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## Standing Committee on Canadian Heritage

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EVIDENCE

**Monday, May 25, 2009**

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**Chair**

**Mr. Gary Schellenberger**

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## Standing Committee on Canadian Heritage

Monday, May 25, 2009

•(1535)

[English]

**The Chair (Mr. Gary Schellenberger (Perth—Wellington, CPC)):** Good afternoon, everyone. Welcome to meeting number 22 of the Standing Committee on Canadian Heritage.

Pursuant to Standing Order 108(2), we continue with our study on the evolution of the television industry in Canada and its impact on local communities. This afternoon, for a repeat performance, we have the Canadian Radio-television and Telecommunications Commission, the CRTC.

Welcome, gentlemen.

Mr. von Finckenstein, would you please make your address?

[Translation]

**Mr. Konrad W. von Finckenstein (Chairman, Canadian Radio-television and Telecommunications Commission):** Thank you, Mr. Chairman.

Good afternoon, ladies and gentlemen of the committee. Thank you for having invited us here today. With me today are two colleagues from the Canadian Radio-television and Telecommunications Commission, Michel Arpin, Vice-Chair of Broadcasting, and Scott Hutton, Executive Director of Broadcasting.

When we last appeared before you on March 25, the commission had not yet held its public hearing to renew the licences of the majority of Canada's private conventional television broadcasters. Similarly, your study was only getting underway. Both this committee and the CRTC have since heard a wide range of views in our respective forums.

There are clear benefits to holding public hearings on these issues. Being exposed to the opinions of different stakeholders allows both of us to not only understand exactly what is at stake, but also to reach informed decisions.

[English]

The conventional television sector has been the cornerstone of the Canadian broadcasting system since the introduction of television in Canada in 1952. Local programming is, of course, one of the defining characteristics of a conventional television station.

On the first day of our public hearings, I had an exchange with Mr. Ivan Fecan, president and CEO of CTVglobemedia, on the importance of conventional television. I referred to his testimony before your committee and said I had read very carefully his statement to the House of Commons—which essentially he had

repeated to us—that conventional is local; it is a glue that binds a community together; it's needed for national interest and national unity issues; and it is the best machine for promoting things, better than anything we have right now. I said to Mr. Fecan, "Have I got that right?" Mr. Fecan answered, "Yes."

I believe you all agree with Mr. Fecan's viewpoint. I'm glad he shared it with us at the outset of the hearing. However, conventional television's ability to play its central role in the broadcasting system, which includes providing local audiences with local programming, has recently come under threat. There has been a steady fragmentation of audiences' advertising revenues, which are now split between conventional, pay, and specialty services, as well as the Internet.

[Translation]

While conventional broadcasters were adjusting to this trend, along came the global recession. Like many other sectors of the economy, broadcasters were sideswiped by the downturn. They have seen their revenues shrink as spending on advertising declined sharply. Let's not forget that the automotive sector was traditionally the single largest advertiser on television.

[English]

On May 15 we handed out a preliminary decision that provided private broadcasters with key details regarding their licence renewals. Specifically, we renewed the licences of the major English-language networks for one year, including the television stations operated by CTV Television, Canwest Television, and SUN TV, as well as the Citytv station. We decided to renew the licences of the major networks for a shorter period than the customary seven years to give the industry a certain flexibility to respond to the current economic downturn. We plan to use a group-based approach to renew the licences of major English-language networks in the spring of 2010.

[Translation]

We renewed the licences of the TVA Group's television stations for two years. We will therefore renew TVA's broadcasting licences in 2011. In the same timeframe we will also review the licences of the French-language television stations operated by the Canadian Broadcasting Corporation and reconsider the programming commitments of the TQS television stations. The specific terms and conditions attached to the licences will be issued by mid-July.

[English]

It's become clear that we cannot carry on with our traditional assumption on models over the medium and long terms. Consolidation in the Canadian broadcasting industry has resulted in a few large groups that control an array of conventional, specialty, and pay-television services. As I indicated in my previous appearance, the commission's processes must take this reality into account to ensure that the objectives of the Broadcasting Act are achieved in the most effective way possible. Over the next year, we will work with the industry to find solutions to the underlying issues that have led us to this point.

The commission has identified seven areas that require structural reform.

The first area is group licensing. As I mentioned to you previously, we need to move away from a framework where licence renewals for conventional television services are assessed independently from pay and specialty services. A group-based approach will allow us to harmonize the rules that govern all categories of television services. It will also allow us to consider the total audiences reached by broadcasting groups, the totality of its revenues, and its programming commitments and obligations.

Secondly, there needs to be a refocus on core elements, coupled with necessary energy and resources. Conventional broadcasters need to refocus on the core elements of their service—local news, local programming, and programs of national interest. Rather than perceiving it as a cost of doing business, they need to see it as a central element of their survival, and expend meaningful resources and energy on it.

Third is the harmonization of local programming obligations. The amount of local programming varies from station to station and depends on when the licence was originally granted. We believe there should be a level playing field and that the amount of local programming should be harmonized, depending on the size of the markets they serve.

Fourth, we need clarified funding. As indicated on May 15, to carry out such refocusing, broadcasters need more predictable funding. Rather than resorting to fee-for-carriage, we will seek to provide revenue support for conventional television by investigating alternative support mechanisms designed solely for local programming; protecting the integrity of the Canadian broadcasters' signals; and exploring mechanisms for establishing, through negotiations, the fair market value of these stations' signals. This will be backed up, if necessary, by CRTC arbitration.

Fifth, we need meaningful commitments. I'm certain that broadcasters can develop successful business models if supported by revenue streams that reflect the value of the programming being distributed. However, in exchange for the above-mentioned harmonization of obligations and negotiated funding, it will be necessary for broadcasters to provide firm commitments regarding local news, local programming, and programming of national importance.

Sixth, we need restraint on foreign programming, and/or commitments toward Canadian program spending. We have heard great exasperation from the Canadian creative community about the

amount of money that's being spent each year in Hollywood. To live up to the objectives of the Broadcasting Act, some sort of restraint or attenuation is required. It remains to be determined whether this should be achieved by way of ratio—minimum Canadian expenditure requirements—or a percentage of revenues obtained. But some sort of restraint mechanism appears to be necessary and desirable.

• (1540)

[Translation]

The seventh sector is digital transition. Finally, we must find an acceptable solution to the obstacles standing in the way of the transition from analog to digital television. A hybrid solution which would entail over-the-air digital signals in standard definition in major centres and access by way of cable or satellite in non-metropolitan centres appears to be the answer. However, certain details still need to be worked out, including access, cost and entitlement.

[English]

On the same day that we announced the new licensing terms for private conventional television broadcasters, we outlined our plan to address these seven areas that I have just described. We will soon initiate a public process that will culminate in public hearings this fall, on September 29 to be exact. This is the summer process I referred to during my presentation back in March. We are confident that we will come out of the hearings with a revitalized framework that we will be able to apply in 2010 to the group-based licence renewals. We recognize that we're dealing with very tight timelines. However, the urgency of the matter justifies these timelines, and we have every reason to believe that we will achieve our goal.

[Translation]

You have raised some very pertinent issues during your study, which we are taking into consideration, and we look forward to reading your final report. It will add an important perspective to our deliberations.

Thank you. We are prepared to answer your questions.

[English]

**The Chair:** Thank you very much.

The first question comes from Mr. Rodriguez, please.

[Translation]

**Mr. Pablo Rodriguez (Honoré-Mercier, Lib.):** Thank, Mr. Chairman.

Good afternoon, Mr. von Finckenstein. I'm pleased to see you and your team again. With you, we started our examination of the future of television on March 25, exactly two months ago. We heard dozen of witnesses. We spent countless hours studying this issue. The most knowledgeable experts have appeared before this committee.

Two months have passed. Did you learn anything new? Has your position on this subject changed?

**Mr. Konrad W. von Finckenstein:** As I mentioned, major structural changes are clearly needed. Those are the seven points that I have just referred to. Point no 4, namely clarified funding, is the most important. Conventional television must be based on stable and predictable financial mechanisms.

There are also other points to consider. The emphasis must be placed once again on the basic elements, with the energy and resources necessary to support that.

**Mr. Pablo Rodriguez:** This isn't new, I agree with you. It was true two months ago and it's still true today. There's a structural problem, and it will require structural solutions. One of the issues which is most often raised is that of fee-for-carriage. You were asked the question two months ago, and I'll ask you the question again today since there has been a lot of discussion in the intervening period.

Let me quote what you said.

•(1545)

[English]

On fee for carriage, you said:

We've turned it down because it wouldn't have done anything for local content, which is exactly the thing you're working on. I asked the people to understand. I said, "If we give you a fee for carriage, are you going to commit to a certain local content, especially in the smaller markets?" I got a resounding no. That's why we didn't do it.

The people who came after you, the CTVs and the Globals, said that's not true, that they didn't say that. So we have two versions here, and it's very important. Somebody's not necessarily saying the truth here.

[Translation]

You're being contradicted by these folks. Do you stand by the remarks you made last time?

[English]

**Mr. Konrad W. von Finckenstein:** I'm glad you asked me that question. It gives me an opportunity to clarify this, as I already did in our April hearing, but I'll gladly do it again.

At the hearing for fee-for-carriage, I asked CTV:

Would it make a lot of sense for us to — assume we could grant you a fee-for-carriage of 50 cents per signal as you suggest and we earmark it in some way, we either insist that it is incremental over what you spend right now on local content and drama, let's say those two things, or we say it all has to go into local news, or in some way that in effect both you and we as a Commission could demonstrate we are doing this only for one purpose and that is to maintain that part of the system which we feel is under threat because of the fragmentation of the advertising dollars and a fragmentation of the whole broadcasting system.

That was my question.

**Mr. David Goldstein of CTV, who was in the room, said:**

As outlined in our joint submission, we submit that the fee would be tied to local reflection as to be defined by the Commission.

I said:

Put some bones on the flesh for me. What does that mean?

**Mr. David Goldstein responded:**

One of our issues, of course, is that of sustainability. As the economic research has borne out, the obligations on these stations are particularly onerous. What we are

not coming back, or at least not what we are presenting today, is ask for a reduction in those obligations. But what we would — what we would hope is to come back at group licence renewal for each of these individual stations and give you an extremely specific proposal of what that means to the sustainability of local service in each of those markets.

**Mrs. Bell from CanWest then piped in and said:**

And Chairman, we have tied the — we have tied this to local original programming and part of the reason why it would be difficult for us to put a number on that at this point is we — as you can appreciate this is a pretty massive review of television policy....

**Mr. Pablo Rodriguez:** Monsieur von Finckenstein, time is precious. We only have ten minutes.

**Mr. Konrad W. von Finckenstein:** I only have one more quote. I'm not trying to use up your time.

But she then said:

So in terms of making long term commitments and telling you where those numbers lie it would be difficult for us to do that today.

So I said there was a resounding silence, which was a figure of speech. I just read you out the answer. If you can read into those answers a firm commitment—

**Mr. Pablo Rodriguez:** Yes, but since then....

I see Mr. Goldstein in the back there smiling. I know we can't, but I'd like to have his comment.

My initial question was, has anything changed in your position in the last two months? I ask because those people came back after those hearings and we heard them say that maybe a lot of that money will go to local content. So we have to find out what's going on here. We want to make sure who is right on this.

**Mr. Konrad W. von Finckenstein:** It's not a question of who's right or wrong.

**Mr. Pablo Rodriguez:** Yes, but it's very important that we clarify this, Mr. von Finckenstein.

**Mr. Konrad W. von Finckenstein:** It's not a question or right or wrong.

We clearly didn't have a discourse or understanding on this. I asked them, "What firm commitments are you willing to make?" They did not give me any. They claim they intended to—and I read you out the process. I think we shouldn't dwell on it.

The fact is that we were not prepared to give fee-for-carriage or consider it unless there were firm commitments. There were no firm commitments on the table.

Today, I just testified to you and said in point four that we want to explore "mechanisms for establishing, through negotiations, the fair market value of these stations' signals....backed up, if necessary, by CRTC arbitration". In plain language, what that means is that you negotiate the value of the fee that's being distributed. The cable companies distribute it. It has to be evaluated; otherwise you won't be distributing it.

What is it you want? Do you want me to set the value? No. We won't do that. You negotiate that with the broadcasters. If you can't come to an agreement, come to us and we'll arbitrate it.

So there will be a fee. The amount of the fee will depend on the market of the station in question. You can't do it by having, as they said, 50¢ for each signal. It may very well be different for different markets. But you are the players in the market. You negotiate. If you can't negotiate it, I'll arbitrate it for you if I have to.

That's how we're going to approach it.

• (1550)

**The Chair:** Thank you.

We have to move on now to Ms. Lavallée, please.

[*Translation*]

**Mrs. Carole Lavallée (Saint-Bruno—Saint-Hubert, BQ):** Thank you for being here today, Mr. von Finckenstein.

Your structural reform, as set out by you, includes seven areas, however a number of them are not clear to me. Since we don't have much time, I'll turn to what I'm more concerned about: "clarified funding". You said:

Rather than resorting to fee-for-carriage, we seek to provide revenue support for conventional television stations by:

- a. investigating alternative support mechanisms for local programming;
- b. protecting the integrity of Canadian broadcasters' signals;

What do you mean by "investigating alternative support mechanisms for local programming"? What else is there besides that?

**Mr. Konrad W. von Finckenstein:** In point 2, I said we need to refocus on core elements coupled with the necessary energy and resources.

You have heard a lot of testimonies. All the conventional broadcasters tell us that local programming is at the very heart of what they do. I told them that that was not what I had observed, that they were not dedicating their resources, their talent and their money to local programming, but that if they wished to do so, I would fund them.

**Mrs. Carole Lavallée:** I'm sorry, Mr. von Finckenstein, but you're talking about English-language broadcasters. Canadian and Quebec productions are really at the heart of French-language broadcasters' programming and activities.

**Mr. Konrad W. von Finckenstein:** Unfortunately, that is not the case. If you recall, we renewed TQS's licence, and it wanted to completely scrap local programming.

**Mrs. Carole Lavallée:** You're right about TQS, but I don't think that you face the same problem with TVA and Radio-Canada.

**Mr. Michel Arpin (Vice-Chairman, Broadcasting, Chairman's Office, Canadian Radio-television and Telecommunications Commission):** It is true of TVA outside Montreal, it just keeps on shrinking. There is only one single, daily, locally produced news broadcast. There is no public affairs program. There's nothing else, except in Quebec City, where there are a few hours of locally-produced programs.

From what we've heard, these programs are still produced by folks from Montreal who simply travel to Quebec City to be physically present in a TV studio there. But to what extent does that kind of program represent the national capital?

**Mrs. Carole Lavallée:** You're right. I was confusing local programming with Quebec programming.

I've just come back from a tour of Quebec and I can tell you that there are a lot of half-baked arrangements in the various regions of Quebec, and the upshot is that the folks in the regions don't get any real local news. I was even told that for the Magdalen Islands, there's a weekly Radio-Canada quota of two news items. What on earth do they do when there are three!

**Mr. Michel Arpin:** That's what we were referring to in point 4.

**Mrs. Carole Lavallée:** You talk about: "investigating alternative support mechanisms for local programming"; what other mechanisms are there?

**Mr. Michel Arpin:** One thing that we have already done is to institute the Local Programming Improvement Fund.

**Mrs. Carole Lavallée:** Is the fund up and running?

**Mr. Michel Arpin:** In fact, there are all the regulatory aspects that go along with that. The quantum has not yet been set definitively.

**Mrs. Carole Lavallée:** Mainly, the amount of money.

**Mr. Michel Arpin:** Yes, the amount of money.

Everything should be in place by early September so that the broadcasters can start receiving funding in the following weeks.

**Mrs. Carole Lavallée:** When you appeared the last time, I gathered that this Local Programming Improvement Fund was among the various avenues you were exploring.

Are you now telling me that you have chosen this option?

**Mr. Michel Arpin:** Absolutely.

[*English*]

**Mr. Konrad W. von Finckenstein:** Excuse me. Can I comment quickly?

[*Translation*]

**Mrs. Carole Lavallée:** Don't be so stubborn!

**Some hon. members:** Oh! Oh!

**Mr. Konrad W. von Finckenstein:** We have not made the decision, so I cannot share the conclusion with you.

However, the Local Programming Improvement Fund does exist. It is currently set at 1% of revenue, and in actual fact it now totals \$68 million. One question that we have talked about and looked at in greater detail is whether this level is sufficient, or whether it should be increased to 2.5% or something like that.

You will get the answer once we have made our decision, in July.

• (1555)

**Mrs. Carole Lavallée:** Okay, but do you mean that the decision has not yet been made?

**Mr. Konrad W. von Finckenstein:** No, because it is a process, Ms. Lavallée.

We received testimony from approximately 50 people. All this testimony must be considered and analyzed. These people have the opportunity to make additional comments, and the commission will then make a decision.

**Mrs. Carole Lavallée:** Mr. Arpin.

**Mr. Michel Arpin:** The amount of \$68 million that Mr. von Finckenstein just referred to has already been determined. It was set in a decision that we made at the end of 2008, when we established the fund and said that it would be equal to approximately 1% of the distribution undertakings' revenue.

However, many people have told us that this amount was not enough to meet the needs. During our April hearing, the discussion also dealt with the quantum.

**Mrs. Carole Lavallée:** How will it...

[*English*]

**The Chair:** We have to move on. I'm trying to even things out here.

Mr. Angus, please.

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

Thank you, Mr. von Finckenstein, for coming back. We appreciate you taking the time to work with us.

At this committee we have tried to address the various arguments we're hearing from all political perspectives. Our fundamental desire is to make sure that whatever decisions are made, they are done so that our local television communities remain strong and vibrant, that any re-division of the pie doesn't end up with the broadcasters continuing to run their local stations into the ground and taking the money and spending it elsewhere, or with the cable giants ripping the consumers off, and how to do that.

We have the local improvement fund, we have the fee-for-carriage model, and now you're suggesting this compensation-for-value negotiations that are ongoing.

When we met with you two months ago, the question was asked: Is fee-for-carriage dead? You said "No, of course not." Now, in your closed-door hearings with CTV and CanWest on April 30, you said discussions for fee-for-carriage were "a dialogue with the deaf" and that the new compensation-for-value model was more fruitful than "hammering the dead horse of fee-for-carriage". So, is fee-for-carriage dead, or do we need to move on?

**Mr. Konrad W. von Finckenstein:** First of all, at the beginning of the hearing I tabled a document saying we all talk about fee-for-carriage and we all mean something different. I said I've actually done impact analysis of what 50 cents per signal would mean, and here it is. Then I asked, are you all in agreement? And surprise, surprise, nobody was in agreement.

That's great, we said, so we're all apparently talking about something different. There were different views on the way you calculated how much each station gets and what the impact would be on the BDU. Tomorrow there's actually a working group meeting with the various participants of the industry to find out what is each person's position, because while everybody throws around the phrase "fee-for-carriage", they don't necessarily have the same understanding of how you would measure it.

Secondly, as I said here, we, as a commission—and I've indicated that during the hearings—think a much more fruitful way would be

to look at really what we're talking about. If you're a cable company, you distribute signals. You distribute them because the viewers want them. The producers of those signals should be remunerated for their value. You do it with specialty channels but you don't do it with conventional. Clearly, as a viewer you want to see conventional as well as specialty channels. So there is a value on it, and to distribute it brings an advantage. What is that value? That value should be established by negotiation. If you can't, we could arbitrate it. But that would then essentially give you a regular income stream for that conventional.

If you want to call it "fee-for-carriage", call it that. I don't think fee-for-carriage is suggesting one number across the board, regarding what signal and where, etc. As I say, CTV wanted 50%. I think the more logical thing is to value it for what it is worth and then get compensated for it.

**Mr. Charlie Angus:** Okay, so we're not exactly hammering a dead horse; we're just transforming it into maybe a camel or something else, but it's still going to run at the end of the day. Is that...?

**Mr. Konrad W. von Finckenstein:** I think they're trying to create a nice working horse, rather than a dead one.

**Mr. Charlie Angus:** Okay, because you do know that a camel was a racehorse that was made by a committee.

I'm looking at this model of compensation for value, and I think the question we still have is how it is going to ensure protection for consumers and how it is going to ensure protection for local markets.

Cartt.ca had an article on May 21, where the cable giants in the U.S. are now saying they're being forced to pay up increases of 271% to 300% and they're going to put that onto the cable bills. If you negotiate a value for compensation that's fair, that gives another revenue stream, will you have the tools in your tool box to ensure that the cable viewers aren't unfairly gouged at the end of the day, and that once these prices or agreements are in place either side can't arbitrarily change them? What tools do you have to ensure that there will be peace in our time on the television front?

● (1600)

**Mr. Konrad W. von Finckenstein:** I don't know whether "peace in our time" is the right expression. I would certainly hope we will have a much more equitable and a better working system than we have right now.

In terms of passing on costs to the consumer, as long as you don't regulate cable rates, that's always an option. Whether they do it, of course, is a commercial decision, because they will have to make the decision as to whether consumers will put up with it or whether they're going to vote by either reducing their package or by going off cable altogether. There isn't an infinite capacity of BDUs to put costs on the consumer. That again depends on—

**Mr. Charlie Angus:** But you have the capacity within the act to deal with that if they decide to pass that on.

**Mr. Konrad W. von Finckenstein:** What do you want, Mr. Angus? Do you want a free, open market system, which you basically have, with regulation—

**Mr. Charlie Angus:** No, I want the public interest protected. That's your job. The market handles itself.

**Mr. Konrad W. von Finckenstein:** No, that's margins. That's what we have, or you can regulate the whole system.

Don't forget, this is not a self-contained system. There are alternative means of getting television signals and viewing, etc. So you have to be careful how far you regulate so that you don't force people out of the system. It's the same thing that BDUs have to be very careful of, how much they charge, otherwise people will abandon the BDU system altogether, or the television system, and try to get their signals over the Internet.

I think it was more self-regulating.

**The Chair:** Mr. Angus, just a very brief question.

**Mr. Charlie Angus:** The problem is that if we don't have monetary penalties, how do we know that the BDUs are going to live up to their public obligations, or the broadcasters, if they're in breach of their licence? It seems that if you just say it's a market model, then why do we have the CRTC?

Your job is to protect the public interest and to make sure of that balance, and if you don't have the ability to hold them to account, nobody is going to play ball.

**Mr. Konrad W. von Finckenstein:** If you want to amend the act and give us the ability to—

**Mr. Charlie Angus:** Would you like that?

**Mr. Konrad W. von Finckenstein:** I have said that many times. I think it's one of the major shortcomings of the act, that it's basically all or nothing.

We can deal with the licence. You get a licence or you don't get a licence, and no—

**Mr. Charlie Angus:** So if you had the tools, it would make your job easier.

**Mr. Konrad W. von Finckenstein:** Yes, it would make it easier.

**The Chair:** Mr. Del Mastro.

**Mr. Dean Del Mastro (Peterborough, CPC):** Thank you very much, Mr. Chair.

Thank you, Chairman von Finckenstein, and your colleagues for appearing here with us today.

My observations through these hearings have brought me to the point where I think all members of the committee care about essentially three broad themes: Canadian content, as I've heard all members of this committee saying they want to make sure there's Canadian content on Canadian airwaves, including Canadian drama; local stations and news, because people care about their local stations and about their local news; and they care about the CBC. I would say, broadly, all committee members have articulated that.

I have a couple of concerns. First of all, I want to go back to your fourth point, in regard to structural reform. In paragraph 4(a) you talked about investigating alternative support mechanisms for local programming. You've created the local program improvement fund. By that, are you looking at expanding the local program improvement fund? Based on some of the hearings we've had, I

think there would be support of the committee to make a recommendation around an expansion of the LPIF, broadly. I don't think we've determined what that should be. Is that what you're referring to?

Secondly, I'd like to get something else on the record. Will you be considering this committee's report in your deliberations in July?

**Mr. Konrad W. von Finckenstein:** On the first point, we established the LPIF at 1%. As part of the hearings we just finished, we have asked people whether that's sufficient, and we also wanted to know on what basis you should distribute. I mean, the distribution formula can depend on viewers, can depend on markets, can be tied to what they spent in previous years, etc. We asked for input on all of those, and we'll make a decision on that.

Secondly, in terms of your public hearings, I find them very useful, because they have echoed by and large what I've heard from people. It was interesting to see that people do not take a different stand when they're here from what they do when they appear before us.

• (1605)

**Mr. Dean Del Mastro:** So if we're making specific recommendations, you'll consider them?

**Mr. Konrad W. von Finckenstein:** Whatever you take, it will be on the public record and will be one of those things we can take into account.

**Mr. Dean Del Mastro:** Okay, thank you.

On part (b), "protecting the integrity of Canadian broadcaster signals", I assume by that you mean distant signals or time-shifting. Why don't we just put an end to it? The cable broadcasters are telling me they're paying 50 cents per subscriber per month for distant signals. It doesn't have any more value than that. There's been a longstanding negotiation that's supposed to have taken place that is not moving forward. They're not going to come to an agreement on it. I think we have to be realistic about the fact that we've got two sides that are dug in. They don't agree.

I think we should put an end to distant signals, to protect local markets. I can tell you that a colleague of mine, the MP for Edmonton—Leduc, had a conversation with a CTV station manager just this past weekend. They told him distant signal has taken away 40% of their revenues. That's hurting a local television station, because it can't sell ads. Why don't we just put an end to distant signals?

**Mr. Konrad W. von Finckenstein:** For the simple reason that Canadians want it.

Distant signal came onto the scene, first of all, when you had satellite television. Suddenly you can watch the same program at 6 p.m., 7 p.m., or 8 p.m., etc, by just going to a different region. It's a wonderful convenience for people who are delayed by traffic, by the babysitting, or whatever, to catch the news or their favourite program.

**Mr. Dean Del Mastro:** But in an age of PVRs and so forth, Mr. Chairman, I'd suggest to you we don't need it; it's destroying local television, and we should put an end to it. Canadians might like it, might find it convenient, but if it's really hurting the system—a system that Canadians ultimately want to see succeed—then we should put an end to it.

**Mr. Konrad W. von Finckenstein:** It so happens that once satellite offered it, the cable companies turned around and all offered it, because they realized that if they didn't offer it, they were going to lose customers. So there's clearly great demand.

I don't feel it's our role to tell Canadians what they can or can't have. Let the market decide. What we're trying to do is make sure, to the extent there is value in it, that value is being given to the broadcasters. But protecting the integrity of Canadian broadcaster signals also has another aspect to it, which is lots of programming, which you see in conventional TV and you can also see on American TV, on ABC, or—

**Mr. Dean Del Mastro:** I'm not going to belabour this, but I am going to seek a recommendation of this committee that we put an end to distant signal because it's hurting local television stations. In fact, an awful lot of stations are just going to become retransmission centres for large networks, and they're not going to reflect local communities at all if we don't address this issue.

Now, in part (c) you talk about “exploring mechanisms for establishing through negotiation...” . I'm going to ask you a two-part question. We had a release from the cable companies on Friday that they sent you a letter complaining about the conduct of a broadcaster with respect to their advocacy for fee-for-carriage. Is that a legitimate complaint or is it not?

Secondly, why do you think this would work at all? Why do you think they'd be able to come to a negotiated settlement? I think it's just fee-for-carriage under another name. I think we've got a system. We established a local program improvement fund. You're looking at increasing that, and now you're looking at putting a fee for carriage in place, or a fee, and this is all going to be passed on. Mr. Angus talked about Canadians. I'm concerned about Canadians and I'm concerned about the amount their bills are going to go up—because they are going to go up. You certainly can't say you're going to provide money on this side and cap it on the other side. That's certainly not a free-market way of doing things.

Why do you think this would work? And was that a legitimate concern that was written to you on Friday?

**Mr. Konrad W. von Finckenstein:** Those are two totally unrelated questions. On the first one, are you talking about the Rogers complaint about CTV? That is a question of the code of ethics and whether that's being complied with by CTV or whether it has broken the rule and is in effect confusing its role as newsmakers and reporters of news. That is an issue of the code of ethics.

We have a system by which we ask the CBSC, Canadian Broadcast Standards Council, to rule on it. If the ruling is made and somebody doesn't like it, they can appeal to us. I spoke to the chairman of the council. They actually had some other personal complaints on it. They're going to look into it and they're going to deal with it as quickly as possible.

As far as your question about 4(c) is concerned, I think it is for the participants in the market to establish the rules of how much that signal is worth. Clearly it has a value; otherwise it wouldn't be distributed. What is the value? Rather than our imposing it and in effect it becomes an operating subsidy, I think the participants in the market should negotiate it. We will make sure they do negotiate it; otherwise, we won't let them distribute the signals. But they should do it.

If they cannot come to an end, then one way to do it would be perhaps to adopt something like the best ball rule. You both give me your best offer and I'll pick one of the two. It therefore puts both of them under a real obligation to come up with a realistic number.

•(1610)

**The Chair:** Thank you. We have to move on.

Mr. Simms, please.

**Mr. Scott Simms (Bonavista—Gander—Grand Falls—Windsor, Lib.):** Thank you, Chair.

I'd like to also thank the chairman for joining us once again.

Just so that I get the story straight, you fully subscribe to the fact that you are going to leave the players among themselves to decide how they are going to handle a fee for carriage—or as one of the witnesses called it, a fee for programming. Is that correct?

**Mr. Konrad W. von Finckenstein:** I wish you wouldn't use the expression “fee-for-carriage” when you're talking about the value of the signal being distributed.

**Mr. Scott Simms:** How about fee-for-programming?

**Mr. Konrad W. von Finckenstein:** Let's find what it is. You are the cable company and you're distributing my signal. What is the value of that signal? What are you going to pay me for it? That's what we're talking about. So it's the value for the program, and it's for the signal being distributed.

**Mr. Scott Simms:** All right, and Jim Shaw calls it a tax for TV. That's fine. We can all play that game all we want.

**Mr. Konrad W. von Finckenstein:** No, I'm not playing a game. I'm just trying to say what we're getting at.

**Mr. Scott Simms:** No, but here's the thing. You want to create a revenue stream by which these people can survive. I'm assuming that's what you'd like to do. But at the same time, as a committee, we're asking you to look at the value of Canadian content and the value of local programming.

So now if you are telling us that you don't like the fact that you're seeing increased spending on Hollywood programming, and you're seeing other things in there that you don't like and you'd like to see them reach a certain minimum of local programming, how are you going to make sure they do this? What are the sanctions by which you can conduct yourself? Sometimes I'm not sure if you can or are willing to do so.

**Mr. Konrad W. von Finckenstein:** Well, there are about five different questions, and you'll have to let me disentangle them.

What is our capacity? We can set a condition of the current licence. We can set time limits. We can say “I won't give you a licence unless you have an agreement, etc.” So I can make sure they do make an agreement and it gets implemented.

We have the capacity to review people if they violate the agreement. If we find there is a violation of the condition of licence, we can declare it and we can then take it to court because there's a violation of the licence.

So we do have some tools. They are very extreme tools, but we do have some tools.

**Mr. Scott Simms:** Okay, they're extreme tools. There are times... I'll give you an example. I look at some of these specialty channels: in the beginning they start out being something that resembles one thing, and two years later they resemble something completely and utterly different. So I'm not sure what kind of teeth you have to do this.

I'm concerned about the spending on Hollywood programming, like everybody else.

**Mr. Konrad W. von Finckenstein:** You say that, but unfortunately you're not borne out by the facts.

If they're outside their conditions of licence, we will call people to account. We've done it. We just did it to the CBC, for instance, with their Bold channel, which was supposed to reflect true reality. It didn't. We told them it didn't, and they came back and said they were applying for a new one because they agreed. They didn't contest our finding that they were outside their agreement.

So to say that we don't have teeth and we don't enforce—I just don't accept it.

**Mr. Scott Simms:** Would you like to see more authority to sanction?

**Mr. Konrad W. von Finckenstein:** As I mentioned in regard to the previous question, I always thought it would be much more sensible if we had the capacity to administer a monetary penalty so that we would have some intermediate way of enforcing things.

**Mr. Scott Simms:** That concern was brought up by several witnesses, and I think that's a valid point.

Let me turn to the local programming improvement fund that you talked about. On the pool by which that's created for programmers to take advantage of, does that include the public broadcaster, CBC?

**Mr. Konrad W. von Finckenstein:** Yes.

**Mr. Scott Simms:** Okay.

I'm just going to change channels again here now. Do you look at some of the rules and regulations? Some of the witnesses were very concerned and are concerned still about the ruling that came down from you guys in 1999 about drama funding and how the fact that you relaxed the rules doesn't allow extra spending for independent producers and the like. Do you defend that today?

• (1615)

**Mr. Konrad W. von Finckenstein:** I wasn't there in 1999, so I have nothing to defend. What I pointed out in point 6 on the paper before you is that this is an issue that needs to be addressed if the artistic community really feels that this is out of whack. I've said that

it remains to be determined whether this would be achieved by way of ratio, minimum expenditure requirements, or, for instance, by what a lot of the unions say, which is that it should be 7% of revenues earned the previous year. So if your revenues go down, you spend less; if your revenues go up, you spend more.

Now, I don't know where they got 7% from, but you can see how the system would work. Basically, the Broadcasting Act says we should have a system that's predominantly Canadian. The only way to be predominantly Canadian is that more than 50% of the time is Canadian programming. How do we have that Canadian programming? It has to be financed. If you spend all your money in Hollywood, you don't have the ability to do it here. Therefore, they suggested that. I don't know the right answer, but I have put it down on paper, saying that this is one of the issues we have to put to bed.

**Mr. Scott Simms:** Yes, but I think what they were saying is that you're not doing any favours for Canadian content. You talk about creating local and national programming or programming of interest to the nation, and I think what they're arguing—

**Mr. Konrad W. von Finckenstein:** [*Inaudible—Editor*]

**Mr. Scott Simms:** Would you consider changing these?

**The Chair:** Make it very short, please.

**Mr. Konrad W. von Finckenstein:** Believe you me, if we put in that 7% of revenue has to be spent on Canadian programming, they'd love it. Personally, they have said to please do it. So if you were to say that it doesn't do anything for Canadian programming... It would do a phenomenal amount for Canadian programming. Whether it's doable is a different issue, but that's what the artistic community is asking for.

**Mr. Scott Simms:** Okay.

Do I have much time left?

**The Chair:** No. We have to move on.

Mr. Pomerleau, please.

[*Translation*]

**Mr. Roger Pomerleau (Drummond, BQ):** Thank you very much.

Thank you, Mr. von Finckenstein, for appearing before the committee, along with your colleagues.

My question is along the same lines as the question that was just asked. I am very pleased with the seven points that you mentioned. These points are at the very heart of your structural reform, the reform that you claim you must carry out. Indeed, I think that the entire field needs to be put on a more rigorous footing. I do not think that you should overdo it and be too rigorous, but after hearing everything that I have heard, I have the impression that there needs to be a few more “teeth” than what we have seen so far — to use my colleague's expression.

He alluded to the many people who appeared before us and told us that if the CRTC had done its job properly when it came to local production, we would not find ourselves grappling with these problems. Why are these people, most of whom are producers, saying such things?

**Mr. Konrad W. von Finckenstein:** Mr. Arpin will answer your question.

**Mr. Michel Arpin:** Well, to answer your question, I will repeat...

We talked about what happened in 1999, but in 1998, the commission held a hearing on some structural aspect—and I too was not part of the commission at the time. Producers lobbied the commission to promote drama series. The commission then created priority hours and decided that eight hours per week would be considered “priority”.

In 1998 and 1999, the commission's rationale was the following: investing in dramatic programming and documentaries would be very profitable and would likely yield a greater return than previously.

Ten years later, we realize this did not exactly come to pass. It was not a failure from day one; things were stable for some time. In fact, recently we have noticed a marked increase in spending for foreign shows by English-language broadcasters.

So now producers are challenging the priority-based system. This upcoming summer and fall, we are going to try and see if we should not... Indeed, television broadcasters and producers are telling us to return to the investment-based system, to spending on Canadian shows based on a percentage of revenue.

**Mr. Roger Pomerleau:** And you believe that this is possible?

**Mr. Michel Arpin:** It has already been done. It's a matter of returning...

**Mr. Roger Pomerleau:** It must not have been too good...

**Mr. Michel Arpin:** Pardon me?

**Mr. Roger Pomerleau:** It must not have been too good if they decided to change it.

**Mr. Michel Arpin:** That's right, but 10 years later, they are saying that the system they promoted did not produce the expected results. Because of that, producers would like to revert to the system from 10 years ago.

• (1620)

**Mr. Roger Pomerleau:** With respect to the digital transition, many of the witnesses who appeared before us said that it was all well and good to want to convert to digital. But they added that they did not think, because of financial difficulties and timelines, that it could be achieved in such a short lapse of time.

What do you think? What will happen if you are unable to complete the digital transition?

**Mr. Konrad W. von Finckenstein:** We will succeed. As I stated, our answer is a hybrid solution. We will find a solution, and not only in major centres. We will purchase broadcasting rights. The only thing required is equipment to capture digital signals, otherwise one would need a set-up box costing \$50 or so, or something similar. People living in big cities probably already have access to satellites, and satellite companies are willing to do something like that. Freesat is such a company; you do not need a subscription, but the initial cost is about \$500, for the set-up box, the antenna, and installation.

Obviously, we must find a way to finalize costs, and identify a source to pay for the initial cost—not all of it, etc. We are working

hard on this... Lastly, if it seems that a government subsidy is required... it is too soon to talk about mechanisms because we have not yet clearly identified the costs and mechanisms in detail. This is on the agenda at our next hearing in October.

**Mr. Roger Pomerleau:** All right.

[English]

**The Chair:** Your time is up.

We'll now move to Mr. Del Mastro. Ms. Glover is sharing the time.

**Mr. Dean Del Mastro:** Thank you very much, Mr. Chair.

I want to come back to your point 4(c). You're going to ask them to explore “mechanisms for establishing, through negotiation, the fair market value”. Suppose they can't agree, and you come in and say, “Here's what it's worth”. I understand that somebody in Toronto might pay more than somebody in Montreal, which I think is ridiculous. But if you establish a fee and the cable company doesn't want to pay the fee, are you going to force them to carry the station?

**Mr. Konrad W. von Finckenstein:** That's one of the issues we're going to explore. I didn't say we're going to impose it; I said we're going to find the mechanism. As you know, right now every single over-the-air station has to be a carrier—that's mandatory under the BDUs—but they don't pay for it. We don't understand why they're not paying for it, because there's a value for their listeners.

I don't know where your riding is.

**Mr. Dean Del Mastro:** I live in Peterborough—“Electric City”.

**Mr. Konrad W. von Finckenstein:** You have a cable company and it offers you both the local Peterborough signal and specialty channels. How would you feel if tomorrow the cable company said sorry, we couldn't make a deal with the local conventional station, so you're no longer getting it; you'll only get the specialty channels? That's just not on.

**Mr. Dean Del Mastro:** My local conventional station came here and said they weren't looking for fee-for-carriage; they'd prefer enhancements to the LPIF. That's specifically what they testified at this committee.

**Mr. Konrad W. von Finckenstein:** I said we're going to explore this. I didn't say what we're going to come up with. As a point of illustration, I tried to explain to you how these things would work.

**Mr. Dean Del Mastro:** I'm very concerned, especially when you say it might be different in different parts of the country in different stagings. It sounds like if somebody cuts a better deal than somebody else, Canadians in some areas could ultimately be on the hook for more money than Canadians in other areas. I'm concerned about the model you've set in place. We will be making specific recommendations as a committee around this, and I hope you'll consider them.

I'm going to pass the rest of my time to Ms. Glover.

**Mr. Konrad W. von Finckenstein:** Let me explain to you why there are different values. In Toronto you have about ten local signals, and in Peterborough you probably have two. If you take the fee-for-carriage as more or less proposed, that means those in Peterborough would pay one dollar, while the people in Toronto would pay five dollars if they had ten stations. You can't watch programming from all those signals at the same time, so there is a value to it, but what the value is I don't know. That's why we're talking about it that way rather than as a straightforward one-for-one per signal and a certain amount, because it can get to very unjust amounts.

•(1625)

**Mr. Dean Del Mastro:** Okay.

Shelly, go ahead.

**Mrs. Shelly Glover (Saint Boniface, CPC):** I'm going to run out of time very quickly.

Welcome back.

**Mr. Konrad W. von Finckenstein:** Thank you.

**Mrs. Shelly Glover:** To follow up on what Mr. Simms had to say, you said emphatically that you have teeth. You presented us with an example—CBC Bold, I think you said.

What are the consequences, the specific consequences, that we would we look toward if you were to use your teeth repeatedly to make sure that we kept these people in line?

**Mr. Konrad W. von Finckenstein:** You suggest, or it's implied in your question, that there's massive misbehaviour and violation of our rules. That's just not the case. Very rarely do we have cases where people stray outside their—

**Mrs. Shelly Glover:** No, no; what were the consequences for that?

**Mr. Konrad W. von Finckenstein:** Well, as I said, we examine it, we come to a conclusion, we send the conclusion to the broadcaster, and we say, "Look, it seems to us you're not within your mandate. Your mandate is X, and you're way over here. Reform yourself."

If they didn't do that, then we would issue them a mandatory order. If they didn't obey the mandatory order, we'd go to court, file an order, and start contempt proceedings.

That's the mechanism.

**Mrs. Shelly Glover:** I just want to be very clear on this: the teeth you're talking about is simply repeating "Do as you're told".

**Mr. Konrad W. von Finckenstein:** No, the teeth is investigating: if there's a complaint, fix it; if you don't fix the complaint, I'll give you an order; and if you disobey the order, I'll take you to court. The court then will deal with contempt of court.

**Mrs. Shelly Glover:** What is the consequence—

**Mr. Konrad W. von Finckenstein:** Of contempt of court?

**Mrs. Shelly Glover:** Are there fines? Are there...?

I want to get to the crux of this.

**Mr. Konrad W. von Finckenstein:** The court can do what it wants. It does what is appropriate. It can fine people. It can imprison people. It can take their licence away—whatever.

**Mrs. Shelly Glover:** In that one case, sir, what was the consequence? That's what I'm just trying to get at. You say you have teeth; prove it.

**Mr. Konrad W. von Finckenstein:** We told the CBC that they were in violation. They argued with us, and we made the finding that, yes, they were in violation. They didn't dispute that. They said, "Let us change. We'll come back to you and ask for a different licence, because we're clearly not living up to what you'd stipulated." In legal terms, it's *nolo contendere*—essentially, I don't contend your allegations, I don't dispute your finding.

Effectively, they reformed their conduct. They are going to do something else now.

**The Chair:** Thank you very much.

We'll move back to Mr. Rodriguez, please.

[Translation]

**Mr. Pablo Rodriguez:** Thank you, Mr. Chair.

As regards your suggestion about negotiations, can you take this initiative on your own, or does the legislation need to be amended? To what extent is it feasible to proceed quickly?

**Mr. Konrad W. von Finckenstein:** Once we have made the decision, we may have to make a few changes to the regulations, but we could implement them before the beginning of the new licence in April 2010. This could be done sooner, depending on the changes we make. We have to decide whether we are changing just the policy or whether we have to change the regulations. We are able to change the regulations ourselves, but it does take a little longer.

**Mr. Pablo Rodriguez:** There is consensus on two things, or perhaps on several, but there is definitely consensus on two things—namely that there's a structural problem and that action must be taken quickly. Can you not speed up the process?

**Mr. Scott Hutton (Executive Director, Broadcasting, Canadian Radio-television and Telecommunications Commission):** Because we are a commission, we face some constraints, and we are required to consult the public and act in accordance with natural justice.

However, we have completely changed our game plan. Last April, we were supposed to be issuing licences for seven years. We changed that, and issued licences for one year. We included provisions regarding policy, and we asked questions about the value of the signal and about obligations. We put out a decision just two weeks ago after the hearing was over to provide some clarification and to announce another process scheduled for late September or early October of this year.

We are also trying to issue a decision before the end of the year so that these issues will be settled when we hold full hearings for a new seven-year term—as we did last April.

**Mr. Pablo Rodriguez:** I see.

There has been a great deal of talk about the fee-for-carriage system. I know you do not like talking about this much. I actually have the impression that you become impatient when the issue is raised.

Are there any conditions under which you would agree to adopting this system?

• (1630)

**Mr. Konrad W. von Finckenstein:** I could never give you a categorical answer to a hypothetical question.

**Mr. Pablo Rodriguez:** You sound like a politician.

**Mr. Konrad W. von Finckenstein:** I cannot answer your question. Because of the way you ask it, it is completely hypothetical.

Of course, the objective remains the same. We are trying to ensure that the revenues of conventional broadcasters can be foreseen. We are taking into account all sources of possible revenue, including market-associated advertising...

**Mr. Pablo Rodriguez:** The question is hypothetical, but there may be conditions under which you would agree to this.

I would like to come back to your suggestion regarding negotiation. If a value is assigned to the transmission of signals, that is to the content, the cable companies will negotiate a royalty with the broadcasters. The cable companies will react by saying that they will increase the fees consumers have to pay. That is what they always say. Do you agree with that?

**Mr. Konrad W. von Finckenstein:** But all companies do that. If we make changes, someone is going to have to pay for them. When people can pass on the cost to the final client, that is what they do.

**Mr. Pablo Rodriguez:** So, that is what they're going to say.

Imagine that I am the consumer and my monthly bill goes up because the cable company has decided to pass these costs on to me. Under your proposal, would I be able to opt out? Would I be able to say I did not want a particular channel, such as CTV or Global? Could consumers get fewer channels without paying more?

**Mr. Scott Hutton:** We have not yet worked out this level of detail regarding this proposal. That is why the issue must be discussed during a hearing process. Some of the companies raised it. We should distinguish between the fee-for-carriage system and an attribution of value. If we were to charge all the channels 50 cents, there will be an impact on consumers.

Even if we change the regulations to limit the increases imposed on the cable companies, whether they are five, six or seven dollars a month, they will not be able to find these amounts in their pockets.

In order to determine the value, cable companies will base the calculation on what they and the market, that is the consumer, are prepared to pay. This approach would show more respect for consumers than would a decision by the commission on the matter.

[English]

**The Chair:** Our next questioner is Mr. Bruinooge.

**Mr. Rod Bruinooge (Winnipeg South, CPC):** Thank you, Mr. Chair.

Thanks to the witnesses.

Of course, we're continuing our very important study on the effect of the television industry in Canada on local communities and, of course, on local television. This is a very important issue in my hometown of Winnipeg. I was at an event on the weekend where 1,000 people came out in support of local TV. Clearly, Canadians value local television.

I know there's been a lot of discussion today about various elements of the job that you do and that the CRTC does. Without coming out in terms of my personal support for any particular element of the fee-for-carriage discussion, my interest with my questions is more so in your appearance here today in the sense that we didn't necessarily account for having you return to the study, because you were here once already.

My biggest interest is in regard to the fact that our committee actually voted to request that you come back to clarify some of the statements you made at a previous committee meeting. I know that Mr. Rodriguez made reference to some of it, but I just want to give you the opportunity to speak to it again, because essentially that was the purpose of you coming to our committee meeting today.

Looking at the reasoning for you to come here today, it was mostly in relation to the broadcasters making suggestions, and in fact, they did say that they were going to apply fee-for-carriage to local broadcasts, to local television. As you indicated in the previous meeting, of course, you said that there was a resounding "no" to that at one of your encounters with them. So I guess my question to you would be, do you believe that the broadcasters were misrepresenting you and misinforming the committee? Also, because we brought you back to clarify, should there be some sort of request to them for further clarification?

• (1635)

**Mr. Konrad W. von Finckenstein:** First of all, thank you very much for asking me to come back. You will appreciate that when I was before you the first time, it was prior to our hearings, and now it's subsequent to our hearings. So we've had a lot more submissions on all these various points, I think, which is helpful. And I've been following very closely the witnesses before you to see what they say.

In terms of the particular issue of what happened at the BDU hearing, they asked for a fee for carriage, and I basically asked what I would get in return, quid pro quo—spell it out for me. They didn't spell it out. I read you their testimony. They didn't say no. They said that it will be reflected. They talked about sustainability. They talked about coming back further on. So I then used this figure of speech and said "a resounding no", which I regret very much, because it obviously was misleading. It sounded as if I was accusing them. All I was trying to say was that I didn't get a sound commitment.

We have since gone over the testimony again from our own hearings, and you've heard from the witnesses. It is clear that we didn't have a meeting of the minds. It was unsatisfactory. They indicated that they were willing to come along if we made a decision on fee-for-carriage. I thought that the whole issue was no fee-for-carriage unless you come back with a sound, specific commitment, which they didn't.

I think the best thing is to forget about that issue. Really, both sides have.... Mr. Fecan at one point in time said in our hearing I guess I wasn't too clear, and I probably didn't follow it up sufficiently. The fact is that at the hearing, when we decided not to do fee-for-carriage, essentially, the situation wasn't as bad as it is right now. We didn't see what the value added would be that we would get. And it was done just after they had done major acquisitions and so on, and we felt that they hadn't established sufficiently their need.

This is very much a moving target. Things have completely changed. Remember, this was in October 2008. Clearly, something needs to be done. I have said that publicly many times. We all agree. You have held these hearings. The question is what we do. Having just had this hearing in April, when the first week was only on policy, we have come basically to set up a new master plan. We're going to deal with it in October, and I have outlined today and shared with you, and everybody who's listening to this hearing, for the first time, the seven points we think will be at the heart of the hearings in September.

**Mr. Rod Bruinooge:** Mr. von Finckenstein, I have just one last, very short question.

I know that you indicated that you wish we could forget about it, but this is a very important hearing on the future of local television. It's important for us as a committee to ensure that the testimony we receive is the correct testimony. So I just want to clarify one last point.

In your most recent answer to my question, you indicated that you thought that the particular answer, "a resounding no", was misleading. Could you expand on that?

**Mr. Konrad W. von Finckenstein:** If you take it literally, I said that the resounding silence meant that I didn't get an answer. Obviously, I got an answer. I read it out to you earlier today. The answer to my question was the equivalent of a resounding silence, because it didn't answer what I asked, which was to put some flesh on the bones. What does it mean? If you get a fee for carriage, what am I going to get from you? And I didn't get anything substantive that way.

I've learned. I will not continue to use figures of speech like this. I will be more serious. This is not my first time in Parliament. It's about the hundredth time I have had to testify before a parliamentary committee. I know that with Parliament you don't mislead it. You give the information as precisely and as concisely as you can. As I say, it was a figure of speech. It never occurred to me that when I said there was a resounding silence that somebody would read that to mean that there was no answer. Yes, there was an answer. I read the answer out to you. It wasn't a response to the question I posed.

**Mr. Rod Bruinooge:** Thank you.

**The Chair:** Mr. Angus.

**Mr. Charlie Angus:** Thank you very much, Mr. Chair.

I'm fascinated by this compensation-for-value model that's being discussed, because we didn't really see this the last time, and I think we're all trying to get our heads around it.

The idea that instead of the CRTC, the big players will negotiate among themselves.... These are companies that are taking out

newspaper ads against each other. They're coming before our committee. They're saying no, their map is upside down and has to be read this way. I haven't seen this kind of corporate hostility ever.

I don't know if there's a solution to the future of over-the-air television, but I'd suggest that CTV should get a reality TV show. We could put Phil Lind in a room with Jim Shaw and the Aspers, and we could watch them negotiate.

Is it a viable solution, given the hostility on this issue, to just say that you guys should come up with a deal? Who's going to protect the local operations? Who's going to say that there's Canadian content? That's your job. How can you suggest, given the level of hostility we're seeing, that they're actually going to be able to come back with a plan that protects the overall health of the Canadian television industry?

● (1640)

**Mr. Konrad W. von Finckenstein:** Don't mistake the noise for the substance. These people are in show business. This is television. They are making a very good show. I wish we had an educated debate, because these are very big issues. Instead you are having issues such as this. There's a very heated debate. We're seeing full-scale ads. We have accusations from one of their people who allegedly mistakes news-making and news reporting. We have cable community channels having debates on this all over the place.

Regard that as background noise. They need each other. Broadcasters need the BDUs; BDUs need the broadcasters. If the signal is not distributed by the BDU, you as the broadcaster are going to be dead on arrival. On the other hand, if you're a BDU and you don't have content to distribute, people won't buy your services. They need each other; they know that full well. They'll come to agreement. They do it all day long. Think of CTV or the whole stable of specialty channels. For each one of those they negotiate the fee with the BDUs. Why can't they do it for the conventional channels? They know each other; they know the business; they know each other's margins; they know the other's area of manoeuvrability.

If we set a timeline and say that's a precondition for being able to get a licence or being able to distribute the signal, they'll come to it.

**Mr. Charlie Angus:** I certainly don't doubt that at the end of the day they're probably a lot closer than we are in our various political parties. There's a lot of cash there, and they have to work with each other. The question is, who is there to protect the public interest? Nobody is going to feel sorry for the fact that these companies have over-leveraged themselves, that they've spent a whack of money on American programming, and the advertising has gone south. But people feel strongly about local television, and we don't see any commitment that local is going to be not just protected, but enhanced. We don't see commitments that Canadian content is going to be strengthened. That is the role of the CRTC.

So if we're going to go to this model of negotiation between the big boys in a room someplace, who is going to be there to protect the cable consumer, and who's going to be there to say "You have obligations for local content, for local news, and for Canadian content"? I don't see that happening under this system.

**Mr. Konrad W. von Finckenstein:** Did you read the last sentence in point five? That is, in exchange for harmonization obligations and negotiated funding, it will be necessary for broadcasters to provide firm commitments regarding local news, local programming, and programs of national interest. That means we are going to hold their feet to the fire. They're not going to get that stream of income unless they deliver.

**Mr. Charlie Angus:** I hope that's going to be the case, but I'm looking at what's happening in the U.S. with their retransmission battles between the cable giants and the television industry. There was an article just this past week saying that retransmission consent puts them at a competitive disadvantage—that's in the Multichannel News. It says that the meteoric rise in retransmission costs leaves small operations at a competitive disadvantage. The smaller players can't compete when these fees are being negotiated by the giant BDUs and the giant broadcasters. It's all well and good to say come back with a plan, but there are some very small players in this market that have to have their place as well. I don't see the backroom negotiations between the big players being able to ensure the small broadcasters and the small players are given a fair seat at the table.

**Mr. Konrad W. von Finckenstein:** I'll make two points. First of all, the U.S. system is totally different from ours. It works on a different principle. So I think trying to make an analogy between one and the other....

Secondly, they have very large networks that cover most of the country. We have small broadcasters, but we also put specifically in our last BDU decision, which was last year, an expedited arbitration mechanism to resolve disputes between BDUs and small broadcasters. We have just issued several decisions under it, because we realize, given the difference in economic might, etc., that if we are not there to protect them, the cable companies could abuse their power. The mere fact that we are there, that we have that mechanism and people have availed themselves, etc., works very much as a restraining influence. If necessary, we'll invoke it.

• (1645)

**The Chair:** Thank you very much.

We have two more questions, one from Mr. Simms, and then Mr. Del Mastro.

Mr. Simms, please.

**Mr. Scott Simms:** In this particular situation, if you tried to extract the answers that you wanted from the particular broadcasters over certain responsibilities that they may have under fee-for-carriage, how are you going to do that if you ask them to negotiate among themselves? It seems to me that you've created a model by which you cannot demand that. And correct me if I'm wrong, but you are relying on the local programming improvement fund to create certain measures by which people have to conduct themselves. With these big players, as my colleague pointed out, you have to put up these bars that they have to cross. That's one part of it. You're relying heavily on that.

The second part is this. Let's say I'm one of those big players and I fall under that barrier that you've set. What are you going to do about it?

**Mr. Konrad W. von Finckenstein:** I'm sorry, I'm not sure that I'm following you. What barrier are you talking about?

**Mr. Scott Simms:** If you're going to set regulations by which people have to adhere to local programming rules—the standards that you set here under the LPIF, the local programming improvement fund—I just don't see where you have the clout or the mechanism by which you can ask these people to adhere to these principles.

**Mr. Konrad W. von Finckenstein:** You're starting at the wrong end. If you come and want a licence and we say that you can have it, we want you to provide—for argument's sake—as part of your licence ten hours of local news programming per week. You have access to the LPIF, so you know that you have that money and also access to advertising. You have the means.

I want to see ten hours of programming, and we may specify whether that's original programming or whether you can use the pre-program set-up. So you are under that obligation to do that. If you then don't live up to it and I get a complaint, we will investigate it. If we find that you're offside, we'll ask you to get onside. If you don't, then we can make an order saying that you have to do it. If you don't do it, we can take you to court, as I expected to do—

**Mr. Scott Simms:** But sir, this happens all the time. Channels break the rules all the time. It seems to me that you're only dealing in absoolution. I don't mean to be too hasty about this, because I think you should have a mechanism, like financial sanctions, that you could use.

I just don't see how you can say to them that you will yank their licence. I think they're looking at you and saying, "So what." Give me an example where you've done it before.

I'm sorry, I don't mean to be—

**Mr. Konrad W. von Finckenstein:** Listen, I don't dispute your view and others' views that it would be nice to have fining powers. We don't have it. But I very much dispute that channels do this all the time. We are the regulators. They need our cooperation and our consent on a host of issues. We do not have wholesale violation of terms of licence. Do we have the occasional one? Of course we do, and we may not deal with it as adequately and effectively as you would like us to. But I don't know where you get the idea that broadcasters are in constant violation of the terms of licence. On the contrary, they respect them. We have, on the whole, a very obedient system where people realize that violating the rules and picking fights with the regulator doesn't do you any good.

**Mr. Scott Simms:** I'm not speaking about broadcasters. I can pick on the BDUs too about this.

**Mr. Konrad W. von Finckenstein:** It's the same. It doesn't make a difference. Talk about either one.

If the bottom of your question is if I would like to have fining powers, the answer is definitely yes.

**Mr. Scott Simms:** So it's yes. If this committee were to recommend, in that particular manner, that there should be something like that in place for all players, would you agree with that?

**Mr. Konrad W. von Finckenstein:** As a matter of fact, if you want to recommend it, you should recommend an amendment to the CRTC act, so that it applies to everything for which we have jurisdiction, whether it's broadcasting or telecom. Now we have very limited powers in telecom for the do-not-call list. That's the only place where we have fining powers.

•(1650)

**Mr. Scott Simms:** One of the things the witnesses said was that over the years, the Standing Committee on Canadian Heritage has come up with great recommendations and great reports, but he insisted that you never enacted any of them. Do you dispute that?

**Mr. Konrad W. von Finckenstein:** I don't know what you're talking about. I mean, I've only been in this job—

**Mr. Scott Simms:** What has the heritage committee done that you—

**Mr. Konrad W. von Finckenstein:** I don't know what former reports you're talking about, what recommendations, and whether they were addressed to the CRTC, whether CRTC could do it, whether it was in their constitutional power, or their set-up, or whether they chose not to do it.

If you give me specifics, I'll gladly give you a view, but I can't do it on an open-ended question like that.

**The Chair:** Time's up.

Mr. Del Mastro, please, for the last question.

**Mr. Dean Del Mastro:** Thank you, Mr. Chair.

Mr. von Finckenstein, part 4(c) tells me something that's a fundamental truth. I think you'd have to acknowledge that what you're doing is setting up a system where some Canadians that receive their signal over the air will pay nothing and they'll continue to receive the signal for nothing, while Canadians who are receiving the signal via a BDU will pay a fee. That's what you're proposing in part 4(c). Do you fundamentally agree that some people get the signal for free and some people, under the model you're proposing, will pay more money?

**Mr. Konrad W. von Finckenstein:** Are you talking about 4(c)? You can always receive the signal for free. You don't have to use your BDU. If that's what you want to do, you're free to do so.

**Mr. Dean Del Mastro:** But you're looking to put in a system by which some people get it for free, and some people have to pay more for it. That's the system you're putting in place right now.

**Mr. Konrad W. von Finckenstein:** If you live in Peterborough, right now you pay the cable company to receive the whole package, which includes the basic, which includes the conventional broadcaster. You receive much better quality—

**Mr. Dean Del Mastro:** But you acknowledge yourself, sir, that through my cable bill I am not paying anything toward the over-the-air broadcasters other than the 5% that they're paying out of their total revenues, plus the 1% local program improvement plan.

I'm just saying you're setting in place a two-tiered system, whereby some people can get it for nothing. Nine percent of the Canadian population will continue to get it for nothing, and 91% will have to dig into their pocket for the CRTC proposed solution.

**Mr. Konrad W. von Finckenstein:** I don't think that's true. I'll have my colleague explain it.

**Mr. Dean Del Mastro:** You don't think it's true.

**Mr. Michel Arpin:** In your cable bill, you pay for your basic service, which is the over-the-air signals plus CPAC.

**Mr. Dean Del Mastro:** Well, I think there are a bunch of things in there. I think there's some U.S. broadcasting—

**Mr. Michel Arpin:** There's the community channel that airs APTN, for which you're paying 25 cents.

**Mr. Dean Del Mastro:** Okay. So, Mr. Arpin, here's the point: you're going to put up the price of basic cable through this. There's no question in my mind that if you increase the local program improvement fund, you're going to put up the price of basic cable. If you get your way on number 4(c), you're going to put up the price of basic cable even more, but if I have a set of rabbit ears, I've never paid for any of it.

**Mr. Michel Arpin:** Well, that's for sure.

**Mr. Dean Del Mastro:** That's for sure. Then we do have two-tiered systems.

**Mr. Michel Arpin:** No.

**Mr. Dean Del Mastro:** Yes.

**Mr. Michel Arpin:** Well, historically, it has always been like that: those who subscribed to cable way back in the early fifties—

**Mr. Dean Del Mastro:** No, you're proposing a radically new model—

**Mr. Michel Arpin:** No, no, not at all.

**Mr. Dean Del Mastro:** —for the television system. Yes, you are.

**Mr. Michel Arpin:** No, no. Listen.

**Mr. Dean Del Mastro:** Number 4(c) is radically different from what exists right now.

**Mr. Konrad W. von Finckenstein:** Right now you are paying for the basic package, which includes, in the largest portion, the over-the-air TV. You're paying for it right now. To say that—

**Mr. Dean Del Mastro:** But it's going to go up in price because you want to give money from the BDUs to the broadcasters. They're going to pass that on to Canadians, including under the digital transition, and Canadians that receive over-the-air are not going to pay anything additional. In fact, Canadians who are receiving over-the-air are not going to pay into the local program improvement fund, and they don't pay in to the 3% that the cable companies are contributing towards the Canada media fund. That is my point. You're creating a two-tiered system.

**Mr. Konrad W. von Finckenstein:** We have that now. You can receive every signal you want in your area by rabbit ears and not pay a penny to a cable company. It's your choice to do that.

**Mr. Dean Del Mastro:** Okay, but 4(c) is going to put the price up for people who subscribe to cable, but people who receive via an antenna aren't going to pay anything more.

**Mr. Konrad W. von Finckenstein:** There may be a rise in cable fees. I don't dispute that. But to suggest it's a totally different system.... You have that system right now. You make the choice: you want to be a cable customer or you want to receive it over the air.

• (1655)

**Mr. Dean Del Mastro:** No, no, you're creating a different model between the BDUs and the broadcasters. That's the point.

I'm going to pass on to Ms. Grewal.

**Mr. Michel Arpin:** But just as a last word on that, the over-the-air operators, as we said earlier, also own specialty services. If the audience is to revert back to the rabbit ears, they're going to be losing over the distribution of their specialty services. So there is an equilibrium somewhere where everybody has to play fair ball: the BDU, because they want to protect their base, and the television operators, who want to make sure that their specialty services keep getting their revenues.

**The Chair:** Mrs. Grewal, be very short, please.

**Mrs. Nina Grewal (Fleetwood—Port Kells, CPC):** If the BDUs are claiming they can't make enough in advertising revenues, why

don't we just open up the market to things like the pharmaceutical industry and allow them to advertise in Canada? We already see this in the advertisements on the U.S. shows, so why not? It will add another \$400 million in additional revenue. So could we just—

**Mr. Konrad W. von Finckenstein:** I stand on record as saying, like you, that I don't understand why we don't. It's not my regulation. It has nothing to do with us. I don't understand why Canadians are exposed to pharmaceutical advertisements from the States but they can't be exposed to pharmaceutical advertisements.... It is not pursuant to any CRTC regulation or anything. It's strictly under the Food and Drugs Act.

**Mrs. Nina Grewal:** So whose responsibility is it?

**Mr. Konrad W. von Finckenstein:** It is the Ministry of Health. You might want to ask them to come here and explain to you what the rationale for their policy is.

**Mrs. Nina Grewal:** Thank you.

**The Chair:** Thank you very much. It's been very informative, and we really appreciate the answers. There have been good questions from the committee.

The meeting is adjourned.

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