. It's true there is a 35% content level on a certain category of the most popular kinds of conventional radio, but even with unconventional radio, there are different levels: for ethnic services, 7%; for specialized formats, 10%; for popular formats, 35%. When you get into specialty services, content levels vary tremendously right across the map. In television, it's 50% in prime time, 60% over the day.

The commission tries to maximize the level of Canadian content consistent with the nature of the medium at the time, the nature of availability of product at the time, the nature of the circumstances of delivery at the time. In the case of satellite radio, where we were faced with propositions before us, not the ideal world versus what we chose, but rather the realities we were facing, we selected levels we thought maximized Canadian content—and French language content, for that matter—within the context of that medium, in those circumstances, at that time.

• (1550)

Mr. Scott Simms: Is it fair to say you're hands-off when it comes to Internet content?

Mr. Charles Dalfen: We have so far chosen to exempt broadcast media that are accessed and delivered via the Internet, that's correct.

Mr. Scott Simms: Why is that?

Mr. Charles Dalfen: Simply stated, it is too early in its growth and development. We didn't want to be sending wrong economic signals through premature regulations when it wasn't yet clear what we were regulating. The commission found there were manifestations of Canadian content on the Internet. We wanted that to be encouraged in as free an environment as possible, and that continues to be the case today. We do find Canadian content, both on the Internet and on mobile television.

Mr. Scott Simms: Don't you think by waiting for the economics to play out to a certain degree, you make a decision then puts you behind the curve when it comes to the peak of activity?

Mr. Charles Dalfen: I don't think so. The impact on conventional broadcasting of new media so far is modest enough that the policy remains correct. We will continue to monitor it, and we will be notified well in advance by conventional broadcasters if they begin to see impacts starting to affect their viewership, listenership, and revenues. At this point we're still comfortable letting it operate.

As you know, Parliament set two tools for us. It set the licensing tool and the exemption tool, and we can't exempt anything the way we exempt broadcasting under the Internet unless we believe that will contribute to the objectives of the Broadcasting Act. We have to do both within the objectives Parliament set, and we came to the view that so far we continue to be comfortable with exemption as the route for dealing with broadcasting via the Internet.

The Chair: Scott, you're time is pretty well up. We've gone a little over time.

Mr. Scott Simms: Really? We were having fun.

The Chair: We'll give you another opportunity later.

Mr. Kotto.

[*Translation*]

Mr. Maka Kotto (Saint-Lambert, BQ): Thank you, Mr. Chairman.

Good afternoon, ladies and gentlemen.

I would like to explore the question raised by my colleague from a different perspective.

Do you believe that the CRTC has adapted, and is adapting well to the introduction of new technologies? I am thinking, in particular, of satellite radio, that was discussed earlier, of Internet radio, IP telephony, cellular television, and many more.

Is the CRTC able to see these new technologies coming on stream before they actually are marketed, so as to provide advice to the government and allow it to develop the appropriate policies?

Mr. Charles Dalfen: I'm sure it won't surprise you to hear me say, once again, that the answer is yes. I believe we are prepared. Someone once said that the future is the most difficult thing to predict, and that is absolutely correct. We do not have a crystal ball; but the fact is that no one does. You always have to react as quickly as possible and make decisions by anticipating developments, be they technological or otherwise. And that is what we are trying to do. Are we successful at it? Well, that is not up to us to say. In any case, we are always aware of that obligation, because the Act clearly states that this is what we must do.

Mr. Maka Kotto: I was saying to a friend recently that in the auto industry, for example, they plan future product generations in advance — always with a view to supplying the market.

Nowadays, however, we are concerned with environmental issues. The vehicles to be marketed over the coming period will inevitably have to be adapted to reflect those environmental constraints. In a way, some people have [*Inaudible—Editor*] to examine these kinds of things.

At the CRTC, do you have the financial resources you need to take this kind of initiative?

• (1555)

Mr. Charles Dalfen: Well, the fact is that we have a great many things on the go. Any additional resources that could be made available to allow us to review these matters would be graciously accepted by the CRTC.

We have just reorganized the structure of the CRTC. In addition to a branch with responsibility for broadcasting, and another, for telecommunications, we now have a third which will allow the two others to access technological, economic and other types of expertise, and this branch will be able to serve what we call both sides of the store.

We have noted that in Canada, some companies integrate both areas — telecommunications and broadcasting. That is an ever-growing phenomenon, and we want to be ready. We are currently hiring experienced staff to work in this third branch. Also, we will have to hire consultants from time to time, as we do normally.

We can also count on the contribution of broadcasters and intervenors to provide us with both technological and economic facts and data that allow us to prepare. It is in their interests to do so, so that we are in the vanguard as concerns these matters. Do we always succeed? Once again, we are not in a position to judge that.

Mr. Maka Kotto: Does the Broadcasting Act, as it is currently worded, impose restrictions of any kind, be they positive, negative, or both at the same time?

I know you are anxious to preserve the cultural sovereignty of both Canada and Quebec. To what extent would an adjustment or review of the legislation help you to carry out your duties?

Mr. Charles Dalfen: The legislation was passed in 1991 — in other words, 15 years ago. Of course, in an area so subject to the influence of technological change, I believe it is a good idea to question the fundamental principles of an act when reviewing it, from time to time. The fact remains that in principle, we are able to work with this legislation.

However, it would be a good idea — and this was recommended by a number of committees, including Mr. Lincoln's — to give us the power to impose fines with respect to broadcasting. I believe that would be useful, in the sense that in some cases, it would be possible to discipline people fairly early after an incident has occurred and prevent more serious problems.

Mr. Maka Kotto: Do I have any time left?

[English]

The Chair: Thank you. Your time is up.

Mr. Angus.

Mr. Charlie Angus (Timmins—James Bay, NDP): Thank you, Mr. Chair.

I'm reading the CRTC mandate as it's laid out in the Telecommunications Act, and it clearly states that the object first is to maintain Canadian sovereignty and to promote the ownership and control of Canadian carriers by Canadians. That's a clear mandate within the Broadcasting Act for the CRTC.

We know that Canada—

Mr. Charles Dalfen: You said Telecommunications Act first and then you said Broadcasting Act. Which is it?

Mr. Charlie Angus: Under the Telecommunications Act, sorry.

Right now Canada is at the GATS as the lead country on further stripping telecommunications deregulation, and I just want to say, as

a parenthesis, that we already are a fairly deregulated market within Canada. But the push that's coming on from this government and Mr. Bernier very clearly, the stripping of foreign ownership restrictions on telecom—that's our position internationally and it's something I suppose we would be having to meet domestically. So how does the CRTC see its role in terms of maintaining its obligations to an act that was laid out by Parliament about ensuring that we're promoting ownership and control of Canadian carriers by Canadians, when the mandate you're getting from the government is the exact opposite?

• (1600)

Mr. Charles Dalfen: On foreign ownership, as I've said to this committee before, it's one of those areas in which the CRTC is directed by the government. It's in both our acts that the government has the ultimate regulation-making power and we give effect to our mandate within that. As you know, in the Telecommunications Act, those directives are binding on us.

So we have operated historically well within that context, and I expect that in the future we'll continue to do so. But most of the areas you touched upon, the GATS and telecom directives and so on, are not within our purview, so it's a bit difficult for us to comment other than to say that we will operate within those directives, as we have since the inception of the commission.

Mr. Charlie Angus: I guess, though, my question would be, have you looked at scenarios? This has been discussed. This is coming down the pike, possibly. In a deregulated telecom environment, where telecom is the delivery of choice for a lot of Canadian content, have you looked at scenarios about how you would maintain the Canadian content obligations and language obligations in a further deregulated context?

Mr. Charles Dalfen: We haven't in regard to foreign ownership, and that is because while we have read various reports, official and unofficial, it isn't clear what scenarios to run, in effect. There hasn't been much precise—and certainly not official—discussion on it, and so in effect, given our workload, it's just not a luxury that we've been able to afford, to run the scenarios.

If you speculated on all of the things that could come down, you would spend a lot of time running scenarios rather than doing what you have to do.

Mr. Charlie Angus: Do you maintain someone in Geneva watching? Canada is negotiating these, and they will have a dramatic impact on CRTC regulations in telecom and in broadcast. Do you have someone watching that or are you just waiting for it to come down?

Mr. Charles Dalfen: We would not have somebody at Geneva. The industry department, along with the foreign affairs department, has carriage of foreign policies. We're certainly kept informed and we participate in various discussions of what's being negotiated in the international forums, ITU and otherwise, but the nature of those discussions is generally quite confidential and probably not that appropriate to discuss here.

On your question of scenarios, what we try to do is do our work in the public eye as much as possible, and so when we have to make a decision, that decision is most of the time based on public comments that we've received rather than, say, internal discussions where we've been asked, as the industry department is, to lend our expertise to a committee that may be going off to one negotiation or another.

Mr. Charlie Angus: In a recent CRTC decision, you were directed by the minister to allow market forces to simply run their course. Have you received any other comments from the minister about where the CRTC should be going in terms of regulation?

Mr. Charles Dalfen: We have received a copy of a draft direction on policy that we commented on back to the minister, and now the directive that he then wished to produce, I understand, is tabled before the House and has been studied by the industry committee. What you see is what you get. There are no other directives that have come our way.

Mr. Charlie Angus: I want to go to another issue that I think certainly will have an impact on the CRTC. The Bell Globemedia merger with CHUM is going to give one company in most markets across Canada the number one and two stations. It runs contrary to CRTC policy even if it's a one in three share in some markets.

Will this concentration be challenged? Have you looked at scenarios about how you would deal with such a convergence?

• (1605)

Mr. Charles Dalfen: Again, it wouldn't be by scenarios. They will file an application and that application will be examined for approval. It involves a change of control and it will be dealt with in the normal way, including intervenors and the like, and a decision will be taken on that basis.

The Chair: Thank you for your answer.

Mr. Fast.

Mr. Ed Fast (Abbotsford, CPC): Thank you, Mr. Chair.

Thank you to the three of you for appearing before us today, and thank you also for a written copy of your remarks, because it's significantly easier for us to go back and check right here as to what you've said.

In reviewing your comments, I notice that you're undertaking at least five significant reviews and/or studies, everything from commercial radio policy, conventional commercial television, the general review that you're doing as to the broadcasting environment in Canada, and you're also dealing with the pay and specialty TV

services and also broadcast distribution undertakings. These are all issues you're going to be grappling with. You've bitten off quite a chunk there. Once you receive the results of those and you've been able to distill the challenges facing the industry, how will you go about making policy in these various areas?

My concern is this. The CRTC, to a degree, is at arm's length from the minister and is expected by some in our country to take a significant role in developing policy and implementing it. There are others who see the role of the CRTC as being more of an implementer of policy and that ultimately the final direction would be delivered by the minister or the minister's office.

What do you see CRTC's role being, as you start to complete these studies and reviews?

Mr. Charles Dalfen: It's a very good question. I think the word "policy" is an interesting one, because when you look at the law, the broadcasting policy for Canada is set out by Parliament in the act. The Broadcasting Act, section 7, gives the government the authority to provide directions to the CRTC on broad matters of policy. Both of those are legitimate levels of policy-making, and then within that we do regulatory policy-making every day of the week. You could look at our decisions and say, that implies a policy, that doesn't imply a policy. If you said a Canadian content level of 60%, it implies a policy of wanting a predominant amount of Canadian creative and other resources.

So the word "policy" has to apply at every level and does apply at every level. The important thing is for each level of government to calibrate it right, and for Parliament to have the ultimate say on what the policy is, and then for the government to issue whatever policy directions it wishes.

Mr. Ed Fast: Do you accept that the minister would have a significant hand in crafting policy, especially broader policy—not just specific regulatory policy, but the broad paintbrushes of policy relating to broadcasting, telecommunications, etc.?

Mr. Charles Dalfen: Precisely. On matters of broad policy concern, the wording is wording like that. Absolutely.

Mr. Ed Fast: You'll be drawing the minister into those discussions.

Mr. Charles Dalfen: It's interesting that the section 15 report that you mentioned, and that I mentioned in my speech, is a report for the minister, presumably for the minister to advise the government and for the government to make policy. That's as it should be. At the same time, we're having our review, which deals with specific regulatory issues that go to licence renewals of the major broadcasters. Does that involve some level of regulatory policy? Of course, but it shouldn't cut across, or shouldn't compromise the minister's ability to take the higher-altitude, broader view of policy the act provides.

Mr. Ed Fast: I have one last question, and that relates to what Mr. Simms mentioned earlier, the whole issue of regulating the Internet. Your response to his question was that at this point you have taken a position that the timing wasn't right to intervene in that particular technology. Is it even possible to regulate the Internet? And is that one of the struggles you face in deciding whether to step in to that breach?

• (1610)

Mr. Charles Dalfen: The Internet is a new world. You're right, if the Internet was merely a new distribution mechanism, it would probably be regulated in the sense that it was what we call broadcast distribution undertakings that include cable television, satellite, and microwave broadcasting. Look TV is a company that does that. Parliament set up the act, and again I'd underline this. When I go to international conferences, people are envious of our Canadian legislation because it's technologically neutral. It doesn't say regulate analog television, regulate cable television; it says regulate services the public receives, whatever method is used for their delivery. If the Internet was merely another distribution mechanism, it would probably be swept under, but it's a whole new world, a whole new marketplace, a whole new cultural and business environment.

As you say, it's extremely difficult to put boundaries around, but not necessarily impossible. If you want examples of that, you can see movie studios and broadcasting companies distributing episodes of television shows the day after—in some cases the day before—they appear on television. If you try to access an American-distributed show, you won't be able to do that because they have in effect erected a border around American residents, who are within the territory of the United States. How do they do that? They use servers and other techniques. If I try to explain them, I'm going to get way out of my depth.

It's not that it's impossible to impose these borders, it's that it's very difficult. More fundamentally, do Canadians really want those borders erected? The CRTC is saying, this is a new world and Canadians are playing a role in this world; let them play. Let's not give them the wrong signals; let's not cramp their style; let's see where it goes. If it does start to have an appreciable impact on conventional broadcasting, obviously we'll have to take a look at it and start asking ourselves if we can do this properly. Is it technologically doable and do Canadians want it done? We'll address it at that time.

You're absolutely right, the Internet poses a whole new series of challenges and questions. I believe we're only at the start of the Internet age, that we haven't even begun to see what it's capable of doing. Why regulate it and try to crimp it in any way unless it has adverse impacts on the broadcasting system we haven't yet seen?

It's a long-winded answer, but I hope it's a responsive one.

Mr. Ed Fast: Thank you.

The Chair: Mr. Bélanger.

Hon. Mauril Bélanger (Ottawa—Vanier, Lib.): Thank you, Mr. Chairman.

These five-minute dialogues are rather frustrating at times, so we try to piggyback on some of them, and I'll try that too. But there are a couple of things I need to clear up first, Mr. Chairman.

In your remarks, you said the report demanded of you by the government is due by December 14, yet the minister's message in the report on plans and priorities says that the report is due on December 31. My question is, is this going to be a public report?

Mr. Charles Dalfen: Yes, and I hope we didn't get the date wrong. I think it's December 14.

Hon. Mauril Bélanger: It's not abnormal that government would get a bit of a lead on it—

Mr. Charles Dalfen: Yes, it'll be coming.

Hon. Mauril Bélanger: —but she is saying December 31, so I wanted to know if it's going to be a public document.

Mr. Charles Dalfen: Maybe she's counting on slow mail delivery between December 14 and December 31, but our deadline said December 14.

Hon. Mauril Bélanger: Your deadline is December 14. Thank you.

When does your mandate come to an end, sir?

Mr. Charles Dalfen: Personally, that's December 31.

Hon. Mauril Bélanger: Maybe now we understand.

Have you heard anything from the government vis-à-vis renewal or extension of your mandate, or is that impertinent to be asking?

Mr. Charles Dalfen: I wouldn't call it impertinent. I would just choose not to answer it.

Hon. Mauril Bélanger: That's fair.

The matter of the proposed policy direction on the telecom side is of concern to some of us here because of the convergence. Bell is affected by it, but Bell also has some ownership in terms of general broadcasting. So where the telecom panel went beyond its mandate was in opening the matter of foreign ownership content, so therefore some of us have some grave concerns.

I went to the industry committee. I raised this with the telecoms, and one of them actually realized that indeed there is a legitimate concern there and so forth.

If you have a situation where you have a proposed policy—and I insist on that now—and a will of Parliament expressed through a majority of the members representing the people of Canada, will you give voice to the will of Parliament in responding to the proposed policy direction?

• (1615)

Mr. Charles Dalfen: Are you again referring to foreign ownership here?

Hon. Mauril Bélanger: Yes.

Mr. Charles Dalfen: Again, I think our hands are quite tied in regard to foreign ownership in that we are obliged by our act to give effect to whatever the directive the government gives us is. So you could say that's the will of Parliament and that Parliament gave the government the authority to direct us, and that's—

Hon. Mauril Bélanger: But what I'm saying is that until it is an actual directive, the CRTC presumably is invited to comment on the proposed directive, is it not?

Mr. Charles Dalfen: If there is one.

Hon. Mauril Bélanger: You have a proposed policy directive.

Mr. Charles Dalfen: But it doesn't deal with that. The one we have doesn't deal with foreign ownership.

Hon. Mauril Bélanger: But because of Parliament having expressed its desire through a majority vote in the House of Commons, adopting a report from this committee that we maintain foreign ownership restrictions, would the CRTC be inclined to express that indeed there is that concern for the broadcasting side?

Mr. Chairman, we're in this twilight zone here because of convergence, and I think Canadians have a right to know where this government is going, and the government should know where Canadians want or don't want it to go in terms of foreign ownership for broadcasters.

The Chair: I think it could be just a little unfair to our witnesses here to try to determine which way the government policy should go.

Hon. Mauril Bélanger: I agree with you, Mr. Chairman. I'm saying, would the CRTC consider an opportunity to respond to a proposed policy directive, to say there are some concerns out there—and perhaps not just from parliamentarians?

Mr. Charles Dalfen: I'm just going to ask one question of my colleague. Do we get consulted on that?

Yes, we do get officially consulted on that, so the answer is that we will have an opportunity to weigh in and give our comments on it, yes.

Hon. Mauril Bélanger: Thank you.

On the matter of the satellite radio—and that's where we piggyback—my understanding is that there is currently before you a request from a number of companies together to expand the reach of satellite radio. Is that correct?

Mr. Charles Dalfen: Not that I'm aware of.

Perhaps, Scott—

Mr. Scott Hutton (Acting Associate Executive Director, Broadcasting, Canadian Radio-television and Telecommunications Commission): We received a number of applications from BDUs to distribute the satellite radio services through their own systems.

Hon. Mauril Bélanger: Have you any sense of when that might be dealt with? That's strictly on the timeline.

Mr. Scott Hutton: Strictly on a timeline, it should be before the end of the year.

Hon. Mauril Bélanger: The calendar year?

Mr. Scott Hutton: Yes.

Hon. Mauril Bélanger: So that too is something the commission has to deal with.

Is there any news in terms of a timeline on the do-not-call list hearings and when we can expect a conclusion on that?

Mr. Charles Dalfen: The hearings have been held, and the policy issues that need to be resolved will be resolved in...certainly the first half of next year.

Hon. Mauril Bélanger: So it will be next year.

Mr. Charles Dalfen: Yes.

Hon. Mauril Bélanger: Thank you, Mr. Chairman.

The Chair: Thank you for your questions.

Mr. Malo.

[*Translation*]

Mr. Luc Malo (Verchères—Les Patriotes, BQ): Good afternoon, ladies and gentlemen.

Mr. Chairman, as you just pointed out to our colleague from the Liberal Party, you will be leaving your post in a few months. I believe this would be a good opportunity to ask you what you see as your legacy and what the highlights are of your term with the CRTC. And, because these are rather broad questions, I would just like to ask you one more specific one.

It has to do with a CRTC ruling with respect to Canadian content quotas for satellite radio that was rather a disappointment. I was just wondering what kind of impact industry lobby groups had on the CRTC's decision not to demand the same quotas of satellite radio as those required of conventional radio.

•(1620)

Mr. Charles Dalfen: We held public hearings. We thoroughly reviewed the issue. Interveners for all parties appeared before us, and we made a decision. As I just pointed out to your colleague, each media has its own Canadian content level, and it all depends on the circumstances. For conventional radio, it's 7 per cent. For satellite radio, that amount is equivalent to a number of radio stations. It is 85 per cent for every Canadian channel. However, if you multiply that by the number of on-air hours, you quickly realize that it's the equivalent in terms of Canadian content of 20 radio stations. Foreign content on conventional radio stations is 65 per cent, but if you add the 35 per cent, in terms of total hours, you realize that for satellite radio, that is the equivalent of a great many conventional radio stations.

Having said that, in my opinion, that is not the reason why we set that particular level. We believe this was the maximum that could be demanded under the circumstances, whether it be with respect to Canadian content or French channels. I don't know how many subscribers there are in Quebec, given that this information is confidential, but based on newspaper reports, we can assume there are about 20,000. At the same time, truckers travelling all across Canada have access to 107 satellite radio stations, although that does not include any stations in French. However, if you travel to Florida in the winter or to Maine in the summer, you can access four channels on one network and five channels on another network that do broadcast Francophone content, that is added to Canadian content overall.

Personally, I believe it would have been preferable to set a higher level, but we felt, as we did for ethnic radio, specialized radio, and specialized radio and television, that this was the most that could be demanded of them.

Mr. Luc Malo: Am I to understand that you were not under any more pressure with respect to satellite radio than for other types of specialized radio?

Mr. Charles Dalfen: That's correct.

Mr. Luc Malo: You pointed out in your presentation that the market is increasingly divided. However, we have noted that shares of advertising revenue are dropping considerably for general broadcasters — in other words, the major channels. And as you know, it is more expensive to produce dramas than it is to translate original material or broadcast American shows.

Is the CRTC interested in stimulating the production of Canadian dramas? Can it do so? Should it do so? Does it intend to do this?

Mr. Charles Dalfen: We have tried to in the past and we continue to try to do so. We have an incentive program in place which has not shown tremendous progress, even though progress is ongoing. So, there has been upward movement in terms of the production of drama series. This is very important to us, and we are trying to emphasize that. We believe that this kind of program could yield very good results. The most acute problem is in English-speaking Canada, even though we want to maintain the current level of production in Quebec. We are hoping that this program will help in that regard.

When it comes time to renew licences, we will see whether our incentive program has worked. If there is good reason to enhance

services under the program, we will do so. But I can tell you that drama programming is very important to us, in every respect.

Mr. Luc Malo: So, in terms of your legacy...

[English]

The Chair: Mr. Malo, I—

[Translation]

Mr. Luc Malo: I think it's important for the witness to answer that question, because this may be the last time he appears before our Committee, Mr. Chairman.

•(1625)

[English]

The Chair: We might have another chance yet.

Mr. Abbott is next.

Mr. Jim Abbott (Kootenay—Columbia, CPC): Mr. Dalfen, we all have tremendously high respect for you. I know it's not comfortable when you find politicians asking you, perhaps, to be an advocate for our particular point of view. I'm wondering along the lines of Mr. Bélanger's question. I want to get this kind of fine tuning from you so that we understand what's going on here.

I think we're in agreement that you take direction from the government. The CRTC takes direction from the government—from the minister and from the government overall—and your submission says that the commission reports to Parliament through the Minister of Canadian Heritage. That's the way that is. It says that among the main tasks the commission undertakes is “developing and implementing regulations and policies to meet the objectives of the Broadcasting Act”.

That's where this mushy middle starts to happen. I'm giving you this question so that you can clarify for us. I'm not accusing; I'm asking for further clarification.

Maybe I'm wrong, but I took the position of my Liberal friend to say that if a majority of the members of the House of Commons—who, after all, are not the government—voted that there was to be some kind of continued restriction, or whatever the case may be, on foreign ownership.... From your answer. I took it that you said the CRTC then would become an advocate for that position. I ended up with this impression, and I'm not accusing you of anything; I just need some further clarification.

Mr. Charles Dalfen: Certainly that's not what I meant. Where I thought the question ended was that if there were to be a directive on foreign ownership that changed the rules from the current rules, then we would be consulted formally prior to its coming into effect and we would have an opportunity as a commission to express our views. Sometimes on those issues we call for public comments when we're asked to express our views. Sometimes we just express them through a meeting at which our commissioners decide what position to take or what to draw to the minister's attention in regard to the directive. The bottom line is that I don't know if any of that is advocacy.

Mr. Jim Abbott: The problem I'm having is that if I'm ever consulted—which I am from time to time, fortunately, by the PMO or by the Prime Minister himself—I go into a private room and offer him my consultation. I offer him my perspective. I'm really not interested in seeing it on the front page of *The Globe and Mail*. By the same token, from your answer—and I'm really not trying to thread a needle here too much—it strikes me that you would be inclined to comment, if I understand you correctly, in public about these things.

I'm wondering if the counsel of the chair of the CRTC or of representatives of the CRTC to the Minister of Canadian Heritage might not be better behind closed doors.

Mr. Charles Dalfen: I think that in any relationship that works between a chairman and a minister—and that goes for both ministers—the practice has varied over time. There are informal consultations, and they're taken very much on an expertise basis. Any advice I give would not bind my colleagues; it would not bind us in any kind of decision. Information gathering, particularly for new ministers, is an important role. We try to be helpful in terms of where we've been and where we're going—so yes, that goes on, and I believe should go on, but I think what we were referring to earlier was that there is a process whereby the act requires consultations, and we generally don't make those documents public. In fact, generally we don't make them public; we leave them for the person seeking the advice, namely the minister, to make public if he or she chooses.

I'm not sure whether some of them are obtainable under access to information. We certainly would draft those formal responses with a view to their being our official word, and if they were ever what we call ATIPable—if they were ever accessible under freedom of information—we would want to make sure they were appropriate and reflected our views.

The last thing we'd do is try to rush out with press releases on those consultations. We send them back to the minister, invariably, and I can think of three or four occasions over my term when we've done that. We don't stamp “Confidential” on them, because in a sense they aren't, but they are certainly advice that the minister can then choose to do with as he or she sees fit. Frankly, I haven't seen very many of them see the light of day. I don't know what the status is in that regard.

I hope that's responsive to your question. It certainly doesn't rule out informal consultations on a without-prejudice basis.

• (1630)

The Chair: Thank you. Your time is up.

Mr. Simms, it's good to have you back.

Mr. Scott Simms: It's good to be back, sir.

I have a quick follow-up on the comment brought up earlier. Whether you call them informal meetings or closed-door meetings in this particular case, don't you think, as was suggested by my Conservative colleague, that they negate the notion of an arm's-length agency?

Mr. Charles Dalfen: No, I don't. I think that we have, for instance, budgetary matters to discuss with the minister. The minister, after all, has to sign our estimates. Frankly, in my term

of office, there's never been an issue, but I think the minister has a right to be informed if there are new programs. A new do-not-call list has been attached to our responsibility; that has budgetary implications. All kinds of things need to go on simply for good administration.

I hope and I'm obliged, as the chair of a quasi-judicial agency, to make sure that nothing but what is necessary for sound administration and communication is passed back and forth. I don't think any of it has been anything but that.

Mr. Scott Simms: There's one quote in here that talks about “encouraging programming that respects Canadian values with regard to matters such as equality and human rights”. I'm trying to pin down the role of the CRTC when it comes to regional programming. Many technologies do not exist outside of urban areas. How do you see that? To me it's a challenge, given that I am an MP from a rural area.

Mr. Charles Dalfen: It is, absolutely, and I hear you. The act definitely uses terms like “national”, “regional”, and “local” all the time—and “multilingual” and “bilingual” and “multicultural”. It is a multi-faceted balancing act; we have to try to balance and give effect to all of those.

Mr. Scott Simms: You have a passage in here, certainly, that talks about that in the major cities and everything else, but I don't see a lot here about regions that are struggling to keep up with technology in the policy—

Mr. Charles Dalfen: That was a reference to diversity of population, to the demographics, but it isn't confined to the major urban centres. Those were just examples from the major urban centres.

We have regional groups and local groups before us all the time, saying we ought to do this or that for the local community and for the regions. You try to balance it as well as you can.

Mr. Scott Simms: If I were to say to you that conventional—

Mr. Charles Dalfen: By the way, in TV review—excuse me—as I mentioned, we are giving special attention to the situation of small-market broadcasters, who, more than any others, have been affected by satellites and so on. That would be a very particular examination, and ongoing. As you know, we've taken measures to assist small-market broadcasters who are independent of the large ownership groups, in terms of carriage on the satellite and in terms of a programming fund that's been set up for that.

Mr. Scott Simms: I'm sorry, if I could stop you right there, I don't have a lot of time.

Concerning conventional broadcasters versus the pay and specialty services, on the broad spectrum of revenue sources, do you think conventional TV is being shut out here?

Mr. Charles Dalfen: I'm not sure I catch your drift.

Mr. Scott Simms: From my understanding about the collection of fees, which is a somewhat contentious issue, conventional broadcasters do not collect fees, say, from a BDU.

Mr. Charles Dalfen: Subscriptions.

Mr. Scott Simms: Subscription fees; my apologies to BDUs. Okay.

Mr. Charles Dalfen: That's an issue before us.

• (1635)

Mr. Scott Simms: When are we going to get some clarity around that?

Mr. Charles Dalfen: The submissions have been filed in writing, the hearing starts November 27, and I think a decision will be out in the second quarter of next year.

Mr. Scott Simms: In regards to that study again and paying specialty services, I find that in many cases the CRTC made a ruling to license a particular service. That particular service evolves over time, and the market forces it to evolve into something else.

But the CRTC doesn't seem to say no, you can't do that anymore. We sanctioned you to do this, and now here you are....

I'll give you an example: prime TV. I remember years back when prime TV was supposed to be programming for seniors. But yet it has evolved into reruns of popular shows from the 1970s and 1980s, so it's kind of a different....

Mr. Charles Dalfen: We call this the genre policy. The idea was initially to add diversity to the TV dial. You had your general interest services—CTV, Global, and CBC—and now the specialty services. Like general interest and niche magazines, they were going to sports, news, and so forth, and some of them were licensed with very broad mandates.

The women's network, what isn't legitimately included in that? I think there's one called the Life Network, and they are ones that have pretty broad genres.

Mr. Scott Simms: Yes, I know you're trying to determine the genres. You call it genre, and I call it bait-and-switch.

Mr. Charles Dalfen: We have had complaints about that.

We've also had complaints about one broadcaster treading on the turf of another, and we've made rulings on them over time. It comes

up quite often; patrolling the boundaries is something that we have to do.

Sometimes people complain that they've switched formats, we look at that, and then come to a determination one way or the other.

Mr. Scott Simms: Speaking of bait-and-switch and hook, I believe I'm getting the hook. Is that right?

The Chair: You're getting the hook. Thank you.

Mr. Warkentin.

Mr. Chris Warkentin (Peace River, CPC): Thank you very much for being here this afternoon. We do appreciate your submission and your willingness to answer the questions that we ask.

I come from a less populated area, a more rural community. An issue has been bubbling under the surface, and now it's coming up more and more. It's the whole issue of the CRTC and the regulation of radio station "B", allowing radio stations to be established and to broadcast from these communities.

I think it's a real challenge as we look at new technologies as they're being developed, because what has happened in our community specifically is that any radio station that isn't able to come into our community and develop its station...people are going elsewhere to find that type of genre, or that type of music, or talk radio, or whatever. They're turning to the Internet, to satellite radio—to all these other different methods.

I'm curious as to whether this is being looked at. I guess by not allowing these people who want to start these radio stations... Is there's any talk that this may be driving our population to listen to something that may not have, number one, any Canadian content, and may not have the same values as we would subscribe to as Canadians?

Mr. Charles Dalfen: You're raising a very valid point. In new licensing, this is always the balance, particularly in smaller and more remote areas. It's always the issue. The local broadcaster will tell you, if you license that other guy, I'm dead, and you have to look at that. Can the market absorb two stations or three stations?

That is the primordial issue that we look at with radio licensing hearings. He says, I'd rather compete against satellite radio because people aren't going to want to spend \$15 a month, and I'm more happy to compete against that than I am against a head-to-head competitor who's going to have local sales, and so on.

In every single case, you're going to have to look at this and come to a judgment. Can the market absorb it, and is the economy strong, or is it likely to be strong for the next five years or so? Then you make a decision, and then you look at the competing applicants for the licence. That is the licensing exercise summed up.

So depending on the community, you can invariably count on the local broadcaster to object to the new entrant. You can also count on them to raise community interest and say, you know, you need it, and somebody's got to make the call. So we send a panel of our commissioners out, and they make the call.

Mr. Chris Warkentin: I do appreciate that you have a difficult job in trying to make those decisions and those determinations.

Maybe I'll just make my own little submission here. Specifically in rural communities, there may not be the population to sustain the current radio stations. They may not believe there's room in the market for additional players. Maybe I'll just make the submission that people are looking elsewhere, and therefore we're probably losing control that we would not want to lose, and that may be a consideration in the future.

On the issue of the Internet, the regulation of Internet uses has been discussed several times. Is any country regulating that you're aware of, and is it doing it effectively? Is there any other jurisdiction that we're looking to for a model that we might engage in if at some point we decide, or you as a committee decide, that it's a good—

• (1640)

Mr. Charles Dalfen: I can say this without immodesty, because the new media order was adopted before I got to the commission: other countries look to us for that. It was a very well-crafted document. As I say, it occurred before my watch, so I can talk about it quite comfortably in that regard.

The issues that come up on the Internet are pornography, child pornography, and hate speech. Those are the issues that come up on the Internet, those and the questions of whether it should be regulated outside normal criminal law—and if so, by whom—and whether the human rights tribunals should play a role.

Courts have some role to play. Should the CRTC have a role? If the problem increases in intensity, and this country and Parliament believe that it's not being taken care of under the general criminal law, which is where it's now dealt with, and under human rights legislation to a lesser extent, then those questions will have to be asked.

For the moment, those appear to be the issues that we get most pressed on, rather than the regulation of, say, the broadcasting aspects of it.

Mr. Chris Warkentin: Okay. I'm probably running out of time, but am I to understand, then, that there's really no talk of monitoring Canadian content within Internet—

Mr. Charles Dalfen: We are monitoring that, not in the way that we monitor the obligations of broadcasters to budget for and keep logs and so on, but we are monitoring it, both actively and in following all the literature that comes out and receiving information from people. Indeed, this new branch that we call the middle pod in the organization, the technological and economic and financial analysis branch that's going to serve both broadcasting and telecommunications, will hopefully gather and continue to gather that expertise and that monitoring effort.

Mr. Chris Warkentin: Thank you very much.

The Chair: Mr. Angus is next.

Mr. Charlie Angus: In our numerous meetings on film and television, what comes up again and again is the 1999 CRTC decision that changed the definition of Canadian content. The message we hear—and we've heard it from numerous people across the country—is that it had a devastating impact on the production of domestic drama in English Canada. In the new television review that's under way, are you looking at the needs of drama in the English television market and whether the CRTC should be playing some kind of role in ensuring a restoration?

Mr. Charles Dalfen: Thank you.

It's similar to the answer I provided to Mr. Malo. The commission adopted an incentives policy for drama. The answer is yes, we believe we should be involved in that, and the level of Canadian drama should be higher, in our view, across the system, and we should take whatever measures are useful to do that.

The measure we have taken so far is to adopt an incentive policy whereby broadcasters who spend certain levels of dollars, carry certain levels of hours, and achieve certain viewership—because ultimately it's about what the viewer sees—will be rewarded by more advertising minutes, which they can then use for their most popular foreign programming, programming that already has time for more advertising than the 12 minutes we allow in Canada—and this is taking root. We haven't had dramatic results—no pun is meant—but we have somewhat encouraging results and we'll see that along.

The next opportunity to look at that will come up in some ways in the TV policy review, but where it'll ultimately come up is in the renewals of the major broadcasters a year or so later, in their commitment to Canadian drama and so forth. People, including the people I'm sure you hear from, will have an opportunity to weigh in at that point.

•(1645)

Mr. Charlie Angus: Thank you.

I want to go back to the discussion we had about taking direction and whether the CRTC takes direction from the minister, whether they take from Parliament, whether they take it in a private room with the PMO with the windows closed, or whether it's 155-plus-one MPs.

I'm looking at the Telecommunications Act and I don't see where that's clearly laid out, but what I do see is the obligation to “promote the ownership and control”—not maintain, not put up with, but promote. Our minister has given a directive, and that directive is to let the market forces rule. Letting the market forces rule is not necessarily the same thing as promoting Canadian ownership, so I'm asking you how you see your role to promote control and ownership in terms of the Telecommunications Act.

Mr. Charles Dalfen: Just to step back for one second on the premises, we are bound by law—I think it's section 47 of the Telecommunications Act—to give effect to policy directives of the government on matters of broad policy concern. That's very clear. We have not yet received such a directive, period. It's working its way through. It's been tabled in Parliament, and I gather there's a committee decision to have a report by March 1, 2007.

Even that directive, which is not yet enforced, doesn't contain material on foreign ownership, so the issue of foreign ownership is in effect on whatever track it's on. If it is on a track, it's on a separate track from that, but if that direction on foreign ownership were eventually to come to pass, then under the act we would be bound to give effect to it, and although the section 7 provisions you're reading talk about our promotion of Canadian ownership, we would, as an affirmative legal matter, be bound by such a directive.

It's all hypothetical because, as I said, there is no such directive in force on foreign ownership, but that would be the legal answer I would have to give you. We would have to say that the government has given us a directive and that we are legally bound to give effect to it, and that you have to read the promotion of foreign ownership into that.

Mr. Charlie Angus: So a directive from the government would supersede the laws laid out in the Telecommunications Act?

Mr. Charles Dalfen: It would have a legal impact. I hate to give you a legal opinion here. I'm checking back with my own legal adviser.

I think the correct answer is that it says it would be binding. These objectives are ones that were meant to regulate and give effect to, and we do.

Mr. Charlie Angus: Okay, if it's contrary to the Telecommunications Act and it's from the government, then that's what you're bound by. That's all I need to know.

Mr. Charles Dalfen: Others would have to say that. My legal adviser points out that in the act itself, section 16 says, “A Canadian carrier is eligible to operate as a telecommunications common carrier if it is a Canadian-owned and controlled corporation incorporated or continued under the laws of Canada or a province.” What the government has the right to do is define what “Canadian” means under this provision. Under the Telecommunications Act, as distinct from the Broadcasting Act, the provision is in here; it is they who determine what is Canadian, and they have the right to do that.

Mr. Charlie Angus: Okay. They're not going to declare AT&T a Canadian citizen. The question is if it comes before and AT&T wants to buy up Bell Globemedia and all their telecommunications and operate it from Wascana or wherever—Washington....

My question is this. What you're telling me is that you take your directive from the government, a directive that's a change in policy, and not from the act itself, which says you are obliged to promote the ownership and control of Canadian carriers by Canadians.

Mr. Charles Dalfen: The act says that those are the objectives of policy, but it also says very clearly that in the event of a directive, the directive is binding on you. It's in the act, and I guess you have to sort it out in that light. You can't, as a matter of the commission, say that directive is illegal. You have to say that—

Mr. Charlie Angus: You can't say that it's contrary to the Telecommunications Act.

Mr. Charles Dalfen: It would not be for us to say it. I suppose in extreme circumstances we might have a view on that, but frankly, it would be up to the courts to make that determination.

The Chair: Thank you very much.

Mr. Bélanger is next.

Hon. Mauril Bélanger: Thank you, Mr. Chairman.

This is a very interesting discussion. I have to say that I always find it amusing when a member of Parliament accuses another member of Parliament of being a politician. Thank you for that laugh, Jim.

This might surprise some of our colleagues here, but my reading of the act is that indeed the executive, through its authority to give directives, can pretty well tell the CRTC what to do.

I've even found out that there are two authorities to set regulation—

• (1650)

[*Translation*]

specifically, under the Canadian Radio-Television and Telecommunications Commission Act, the Broadcasting Act or the Telecommunications Act. And, in fact, both the CRTC and the Governor in Council can make regulations.

I have been asking myself these questions, and I would like to put them to you, Mr. Dalfen. But, I would like to begin with a question that is not at all theoretical.

Has the CRTC passed regulations that conflicted with regulations made by the Governor in Council?

M. Charles Dalfen: No, not to my knowledge.

Hon. Mauril Bélanger: I see.

My second question is theoretical.

If that were to occur, how would the problem be resolved?

Mr. Charles Dalfen: Well, ultimately, it would probably come before the courts, although I do believe it is an extremely rare occurrence.

Hon. Mauril Bélanger: Well, having checked, I have a partial answer. It can be done in two or three different ways, and I think that Committee members should be aware of this. This information can be requested, and based on what has happened previously, specific regulations take precedence over general ones. So, if certain regulations are more specific than others, the more specific ones may prevail. In other cases, the most recent regulations may take precedence over the older ones.

Finally, if it is impossible to agree, the matter goes before the courts. And that is where it gets interesting. What counts most, when such a matter comes before the courts, is the legislator's intent. So, if there is a conflict between the legislation and the regulation, the court will consider the legislator's intention. That is where it gets interesting. And that is the reason why I asked you about this earlier.

I am not asking the CRTC, in responding to the government's proposed directive, to take the position expressed by a majority of parliamentarians. That is not what I'm asking of the CRTC. I simply

want to know whether it intends to react, because this does raise a concern. Whether or not one agrees with the idea of removing or maintaining restrictions as regards foreign ownership of Canadian corporations, that concern remains.

It is clear that a majority of members of Parliament have stated that they want those restrictions to remain in place. There are broadcasting firms that are very concerned. There are also telecommunications firms that are aware of that concern. Personally, I believe it should also be a concern for the CRTC.

I am not asking it to tell me how it will respond; I simply want to know what the CRTC can do, first of all, and, second of all, whether it will actually do that. It can say whatever it likes. It is not up to me to tell the CRTC how to respond, but as a legislator, I have every right to know whether the CRTC has a right to respond, which you have already confirmed, and what I want to know now is whether you can.

I'm satisfied with your answers. I was certainly not trying to force the CRTC to take any particular position. Is that clear?

Mr. Charles Dalfen: Yes, it is. Thank you.

I understand what you are saying; you have made your position quite clear. I have nothing to add.

Hon. Mauril Bélanger: Fine, thank you.

[*English*]

I have 30 seconds left, Mr. Chairman?

This may be indeed the last chance I have in public to thank you, sir, and your fellow commissioners for the work you've been doing since your appointment to the CRTC. I think, generally speaking, I and many Canadians share the fact that we have a very good broadcasting system in this country, and that by and large the CRTC has been instrumental in making sure we've gone the way we've gone. So on behalf of my colleagues, I want to thank you for the work you've done, and good luck on the rest of the mandate, however long it is.

Mr. Charles Dalfen: Thank you very much.

The Chair: Thank you.

Ms. Boucher.

[*Translation*]

Mrs. Sylvie Boucher (Beauport—Limoilou, CPC): Good afternoon. Thank you very much for being here today.

What I would like to know is where your mandate begins and where it ends. What is the extent of your ability to intervene as regards a radio station, for example? Do you have the power to influence a radio station's programming?

Mr. Charles Dalfen: We try not to engage in micromanagement. When a station applies for a licence renewal or a new licence, we look at the programming plans submitted by the licence holder. Basically, we accept what we hear and make suggestions. For example, if a station wants to have open-line shows, we ask whether they have a code of ethics, just to be sure that everyone will be treated equitably, and so on.

We don't get into the details of their programming.

• (1655)

Mrs. Sylvie Boucher: I see.

So, you can assist them, but you don't have the authority to change everything.

Mr. Charles Dalfen: It's not a question of authority. We try not to interfere. Their responsibility is to manage their own programming, and so it is up to them to make those decisions. We try to encourage them to offer certain types of programming, such as dramas and local news, but beyond those categories, we allow licence holders to decide on their own programming.

Mrs. Sylvie Boucher: Thank you very much, Mr. Dalfen. That answers my question.

[*English*]

The Chair: Mr. Abbott.

Mr. Jim Abbott: Along that line, could you talk very briefly about CHOI?

Mr. Charles Dalfen: It's hard to talk briefly about it.

Some hon. members: Oh, oh!

An hon. member: Fifteen words or less.

Mr. Charles Dalfen: If you saw our release about 10 days ago, the approval of a new owner who will carry on the operation of that station has been granted. The jobs and service to the public will be maintained. But the original licensee will no longer be the licensee.

Mr. Jim Abbott: Recognizing that it is very sensitive—and I sincerely don't want to put you on the spot—what prompted you in the instance of CHOI? What put you over the edge?

We had Howard Stern, and we've had other things come to the air. The CRTC has regularly turned it over to the Canadian Broadcast Standards Council—I think that is the name of the organization. But in this particular instance, you felt exercised enough to do something.

My question is particularly for people in broadcasting who would be taking a look at this testimony. This gives you an opportunity to give them a bit of an outline as to, okay, here is the border, here is the boundary, here is the line. Step across it at your own peril.

Mr. Charles Dalfen: I think providing that line was part of what went into it.

The Canadian Broadcast Standards Council had not once or twice, but to my knowledge at least three times, seizure of complaints and answered the complaints. The broadcaster didn't respond appropriately to those complaints. It escalated to the commission. We gave short-term renewals, and finally the line was crossed. The decision said what it said, and we made that decision.

I guess for broadcasters, the important thing is to read our decision, because we spelled out all the events that had occurred, including the CBSC hearings, very carefully. I would strongly suggest they read the unanimous Federal Court of Appeal decision that upheld the decision. I think it gives broadcasters a really good guideline of what is acceptable over the very powerful airwaves of this country as comment and what is regarded as abusive comment.

Mr. Jim Abbott: In terms of part II fees, roughly what was the amount collected last year?

Mr. Charles Dalfen: Diane, did you think you were going to get away without answering?

Mrs. Diane Rhéaume (Secretary General, Corporate and Operations, Canadian Radio-television and Telecommunications Commission): About \$112 million.

Mr. Jim Abbott: About \$112 million.

Is it appropriate for me to ask, do you have an opinion about part II fees?

Mr. Charles Dalfen: We're obliged to collect the part II fees under the act. We have been in litigation on that, so it's before the courts.

Mr. Jim Abbott: With it being before the courts, if I'm asking a question that's inappropriate, I'll be happy to stop. I'll take your advice on that because I don't want to do anything to compromise the situation.

If part II fees in whole or in part were going to continue to be collected, and if the broadcasters could agree.... Let's presume the judgment of the court is in favour of the broadcasters, just for an intellectual exercise here. There has been some suggestion that they might be prepared to see a redistribution, perhaps into a CTF kind of idea, or to replace the legacy funds, or whatever the case may be. Do you have an opinion about that?

• (1700)

Mr. Charles Dalfen: I'd prefer not to discuss it because it is before the courts, and there are probably any number of hypotheticals that would lead to other kinds of discussions.

So if you don't mind....

Mr. Jim Abbott: No, I understand that completely. Fine.

The Chair: Thanks for that. Your time is up. I thought that was a very appropriate answer.

I never like to finish with a government question, so Mr. Kotto has the last question. We can't go through a whole round. We haven't got enough time for that, so Mr. Kotto, you have the last question.

[*Translation*]

Mr. Maka Kotto: Thank you, Mr. Chairman.

Mr. Dalfen, I am not asking you this question as Chairperson of the CRTC, but rather as someone who has acquired a great deal of experience in this area. Ten, fifteen or twenty years ago, people did not anticipate what the Internet would become today. And we are in no position to anticipate what kind of changes will occur as regards satellite radio, Internet radio, IP telephony and cellular television.

In terms of convergence, it is inevitable that we will have concerns at some point, because the industry perspective will probably prevail over the cultural perspective. The reason I am raising this by way of introduction is that if the directive to increase foreign control over telecommunications were to be acted on, there would be two major consequences: the offshoring of decision-making centres and increased control by American companies of Canadian culture. That is something that we could not possibly have anticipated a few years ago, when the legislation in the two areas of culture and telecommunications made no provision for any such thing.

However, based on your personal experience, do you not think this is a good opportunity to sit down and calmly, seriously consider this matter, avoiding any partisanship — in our case, we are inured to that sport — particularly if our concern is to preserve cultural identities?

Mr. Charles Dalfen: Who could possibly be against calm, informative consultations? I obviously encourage you to engage in such consultations.

As I said in my presentation, I believe we should be proud, both in Parliament and in Canada as a whole, of having passed legislation that didn't force us to predict every single technological development, because we took a neutral position in terms of the technology. We focused on services for Canadians, whatever the technology used to deliver them. And I believe that continues to be the case.

That is why we have that flexibility and can carry on our activities, including things like the Internet. I am not saying it's easy, nor am I saying one can predict future events; however, the framework in which we are working is flexible enough that we are able to react fairly quickly to any developments.

When we attend international conferences, people come to us for advice, because they recognize that this is an area that is well developed here. I cannot stress that enough — namely that we have created a system here, within a very flexible and robust legal framework, that we can continue to work with for a number of years yet, while considering new developments that occur from time to time and with the certainty that we are on the right track. I see no major issues in that regard.

Finally, just to answer your colleague, Mr. Malo, I would say that what is important for me is to leave the job with the sense that the system is strong from a cultural, commercial and technological

standpoint. We should always be judged not on our words, not on statements made by others or by ourselves, but rather, on the basis of concrete facts. I believe that we have good reason to be proud here in Canada. I, personally, am proud.

● (1705)

Mr. Maka Kotto: That is the second question I wanted to ask you, but having anticipated it, you have already answered it.

Thank you.

[*English*]

The Chair: Thank you very much.

I'm very pleased with the way our questioning went here today. Everyone had an opportunity to ask our witnesses what their thoughts were of the CRTC.

Thank you very much for your answers. I thought they were very full, and thank you again for coming.

We are going to have a five-minute recess.

● (1706)

_____ (Pause) _____

● (1713)

The Chair: Can we please have everyone's attention?

Our committee business, which was put over from the last meeting, was on the court challenges program hearings, which we are working on.

I have a little something I'll read here. My clerk is going to help me read off some of the names because I'm not bilingual, and I apologize for that. This is about the court challenges program.

We'll have another two-minute pause, until we get some translation.

● (1716)

_____ (Pause) _____

● (1721)

The Chair: We don't have any translation.

My suggestion is that we adjourn the meeting today and we'll bring it up as one of the first things on Wednesday. It will be on our agenda for Wednesday.

The meeting is adjourned.

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