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1. *Canada. Dept. of Communications*

2. **GOVERNMENT RESPONSE
TO THE FIFTEENTH REPORT
OF THE STANDING COMMITTEE
ON COMMUNICATIONS AND CULTURE :**



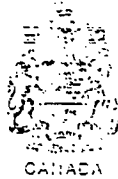
A BROADCASTING POLICY FOR CANADA

**Together with further comments on the recommendations
of the Standing Committee's Fifth and Sixth Reports, pursuant to
the Government Response dated August, 1987**

JUNE, 1988



Minister of Communications



Ministre des Communications

Mr. John Gormley, M.P.
Chairman
Standing Committee on Communications
and Culture
Room 686, Confederation Building
House of Commons
Ottawa, Ontario
K1A 0A6

Dear Mr. *John* Gormley:

In accordance with Standing Order 99(2), I am pleased to forward to you, in your capacity as Chairman of the Standing Committee on Communications and Culture, the Government's response to the Committee's fifteenth report, "A Broadcasting Policy for Canada". In addition, consistent with the intention expressed in the Government's response to the Committee's fifth and sixth reports, additional comments have been provided on the action the Government has decided to take with respect to the matters raised in those reports.

This response reflects and expands on the new broadcasting legislation and the Government's statement of broadcasting policy, both of which will be tabled in the House today. Those documents should also be regarded as part of the Government's response to the Committee's work, since the valuable advice received over the past 18 months has been integral to their development.

In many cases, the Committee's recommendations deal with matters which fall within the mandates of the CBC and the CRTC. Where it was considered appropriate, the views of the Government were expressed. In general, however, the Government expects that those charged with the management and operations of those institutions will carefully consider the Committee's recommendations.

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I would like to express my personal gratitude and that of the Government to the Committee for the diligence and concern which has been the hallmark of your work on this issue.

Yours sincerely,

A handwritten signature in cursive script that reads "Flora MacDonald". The signature is written in dark ink and is positioned above the typed name.

Flora MacDonald

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Recommendations of the Fifteenth Report

PUBLIC RADIO - CBC SERVICES

RECOMMENDATION 1 - CBC Radio Affiliate Replacement Plan

The CBC should complete its program of replacing private affiliated stations with CBC transmitters in order to help extend the full radio service to all Canadians in accordance with the aims of the Broadcasting Act.

RESPONSE

The Government recognizes the importance of CBC radio services. The new mandate given to the CBC in clauses 3.(1)(m) and (n) of the new Bill explicitly includes both radio and television. Moreover, the mandate requires the CBC to make its programming available throughout Canada by the most appropriate and efficient means and as resources become available for the purpose. It is up to CBC management to allocate its budget to the various services within the Corporation. Until it is able to complete its affiliate replacement plan, the Corporation will need a mix of CBC owned and operated stations and affiliates.

RECOMMENDATION 2 - Cable Carriage of CBC Radio Signals

The CRTC should amend its Cable Television Regulations to require cable systems to carry as a priority the CBC French and English Stereo (FM) signals, as well as CBC French and English Mono signals (AM), along with appropriate subcarriers, regardless of whether these signals are available from a local or regional source, or by satellite.

RESPONSE

This recommendation is a matter to be dealt with by the CRTC in the exercise of its regulatory and supervisory responsibilities. The Government is confident that the Commission, through its mandate, will ensure that the policy objectives of the Broadcasting Act are implemented as required under clause 5.(1) of the new Bill. In this regard, the Government notes that clause 3.(1)(q)(i) of the new Bill requires distribution undertakings to accord priority to the carriage of Canadian programming services.

RECOMMENDATION 3 - Extension of CBC Stereo Services

The capital budgets of the CBC should be sufficient to allow the Corporation gradually to extend the transmission of its French and English stereo services.

RESPONSE

The CBC receives separate capital and operating appropriations from Parliament. The allocation of available funding to various services within the CBC and the determination of priorities regarding extension of services are properly matters for consideration by the CBC's Board and Management. Clause 3.(1)(n)(v) of the new Bill gives the CBC more flexibility to extend its services using the most appropriate and efficient means and as resources become available.

The Government notes that, last year, the CBC's capital budget was increased by \$20 million per year for replacement of obsolete equipment and, earlier this year, new funding of \$65 million over six years was committed to fit-up and transition costs for the new Toronto Broadcast Centre. Requests for additional funding for the extension of stereo radio services will be considered in the context of available Government resources.

RECOMMENDATION 4 - CBC Radio Syndication

The CBC should continue investigating the possibility of supplying a radio syndication service in Canada, but should not undertake such a project at the expense of existing CBC audiences or budgets.

RESPONSE

The Government expects that the Corporation will give full consideration to all possible avenues for increasing its earned revenues within the context of its legislated mandate (clause 3.(1)(m) and (n)). The objects and powers of the CBC in the new Bill do not preclude this kind of activity (new Bill, clause 45).

RECOMMENDATION 5 - Canadian Content Requirements

CBC radio stations and networks should be required by the CRTC to meet higher Canadian content requirements than private stations in all music categories, throughout the broadcast day. The CBC should also assist and promote regional talent and performers through its production centres in all regions.

RECOMMENDATION 6 - Musical Composition and Performance

The CBC should pursue a more active and integrated policy of support for both Canadian musical composition and performance encompassing both popular and serious music. The CBC should work closely with Canadian composers, performers, recording companies and support agencies to develop Canadian music.

RECOMMENDATION 7 - Programming in the Arts

The CBC should seek to strengthen its role in broadcasting radio drama and other performing arts programming, as well as its news coverage of Canadian arts activity. In its programming CBC should better reflect and complement the support provided through other federal and provincial cultural agencies.

RESPONSE

The CBC has been and will always remain the principal instrument of cultural policy in Canada. The Committee's proposals in these recommendations certainly fall within the CBC's mandate and nothing in the new Bill would prevent their implementation, bearing in mind available resources. The new Bill empowers the CRTC to make regulations regarding Canadian content requirements for the broadcasting system (clause 10.(1)(a)). The mandate proposed for the CBC in the new Bill states that its programming should be predominantly and distinctively Canadian (clause 3.(1)(n)) and the Corporation is empowered, under clause 45, to establish programming goals and objectives.

RECOMMENDATION 8 - CBC Radio Storefront Strategy

Funds for CBC radio should be sufficient to allow it to proceed with its proposed storefront strategy, but storefront bureaus should not be used to replace existing CBC radio stations.

RESPONSE

The Government agrees with the concept of storefront bureaus, to the extent that they can assist in extending the CBC's radio services throughout Canada, within available resources. The allocation of funding to various services within the CBC and the determination of priorities regarding extension of services are properly matters for consideration by the CBC's Board and management. Nothing in the new mandate for the CBC (clauses 3.(1)(m) and (n) of the Bill) or in its objects and powers (clause 45) would preclude implementation of a storefront strategy. Indeed, clause 3.(1)(n)(v) gives the Corporation greater flexibility to extend its services using the most appropriate and efficient means as resources become available.

PRIVATE RADIO

RECOMMENDATION 9 - Continued Regulation of Radio

Continued federal regulation of radio is necessary to ensure diversity, and to promote the use of Canadian creative and journalistic resources. Regulatory tools should be flexible and -- through conditions of licence -- appropriate to the resources and operating environment of each licensed radio station and network.

RESPONSE

The Government concurs with this recommendation. The new Bill provides the legal framework for such regulation by the CRTC (clause 10). It also provides a wider range of regulatory tools to allow the Commission greater flexibility in ensuring that the objectives of the Broadcasting Act are respected by all players in the broadcasting system. (See sections 9, 11, 12, 13, 32, 33 of the Bill and the Government's overall comment after Recommendations 64 to 86 of the Committee's Sixth Report for details on new regulatory tools.)

RECOMMENDATION 10 - Differentiation between AM and FM Stations

The present differentiation between AM and FM should be maintained with close monitoring of the evolution of both services. The status of AM radio in particular should be reviewed periodically. If in the future the CRTC moves to a common policy for AM and FM, there should be no reduction in the diversity of radio programming.

RESPONSE

The Government agrees that programming diversity is an important objective. Indeed, the new Bill states that the programming provided by the Canadian broadcasting system should be varied and comprehensive (clause 3.(1)(g)(i), which, for radio, could well include different approaches for AM and FM stations. The Bill provides the CRTC with the authority to make regulations for different classes or kinds of broadcasting licences. It is up to the CRTC to regulate and supervise the broadcasting system according to the objectives of the Act. The Government notes that clauses 88 and 89 of the Bill carry forward the existing regulations of the CRTC which do differentiate between AM and FM radio.

**RECOMMENDATION 11 FM Licences to Broadcast Music from Only One
or a Number of Musical Groups**

The practice of licensing FM stations to broadcast music mainly from only one of a number of musical groups should be maintained for cultural diversity, since it gives FM stations a distinctive sound from one another and from AM stations. But the practice should be flexible enough to reflect the evolution of music and listeners' tastes.

RECOMMENDATION 12 - Foreground-Format Requirements

The CRTC should drop blanket foreground-format requirements on FM radio but continue to require foreground programming through conditions of licence tailored to local circumstances. A reasonable share of available resources and air-time, consistent with maintaining high quality, should be committed by each FM broadcasters to foreground programming.

RECOMMENDATION 13 - Use of Conditions of License

The CRTC should use conditions of licence to allow broadcasters to offer a service better tailored to their communities, taking into consideration the size of the station, the characteristics of the audience and the kind of radio services provided.

RESPONSE - Recommendations 11-13

The Government supports the concept of diversity inherent in the Committee's Recommendation 11. As with Recommendation 10, however, these are matters for consideration by the CRTC in the context of its regulatory policies. The new Bill provides the Commission with the authority and flexibility to regulate in a variety of ways. Moreover, the Bill states that the programming provided by the Canadian broadcasting system should be varied and comprehensive, providing a balance of information, enlightenment and entertainment for people of different ages, interests and tastes (clause. 3.(1)(g)(i)).

RECOMMENDATION 14 - Radio Networks

Networks should be encouraged as long as they are Canadian networks. Restrictions will be required to protect Canadian content in network programming, to ensure that network programs do not encroach excessively on local programming and to ensure that radio networks operate in a way consistent with achieving the objectives proposed for the broadcasting system. CRTC policies affecting syndicated programming should also be designed both to encourage the development and use of Canadian-originated material and to prevent excessive reliance on syndicated foreign programming.

RESPONSE

The Government agrees with this recommendation and the new Bill permits radio networks to be established (clause 10.(1)(f)). Moreover, the Government has actively encouraged the development of radio network programming by establishing, in 1986, the Radio Program Syndication fund, administered by FACTOR-CTL/MusicAction. The CRTC is the appropriate authority to ensure that radio networking is consistent with the objectives of the Broadcasting Act.

RECOMMENDATION 15 - Canadian Content Requirements

The existing Canadian content requirements for non-CBC radio broadcasters should at least be maintained, including the 30 percent quota for AM licensees. The requirement that Canadian content be evenly spaced during the programming day rather than tucked away in low-listening periods should be firmly applied.

RESPONSE

The Government concurs that Canadian content requirements should be maintained and that Canadians should have access to Canadian programming throughout the broadcast day. Clause 10.(1)(a) of the new Bill authorizes the CRTC to make Canadian content regulations. It is the CRTC's responsibility to determine the most appropriate methods of implementation, within the context of the objectives set out in the Broadcasting Act.

RECOMMENDATION 16 - FACTOR-CTL/MusicAction

Public policy should continue to support the work of FACTOR-CTL and MusicAction, which should continue to be controlled by boards representing the radio and sound recording industries. The CRTC should use conditions of licence to require more adequate funding of these organizations, in line with the individual stations' ability to pay. At the same time, the CRTC should balance this requirement with the continuing obligation of stations to devote resources to the presentation of local talent. The Government should implement measures to expand sound recording policy to include greater assistance to minority types of music.

RESPONSE

The Government has already recognized the valuable contribution of FACTOR-CTL/MusicAction in assigning them the administration of a portion of its Sound Recording Development Program; this portion is \$3.7 million out of a total annual budget of \$5 million. This allowed FACTOR-CTL/MusicAction, which were originally formed by the broadcasting and recording industry, to assist sound recording, music video production, syndicated radio programming, and international touring.

With respect to private broadcasters' contributions to this organization (which last year totalled \$1.1 million for FACTOR and MusicAction), clause 3.(1)(p)(i) of the new Bill states the Government's expectation that private broadcasters will contribute to the creation and presentation of Canadian programming in a manner consistent with their resources. The Bill provides the CRTC with the authority necessary to determine the most effective way to implement this objective.

As regards assistance to minority types of music, the Committee's report made particular reference to "Classical and other specialty record production." The Government concurs with the Committee that this is essentially a cultural policy issue. The Government does recognize the particular needs of specialized music, and contributes assistance of \$0.25 million annually through its Sound Recording Development Program. The Canada Council has been charged with administering this component, which assists the production and distribution of specialized music (contemporary, classical, electro-acoustic, ethnographic, and jazz).

The Government is reviewing the program to see whether it responds properly to the needs of the industry, and will bear in mind the Committee's recommendation in this context.

RECOMMENDATION 17 - 65% Quota for French-Language Radio

As soon as possible, the CRTC should return to the 65 percent French vocal music requirement for French-language radio stations. In the meantime, the Commission should require stations to apply the interim 55 percent requirement in all periods of the broadcast day, including peak listening time.

RESPONSE

The 65 percent French vocal music requirement was lowered to 55 percent by the CRTC due to a short supply of French-language recordings. Government policy addresses this recommendation in two ways. Through the new Bill and its policy paper, the Government has clearly stated its commitment to a stronger contribution to Canadian programming by private broadcasters. Secondly, the Government provides financial support to sound recording, reserving 40 percent of the Sound Recording Development Program's \$5 million annual budget for the francophone sector of the Canadian sound recording industry. The results of this assistance have already been documented by a significant increase in the number of French-language recordings released in 1988. It is hoped that these measures will facilitate a return to 65 percent content of French vocal music.

The Government notes that private broadcasters have been doing their part as well, with initiatives such as "La Semaine de la chanson française d'ici" and through their contributions to MusicAction.

The new Bill gives the CRTC the authority to make regulations and set specific conditions of licence consistent with the objectives of the Broadcasting Act (Bill, clauses 9 and 10). Moreover, the Bill requires the CRTC's regulation and supervision of the broadcasting system to be readily adaptable to the different characteristics of English and French language broadcasting (clause 5.(2)(a)).

RECOMMENDATION 18 - Radio Advertising

The CRTC should monitor the impact on radio station advertising revenue of cable advertising or home shopping services permitted by the Commission as non-programming services. It should make provision for a public review of this policy after it has been in place long enough for its impact to be examined.

RESPONSE

This is a matter for the CRTC to consider in the context of its regulation of the broadcasting system. The Government expects that the Commission takes into account the kind of environmental factors mentioned by the Committee in developing and implementing its regulations.

RECOMMENDATION 19 - Cable Carriage of Radio Services

With the exception of public broadcasters, the carriage of American radio stations on Canadian cable services should be prohibited. Carriage of distant Canadian radio stations should be permitted to the extent that they complement the programming available from local broadcasters.

RESPONSE

The new Bill states that the programming provided by the Canadian broadcasting system should be varied and comprehensive (clause 3.(1)(g)(i)) and that it should be drawn from local, regional, national and international sources (3.(1)(g)(ii)). It is the responsibility of the CRTC to supervise and regulate the broadcasting system accordingly. The Bill also authorizes the CRTC to make rules and regulations applicable to the reception and distribution of foreign programming services by distribution systems in Canada on such terms as the Commission deems necessary and reasonable to achieve the objectives of the Broadcasting Act (clause 10.(1)(g)).

RECOMMENDATION 20 - Simplified Logs

The CRTC should simplify the form of logs it requires radio stations to keep, concentrating on the information required to ensure compliance with the regulations and with license conditions.

RESPONSE

The Government expects that the Commission will carefully consider all suggestions aimed at simplifying regulation and improving its monitoring techniques. The new Bill authorizes the Commission to make regulations regarding logs and other information (clause 10.(1)(i)) while recognizing that it should be sensitive to the administrative burden that may be imposed by its regulations (clause 5.(2)(f)).

COMMUNITY RADIO

RECOMMENDATION 21 - Co-ordination of funding and Programs

At this time no action should be taken to establish a focal point in the Department of Communications for the coordination of funding, grants and programs related to community broadcasting. Consideration should, however, be given to providing community broadcasting with greater access to appropriate federal training and more general support programs, including those intended primarily for small business. Further study should be done on the appropriate level and nature of federal assistance to community radio, and discussions should take place with the provincial and territorial governments concerning the relative roles of each level of government.

RESPONSE

Federal funding assistance is currently available for community broadcasting through various programs operated by Employment and Immigration Canada, the Secretary of State and Communications Canada. These funding programs have different objectives and orientations but nonetheless achieve the desired end of providing valuable assistance to the community broadcasting sector. The Government agrees that there is no need to establish the "focal point" described at this time.

Regarding the second part of the recommendation, that is, federal, provincial and territorial discussions, the federal government has taken an important initiative by recognizing in the Bill, for the first time, the importance of local broadcasting, which includes community broadcasting, in the Canadian broadcasting system (clause 3.(g)(ii)). The Government remains open to discussions with other levels of government regarding the further development of community broadcasting across Canada.

RECOMMENDATION 22 - Advertising on Community Radio

The Committee supports the existing CRTC policy with respect to advertising on community radio. The Committee encourages the Commission in its efforts to enforce its overall policy for the development of community radio.

RESPONSE

The Government recognizes and supports community broadcasting as an integral part of the Canadian broadcasting system. As expressed in the Government's comment following Recommendation 4 of the Committee's Sixth Report, this is achieved through clause 3.(1)(g)(ii) which recognizes the importance of local programming.

SOUND RECORDING AND SYNDICATED PROGRAMMING

RECOMMENDATION 23 - Integrated Strategy for Financing/Development

An integrated strategy should be established for the financing and development of Canadian-controlled sound recording companies as a more effective vehicle for the production, distribution and marketing of recordings by Canadian song writers, composers and performers.

RESPONSE

As the Government indicated in its paper entitled "Vital Links", released in April 1987, the relationship between creation, production and marketing is of fundamental importance in the Government's overall strategy in support of the cultural industries. This is reflected in the Sound Recording Development Program (SRDP). Elements of an integrated strategy which are already in place include the SRDP, which includes a Business Development component aimed at the long-term improvement of the financial situation of the Canadian controlled sound recording companies; related CRTC regulations on Canadian content; support for Factor-CTL/MusicAction; and cooperation with the Canada Council in the area of specialized music.

To improve this global strategy further, the Government is also examining tax incentives, and copyright-related ameliorative measures.

As noted under Recommendation 16, the Sound Recording Development Policy incorporates a requirement for review of the program from time to time, and the Government has commenced a review. The Government will consider, with interest, the Committee's analysis and all proposals in the context of its policy review process.

RECOMMENDATION 24 - Syndicated Programming

In developing policies to strengthen Canadian content on radio, careful attention should be given to measures which would stimulate the development and use of syndicated programming originated in Canada and which could contribute to achieving the programming objectives contained in the Broadcasting Act.

RESPONSE

The Government agrees with this recommendation and has already taken action in this direction. As noted under Recommendation 14, the Government has actively encouraged the development of syndicated radio programming by establishing, in 1986, the Sound Recording Development Program. This program's component for syndicated radio programming has an annual budget of \$.2 million. and is administered by Factor-CTL/MusicAction. In the past two years, this fund has assisted 28 syndicated radio productions. The CRTC is the appropriate authority to ensure that syndicated radio programming is consistent with the objectives of the Broadcasting Act.

PUBLIC TELEVISION IN CANADA: CBC SERVICES

RECOMMENDATION 25 - Commercial American Programming

Insofar as the CBC does carry foreign programs, it should not be precluded from carrying commercial American programming, provided such programs are of high quality and consistent with the overall character of the CBC service.

RESPONSE

The CBC is not precluded from carrying any program from any source which it considers desirable within the context of its overall goals and objectives with respect to Canadian programming. Still, it is the Government's view that a public broadcaster making the best use of public funds would strive to show programming that is not already available elsewhere on the television dial. The Bill changes the CBC's mandate to give it a Canadian focus and the Government is backing up this change with funding to assist the CBC to meet its objectives of Canadianizing prime-time programming on English television and improving the quality of its French-language programming. Programming decisions are the responsibility of CBC management.

RECOMMENDATION 26 - Canadianization of Network Services

The CBC should (be) provided (with) the additional funds required to proceed with a further Canadianization of its network services while maintaining adequate program budgets and without sacrificing service to the regions.

RESPONSE

The CBC has announced plans to move toward 95% Canadian content in prime-time on the English-language television network and to improve the quality of French-language Canadian programming. The Government agrees strongly with these goals and is providing the CBC with an additional \$130 million over the next four years to assist the Corporation in achieving them. Regional responsibilities are fundamental to the CBC's mandate and the Government trusts that the programming provided by the Corporation will strive to reflect Canada and its regions to both national and regional audiences, as stated in its mandate under clause 3.(1)(n)(ii) of the new Bill.

RECOMMENDATION 27 - Regional Programming on Regional Stations

The CBC should provide increased air time on its regional stations for carriage of regional programming and should include a significant amount of regional performance programming.

RECOMMENDATION 28 - Local Programming on CBC Stations

The CBC should continue at a minimum to provide locally generated newscasts on its owned and operated stations.

RECOMMENDATION 29 - Local and Regional Programming

The CBC's mandate to serve the needs of all regions of Canada should continue to be interpreted as including the coverage of local news, community events and other appropriate subject matter. There should be no effort to make an artificial distinction between local and regional programming for the purpose of limiting the CBC's role in serving Canadians in all regions.

RESPONSE

The Government agrees with the basic thrust of these recommendations. The new mandate for the CBC in clause 3.(1)(n)(ii) of the new Bill confirms the importance of regional programming by requiring the Corporation to reflect Canada and its regions to both national and regional audiences. The Government is confident that CBC management will strive to achieve an appropriate balance in its local, regional and national programming, bearing in mind available resources. Regarding the concept of regional versus local programming, the Government agrees that the two are closely linked. It is up to the CBC to judge the most appropriate way to reflect both aspects in its programming.

RECOMMENDATION 30 - A CBC Northern Regional Television Service

The CBC should be provided with the funds to establish a northern regional television service.

RESPONSE

In its report, the Committee expressed the view that the CBC's Northern Service should become a regional service like those in other regions of Canada. The Government agrees. In this way, the North would have more equitable treatment, in terms of both normal programming and capital resources. The Bill requires the CBC to reflect Canada and its regions to both national and regional audiences. It is up to the CBC to allocate its resources accordingly.

RECOMMENDATION 31 - CBC Service in New Brunswick

Priority should be given to providing a full CBC English-language production centre and broadcasting station in New Brunswick.

RESPONSE

The full range of CBC programming should be available to as many Canadians as possible and the Government has addressed this issue under clause 3.(1)(n)(v) of the new Bill. To this end, an owned and operated station should be established in every province. The situation with respect to CBC English-language television services in New Brunswick has been a long-standing problem. In response to this problem and pending the development of an owned and operated station, the CBC has recently made new arrangements which will provide New Brunswickers with the full English-language CBC-TV network service this fall. There will also be a substantial amount of local news and public affairs.

RECOMMENDATION 32 - Programming Originating From CBC Stations

No prior limits be placed on the types of programming that can be originated in each of the CBC's English-language and French-language stations. While it must be recognized that staffing levels and facilities will differ significantly from station to station, the CBC should make such decisions, subject to CRTC review and the provision of the required capital funding from the government. Decisions should reflect a balance between a concern with efficiency and the need effectively to fulfill CBC's mandate to reflect and serve all regions of Canada.

RESPONSE

This recommendation refers to recommendations of the Task Force that English and French-language production should be reorganized into, respectively, five and four regional production centres. The Committee clearly favours a different approach.

It is fundamental to Canadian cultural policy that creative opportunities should be encouraged in all parts of Canada. The Government agrees with both the Task Force and the Committee that the CBC should maintain a strong regional presence throughout Canada. Clause 3.(1)(n)(ii) of the new Bill recognizes the importance of this issue by requiring the CBC to reflect Canada and its regions to both national and regional audiences. The question of how best to achieve this regional representation is a matter to be addressed by the CBC's board and management. No doubt the CBC will develop certain regional production centres more than others in order to make the most efficient and effective use of available resources. The Government concurs with the Committee that there is a balance to be achieved between the pursuit of cost efficiencies and the fulfillment of the CBC's mandate under the Act.

RECOMMENDATION 33 - Equitable CBC News Coverage

In its news and information programming CBC should use its resources in a way that will provide as extensive and equitable coverage as possible.

RESPONSE

The Government concurs that the Corporation should make the most effective use of its resources in the provision of regional news coverage. The specifics of programming decisions and allocation of resources remain the domain of CBC management. The Government expects that the CBC will, within available resources, make every effort to ensure equitable news and information coverage across Canada.

RECOMMENDATION 34 - Improved CBC French Network Budgets

CBC French network budgets should be reviewed to establish hourly production costs that reflect the role assigned to the French network in the new increasingly competitive television environment, so that the quality of the Canadian programs of the English and French networks would be comparable.

RESPONSE

One of the fundamental principles of the Bill is the recognition of the different character of English-language and French-language broadcasting and this is reflected in the new mandate and corporate structure proposed for the CBC. More competitive programming on the French-language network of the CBC, and for French-language programming generally, will require higher programming budgets. The Government is providing the CBC with an additional \$55.8 million over the next four years to enable its French-language network to upgrade the production values of its Canadian programming and is also taking steps to assist private French-language broadcasters in this respect. However, it remains the responsibility of the CBC's Board of Directors to make decisions on the specifics of funding allocation.

RECOMMENDATION 35 - Cooperation with Private Producers

The CBC should pursue its policy of cooperation with private producers whereby 50 percent of television programming apart from news, information and sports will be independently produced. It should be understood that the goal is the creation of a diversity of genuinely Canadian programs, not merely pursuit of an industrial policy aimed at fostering the growth of the production industry.

RESPONSE

The Government agrees that the CBC should pursue its stated policy of increasing the amount of television programming produced for its networks by private producers. Clause 3.(1)(g)(i) of the new Bill requires that the programming provided by the Canadian broadcasting system, including the CBC, be varied and comprehensive. The concern is, as expressed by the Standing Committee, clearly for a diversity of genuinely Canadian programs. The Government believes that this goal will more easily be attained when a mix of program sources, including significant contributions by independent producers, is relied upon.

RECOMMENDATION 36 - Full Schedule for CBC Affiliates

The CBC should negotiate with its television affiliates to have them all phase in over time the full network schedule, without time-shifting, for what both sides deem to be reasonable compensation. Whenever an affiliate declines to do so, CBC should consider ensuring distribution by whatever means it sees fit, according to local market conditions.

RECOMMENDATION 37 - CBC Affiliates

The CBC should make plans for the replacement of those stations that can be disaffiliated to the net financial advantage of the Corporation and can be expected to be viable economically on their own. The CRTC should not allow any transfers of related broadcast licenses pending the resolution of the status of these stations as CBC affiliates after August 31, 1989.

RESPONSE

It is desirable that national programming services be available to all Canadians and this objective is addressed in the new Bill. It is up to the CBC Board to determine the best way of achieving this objective, including its relations with affiliate stations, within the context of available resources for the purpose, as stated in clause 3.(1)(n)(v) of the Bill.

RECOMMENDATION 38 - Commercial Revenues

The CBC should continue to generate commercial revenue by selling airtime on its television networks.

RECOMMENDATION 39 - Commercial Revenues

The CBC should insulate production, programming, and scheduling decisions from attempts to maximize commercial revenues.

RECOMMENDATION 40 - Commercial Revenues

The CBC should minimize the disruptive qualities of on-air commercials on programs such as drama or performing arts specials, and to exclude or minimize them where appropriate, such as in children' programming.

RESPONSE

It is understood that the CBC will need to continue to generate commercial revenues by selling airtime on its television networks. Indeed, the Government's decision, in 1986, to allow the CBC to keep all commercial revenues reflects this recognition. However, the guidelines proposed by the Committee to insulate programming decisions from efforts to maximize commercial revenues and to minimize the disruptive qualities of on-air commercials are extremely timely and useful. The CBC board is responsible for following them up.

PRIVATE TELEVISION

RECOMMENDATION 41 - Bill C-58 and Simultaneous Substitution

To enhance the capacity of private broadcasters to contribute to the objectives of a new broadcasting act, both Bill C-58 and the CRTC policy on simultaneous substitution should at a minimum be retained.

RESPONSE

The Government agrees with this recommendation and has recognized the importance of these measures for the broadcasting industry by providing for the continuation of both "Bill-C-58" and simultaneous substitution under the Free Trade Agreement with the United States.

RECOMMENDATION 42 - Program Substitution Policies

The CRTC should develop measures to ensure that its program substitution rules do not reduce the exhibition of Canadian programs in peak viewing time. To achieve this purpose, alternative approaches to protecting the program rights purchased by Canadian broadcasters should be considered.

RESPONSE

The Government agrees with this recommendation. It is up to the CRTC to review its policies from time to time so as to ensure that they are consistent with and promote the achievement of the objectives of the Broadcasting Act.

RECOMMENDATION 43 - Foreign Program Distribution in Canada

To the extent possible, broadcasting policy and regulation should assure that foreign programs are distributed in Canada by Canadian television stations holding exhibition rights for the Canadian market, in order to maximize their available resources to present a wide range of Canadian programming and to ensure that they can be an effective advertising vehicle for Canadian businesses.

RESPONSE

The new Bill sets out the Government's objectives for the broadcasting system as a whole and attributes roles and responsibilities to both private and public broadcasters under clause 3. Moreover, the Bill authorizes the CRTC to make rules and regulations applicable to the reception and distribution of foreign programming services by distribution systems in Canada on such terms as the Commission deems necessary and reasonable to achieve the objectives of the Broadcasting Act (new Bill clause 10.(1)(g)). The Government recognizes that the Commission must take into account the historical reality of the reception in Canada of foreign radio and television signals.

RECOMMENDATION 44 - Carriage of Certain American Stations

The CRTC should not use conditions of licence to exempt cable systems from the regulation which precludes carriage of American stations which began operation after January 1985 and should review its decision concerning the importation of U.S. superstations in the light of its potential to erode the existence of a separate Canadian television market.

RESPONSE

The Government trusts that the Commission will take into account environmental factors such as those raised by the Committee in its regulation and supervision of the broadcasting system. Having introduced legislation to ensure a separate distribution market in Canada for film and video products, the Government is clearly unwilling to see the erosion of the separate markets which have traditionally existed for broadcasting programs.

RECOMMENDATION 45 - Annual Statistical Survey

The annual statistical survey of Canadian television broadcasters should be amended to provide data on expenditures on Canadian and foreign programming in each program category.

RESPONSE

The Government concurs that this information would be useful. The annual statistical survey is carried out by Statistics Canada and some of these data are already being collected. The Government will explore ways of expanding the survey's coverage.

RECOMMENDATION 46 - Market Fragmentation Research

The CRTC should give high priority to research examining the impact of market fragmentation on the viewing of existing broadcasters, their revenues, expenditures on Canadian and non-Canadian programming, and profit levels. The Commission should also establish a systematic approach to monitoring the impact of fragmentation. All such Commission research and monitoring studies should be made public, subject to the confidentiality provisions recommended earlier by the Committee in Recommendation 78 of our Sixth Report.

RESPONSE

The Government concurs that such research would be both timely and useful. The new Bill explicitly identifies broadcasting research as an activity in which the CRTC may be involved (clause 14). It is up to the Commission to allocate available resources and determine priorities for research on various topics of consequence to broadcasting policy and regulation.

RECOMMENDATION 47 - Licensing Emphasis for CRTC

The CRTC should shift its emphasis from licensing additional television services to strengthening the capacity of the system to deliver well funded Canadian programs in both French and English.

RESPONSE

By way of the new Bill and its related policy paper, the Government has stated its concerns and priorities with respect to Canadian programming. Determining the point at which licensing additional television services begins to lessen the capacity of the system to deliver well-funded Canadian programs is a matter for constant consideration. As the CRTC supervises and regulates the broadcasting system in accordance with the objectives of the Broadcasting Act, the Government expects that the Commission will strive to achieve the appropriate balance.

RECOMMENDATION 48 - Importance of Local Programming

The CRTC should continue to recognize the basic importance of local television programming and pursue policies designed to avoid or minimize threats to local television stations and local programming. Policies that will tend to transform local independent stations whether Canadian or non-Canadian into regional or national superstations should therefore be avoided.

RECOMMENDATION 49 - Viability of Local Broadcasters

The CRTC should consider allowing existing local broadcasters to become new "twin" or "triple" stick operators rather than allowing distant Canadian signals into local markets if they threaten the viability of local broadcasters.

RECOMMENDATION 50 - Importation of Distant Signals

In communities where no local television service is now provided, the Committee concurs with the proposal to allow the importation of distant signals either by way of cable or low-power, off-air rebroadcasting transmitters where frequencies are available.

RECOMMENDATION 51 - Local Programming Requirement

The CRTC should continue to require licensees to make a contribution to local programming consistent with their financial capacity as well as an appropriate contribution to meeting the broader Canadian programming objectives of the whole system.

RESPONSE

The Government has recognized the importance of local programming by proposing to include, for the first time, a specific reference to local programming in the Broadcasting Act (new Bill, clause 3(1)(g)(ii)). The Bill also sets out the roles and responsibilities of private and public broadcasters, including programming contributions. It is up to the CRTC to determine the best way to ensure that these objectives are achieved. The introduction of distant signals to particular markets is clearly a matter to be determined on a case-by-case basis, as individual circumstances dictate.

RECOMMENDATION 52 - Application of CRTC Policies to CTV Network

The CRTC should continue in its policies related to the CTV network and its affiliate stations to pursue the intent of the Task Force recommendation, strengthening the network's ability to provide Canadian programming at the national level.

RESPONSE

The Task Force recommended in Chapter 17 of its report that the CRTC should consider the licence renewals of the CTV network and its affiliates at the same time and should thoroughly review the structure of the network to ensure that the arrangement is conducive to an appropriate contribution to the broadcasting system.

Like all issues related to specific licence renewals, this is a matter for consideration by the CRTC. The Government notes, however, that the new Bill clearly states that all private broadcasters are expected to contribute to the creation and presentation of Canadian programming (clause 3.(1)(p)(i)). Pooling of resources at the network or other aggregate level would clearly assist in achieving this end. Moreover, the Bill gives the Commission a broadened range of powers to make regulations and set conditions governing licensing decisions.

RECOMMENDATION 53 - Third National English-Language TV Network

Prompt action should be taken to examine the feasibility and potential benefits of a third national English-language television network, through both a call for proposals or applications for a third network and the initiation of a study to examine precisely what options are realistic and to explore the benefits and disadvantages of each.

RESPONSE

The Government recognizes the potential benefits to Canadian programming from the establishment of a third national English-language network. The CRTC will no doubt consider the strengths and weaknesses of such a structure at the opportune occasion.

RECOMMENDATION 54 - French-Language Networks

The CRTC should commission a study of the TVA, Quatre Saisons and Pathonic network structures to see whether changes are desirable which would enhance the ability of conventional French-language television to provide the high quality Canadian programs required in an increasingly competitive market.

RESPONSE

The Government agrees that such a study would be useful and timely. This recommendation is consistent with the recognition, in the Bill of the different characteristics of French- and English-language broadcasting and with the role which the Bill assigns to the CRTC in this respect. The Government is providing increased funding to the Broadcast Fund of Telefilm Canada precisely to improve the production quality of French-language programming.

RECOMMENDATION 55 - Government of Canada TV Advertising

The Government of Canada should normally place its commercials on domestic television programs.

RESPONSE

The Government already places its commercials on domestic television programs in the normal course of its advertising expenditures. It will continue this practice.

RECOMMENDATION 56 - Impact of Tax Reform on Broadcasting

If a decision is made in the context of tax reform to impose a tax on broadcast advertising, its impact should be partially offset through a targeted tax incentive which would complement and reflect the objectives being pursued through the Broadcast Fund.

RESPONSE

The Government will take this recommendation into consideration in the context of its review of the tax system.

RECOMMENDATION 57 - Expenditures on Canadian Programming

Private television stations and networks must be required to commit greater resources to Canadian programs. The CRTC should use conditions of licence to require that stations and networks make expenditures for internal production of, or acquisition of the right to exhibit, Canadian programs consistent with their financial and other resources.

RECOMMENDATION 58 - Quality of Canadian Content

The CRTC should ensure that the productions private broadcasters telecast to meet their Canadian content requirements are of high quality and include a substantial proportion of programs in the categories now most inadequately represented on private Canadian television.

RESPONSE

The Government agrees that the contribution of private television broadcasters to Canadian programming objectives needs to be improved, particularly as regards prime-time drama and entertainment programming, the categories now most inadequately represented. The new Bill introduces, for the first time, a clause which states the expectation that private broadcasters should contribute to the creation and exhibition of Canadian programming in a manner consistent with the financial and other resources available to them (clause 3.(1)(p)). Clause 3.(1)(e) states that programming should be of high standard. In addition, the Bill provides the CRTC with broad powers to set regulations and conditions of licence and gives the Commission a greater range of enforcement tools to ensure compliance. (For details, see discussion under Recommendation 86 of the Committee's Sixth Report.)

While it may be that conditions of licence would be the most appropriate regulatory tool, the Government has provided for an alternative approach which could be more effective. The CRTC will explore, with the broadcasting industry, the possible application of a Performance Incentive Plan. After having been advised of the outcome of these discussions, the Government will decide the best manner in which to proceed.

The Government's broadcasting policy provides for an additional \$75.9 million of the next four years allocated to the Broadcast fund to improve Canadian drama and entertainment programming. This amount supplements the new funding announced by the Government on May 5th for independent production of both film and television programs.

RECOMMENDATION 59 - Definition of Canadian Program

The CRTC must ensure that its definition of a Canadian program will result in Canadian performance programming that reflects the objectives of Canadian broadcasting policy as stated in the Broadcasting Act.

RESPONSE

The new Bill requires that all the CRTC's licensing, regulatory and supervisory powers be directed to implementing the Broadcasting Policy set out in the Broadcasting Act.

RECOMMENDATION 60 - Canadian Content Requirements

The CRTC should, for conventional off-air broadcasters, maintain the requirement that 60 percent of all programming and 50 percent of the programming scheduled between 6 p.m. and midnight must be Canadian.

RESPONSE

The Government believes that existing Canadian volume and content requirements should be maintained. It should be noted that the Performance Incentive would not substitute for these Canadian content requirements, which would be fully maintained.

RECOMMENDATION 61 - Additional Mechanisms for Regulation

If additional mechanisms are adopted to regulate Canadian content on private television, the approach taken should be to make provision in the Act for the CRTC to take such action, and any new approach should include a continuation of existing quantitative Canadian content requirements. Before implementing an alternative approach based on licence or performance fees a full public hearing should be held.

RESPONSE

Agreed. As noted in the Government's response to Recommendations 57 and 58, the Bill provides for a new regulatory instrument, the "Performance Incentive Plan", in addition to regulations and conditions of licence. This means that the existing Canadian content requirements would be maintained. The Government is requesting that the CRTC hold a public hearing before deciding the details of the new measure.

PAY TELEVISION AND SPECIALTY SERVICES

RECOMMENDATION 62 - Canadian Content

In setting Canadian content requirements for the next licence renewal term, the CRTC should consider the contribution that pay operators can reasonably and realistically make as their subscription bases expand. Careful consideration should also be given to the question of whether this contribution should be made by licence fees or through a combination of licence fees and equity investment.

RECOMMENDATION 63 - Exhibition of Canadian Feature Films

The CRTC conditions of licence for pay television services should ensure the exhibition of most of the Canadian feature films being produced. In this connection, Canadian film production levels should be monitored to determine whether adjustments are appropriate, and provisions for adjustments should be made in the conditions of licence.

RECOMMENDATION 64 - American Pay TV

The CRTC should continue to prohibit the importation of American pay television services which compete directly with, and will directly affect the viability of comparable Canadian services.

RESPONSE

With regard to Recommendation 63, it is axiomatic to Canadian film policy, particularly as expressed through Telefilm, that Canadian audiences should have the widest access possible, through all appropriate media, to Canadian feature films whose production is financed by public funds. The Government notes, that the role and responsibilities attributed to private networks and broadcasting programming undertakings in clause 3.(1)(p) of the new Bill, regarding the creation and presentation of Canadian programming, applies to pay-TV and specialty services. So too does the provision in clause 3.(1)(d), requiring the maximum use of Canadian creative and other resources.

RECOMMENDATION 65 - Specialty Services and Fragmentation of Audiences

The Commission should closely monitor the effect of the introduction of the new specialty services on conventional broadcasters, particularly with regard to fragmenting audience.

RECOMMENDATION 66 - Specialty Services and Conditions of Licence

The Commission should ensure that the specialty services scrupulously adhere to conditions of licence limiting their programming to the specialty categories they have chosen and that such programming not be allowed to overlap with conventional broadcasting.

RESPONSE

The impact of the introduction of any new services on the market conditions affecting broadcasting indeed needs to be closely monitored. Recommendation 66 is generally correct but the CRTC needs to take into account the specific economic circumstances of individual licensees. The Government would expect that all broadcast licensees would scrupulously adhere to conditions of licence and the new legislation will provide the CRTC with new tools to ensure such adherence.

RECOMMENDATION 67 - Access of Specialty Services on Basic

The Commission should be prepared to take appropriate action if cable television licensees deny access to specialty services on grounds that are discriminatory or not in the public interest.

RESPONSE

The new Bill provides for a package of measures to ensure that conflicts of interest can be resolved in the public interest and will not be detrimental to the interests of licensed Canadian programming services. The expectations of distribution undertakings in clause 3.(1)(q)(iii) require them to provide reasonable access. Clause 10.(1)(h) gives the CRTC the power to resolve any disputes arising between programming undertakings and distribution undertakings about the carriage of programming. Under clause 9.(1)(h), the CRTC can require carriage of specified services.

RECOMMENDATION 68 - Cable Ownership of Specialty Services

As recommended in the Committee's Sixth Report, new broadcasting legislation should contain a provision that would not permit the licensing of pay or specialty services owned by, or in common ownership with distribution undertakings. (See Appendix VI, Recommendation 51)

RESPONSE

In addressing the role of cable in the broadcasting system, the Government has made provision for distribution undertakings generally to play a broader role by allowing them, where appropriate, to originate programming on terms conducive to the achievement of the objectives of the Act (new Bill clause 3.(1)(q)(iv)). As noted under the previous recommendation, the Bill also gives the CRTC authority to resolve disputes concerning the carriage of broadcast programming. The Government believes that to restrict cable operators to being merely distributors would deny the broadcasting system an important source of funds for programming which should not be ignored.

RECOMMENDATION 69 - Carriage of U.S. Services

The Commission should review the extent of the implementation of "extended basic" tiers which include American specialty services and, further, should prohibit the distribution of such services on that basis if the "extended basis" approach materially expands access by such non-Canadian services to Canadian homes.

RECOMMENDATION 70 - Copyright and Satellite U.S. Services

The Commission should review the program rights questions that arise with the introduction of American satellite services, taking into account the recommendations on copyright and licensing policy in Chapter 8.

RESPONSE

The Government's policy with respect to programming, as expressed in the new Bill and the related policy statement, is not to restrict access to foreign services but rather, to ensure that an adequate choice of high-quality Canadian programming is available in the Canadian broadcasting system.

PAY-PER-VIEW TELEVISION

RECOMMENDATION 71 - Licensing Pay-Per-View Systems

Pay-per-view systems should not be licensed by the Commission unless they can be shown to provide positive benefits to the Canadian broadcasting system.

RECOMMENDATION 72 - Distribution of Pay-per-view

The preferred structure for pay-per-view systems should be on the basis of satellite-to-cable delivery provided by a national network licensee with the ability to serve the DTH and SMATV markets as well.

RECOMMENDATION 73 - Ownership of Pay-per-view

As recommended in our Sixth Report, cable television systems or other local distribution systems should not have an ownership interest in, or be in common ownership with, the pay-per-view network licensee.

RECOMMENDATION 74 - Structure of Pay-per-view

Any structure developed for pay-per-view services should maximize the contribution to Canadian content, and minimize any adverse impact on pay-per-channel penetration.

RECOMMENDATION 75 - Programming on Pay-per-view

The existing pay-per-channel services should not be precluded from being part of the ownership structure of a pay-per-view network; however, if they are not precluded, the rules requiring such services to obtain all of their programming on a non-discriminatory basis from the independent production industry should be strengthened.

RESPONSE - Recommendations 71 - 75

The Government believes that more and better Canadian programming should be provided within a system of expanding program choice for all Canadians, and that the CRTC should regulate in a manner which facilitates the delivery of broadcasting services to Canadians. The most appropriate approach to introducing pay-per-view services so as to best meet the objectives of the Broadcasting Policy set out in the Broadcasting Act is a matter for CRTC decision. Any pay-per-view service licensed by the Commission would be expected to contribute to the creation and exhibition of Canadian programming, as are all private programming undertakings, under clause 3.(1)(p)(i) of the new Bill.

COMMUNITY TELEVISION

RECOMMENDATION 76 - Cable Systems' Expenditures

The CRTC should develop a set of rules for reporting expenditures on the community channel. Cable system operators should be required to submit this information as part of the annual statistical survey administered by Statistics Canada.

RECOMMENDATION 77 - Cable Systems' Material Support

In its policy review of community television the CRTC should address the issue of incorporating into regulation the expectation that cable systems operators will give material support to the community channel. The Commission should also determine whether it is practical to make this expectation more precise.

RECOMMENDATION 78 - Advertising Revenues

In its policy review of community television the CRTC should address the issue of advertising revenues. In particular, the Commission could consider ways to ensure that advertising revenues serve to increase support for the community channel rather than simply replace revenues from subscribers; the Commission could consider whether smaller systems should have greater access to ad revenues; finally, the Commission could consider the implications of cable operators choosing to promote advertising on the advertising channel rather than sponsorship or contra deals on the community channel.

RESPONSE

The Government has recognized the importance of community broadcasting by including for the first time, in the Bill, a specific reference to local programming (clause 3.(1)(g)(ii)). This reference allows the CRTC to continue requiring cable operators to provide community channels and to require FM stations to offer community access time. Detailed regulation of community broadcasting is a matter for the CRTC to determine.

RECOMMENDATION 79 - Federal/Provincial Consultations

We see no need for federal/provincial consultations on the development of community television.

RESPONSE

As noted under Recommendation 21 with respect to community radio, the federal Government has taken an important initiative by recognizing in the Bill, for the first time, the importance of local broadcasting, including community broadcasting, in the Canadian broadcasting system. The Government remains open to discussions with other levels of government regarding the further development of community broadcasting, both radio and television, across Canada. The "Canada-Quebec Memorandum of Understanding on the Development of the French-language Television System" is one example of federal-provincial cooperation in this area.

RECOMMENDATION 80 - Access to Community Channels

The CRTC should proceed as soon as possible with an examination of issues and concerns related to providing equitable community access to community broadcasting services.

RESPONSE

The Government has made the issue of access to the broadcasting system for all Canadians a major objective of the new Bill and its related policy statement. The Committee's recommendation is consistent with this objective.

IMPACT OF TECHNOLOGY

RECOMMENDATION 81 - High Definition Television

In the event that high definition television is introduced, every effort should be made to try to provide delivery over the air in order to integrate this new service fully into the Canadian broadcasting system. Spectrum at present assigned to broadcasting in the VHF and UHF bands should therefore be reserved for that purpose and not shared with other potential users.

RESPONSE

Technical questions and policy issues related to spectrum allocation for the future introduction of new technologies such as high definition television (HDTV) are under active consideration by Communications Canada. The need to integrate HDTV delivery into the existing television system is a major concern. The most appropriate way of achieving this goal will become more apparent as technological feasibilities become clearer.

THE EVOLUTION OF THE DISTRIBUTION STRUCTURE

RECOMMENDATION 82 - Cancom Licence Renewal

In the public hearing on the 1990 renewal of the Cancom licence, the CRTC should return to the goals originally established for providing satellite service to Canadians in remote and underserved communities and examine the extent to which these are being met. These objectives should be identified by the Commission in its call for public comment. In its licence renewal decision additional conditions should be attached to the Cancom licence which are both practical and more consistent with the original goals.

RECOMMENDATION 83 - CRTC Research on Cancom Issues

In advance of the next licence renewal hearing for Cancom, the CRTC should prepare and make public its own evidence and independent research on whether Cancom has fragmented audiences, and affected the revenues of licensed Canadian broadcasters.

RESPONSE

The Government acknowledges the concerns raised by both the Committee and the Task Force with respect to Cancom services and concurs that a review by the Commission would be appropriate in light of these concerns, taking into account, of course, the invaluable contribution Cancom has made to the extension of an equitable range of broadcasting services across Canada.

RECOMMENDATION 84 - Cost of Cancom's Service

The Committee endorses the Task Force recommendation that action should be taken to reduce the cost of Cancom's service to the remote and underserved communities that constitute its core market.

RESPONSE

Distribution undertakings such as Cancom should charge affordable rates to subscribers. For this reason, the role of distribution undertakings in clause 3.(1)(q)(ii) of the new Bill states that they should provide efficient delivery of programming at affordable rates, using the most effective technologies available at reasonable cost. The CRTC will be able to consider such matters as rate structures to determine whether they are in line with the objectives of the Broadcasting Act.

RECOMMENDATION 85 - Financial Assistance for Cancom Delivery

Direct financial assistance should be provided to reduce the costs of receiving Canadian broadcasting signals in remote and underserved communities.

RESPONSE

The Government has announced a new television distribution program which will provide one-time capital assistance to bring distribution services to small and remote communities which currently cannot receive a range of television channels. In total, \$21.1 million will be available to extend services to these communities over the next four years. The program could bring a wider range of broadcasting services, via cable or other means, to approximately 100,000 households or 300,000 Canadians in these underserved communities.

RECOMMENDATION 86 - Exemption for Small Cable Systems

The Ministers of Communications and Finance should consult to find a suitable tax amendment to exempt all small cable systems from the Federal Telecommunication Programming Services Tax.

RECOMMENDATION 87 - Exemption for Direct-to-Home Customers

Subscribers to Canadian direct-to-home satellite services should be exempt from the Federal Telecommunication Programming Services Tax, just as subscribers to small cable systems are exempt.

RESPONSE

The Government acknowledges the concerns raised by the Committee and the Task Force with respect to the impact of taxation on the cost of cable services, especially in small communities. The Minister of Communications will consult with the Minister of Finance on these issues as suggested by the Committee and the recommendations will be taken into account in the context of tax reform.

RECOMMENDATION 88 - Telesat and Cancom Structure/Ownership

The CRTC should conduct wide-ranging public hearings into the Task Force recommendations 25.1, 25.2 and 26.4, and issue a report to the Minister of Communications.

RESPONSE

The Task Force recommendations referenced in this recommendation deal with the structure and ownership of Telesat Canada and Cancom and their respective roles and responsibilities related to the carriage of broadcast signals. Given the range of issues to be considered as a result of the Government's new broadcasting policy initiatives, the CRTC will not, at this time, be requested to make reports on these matters to the Minister of Communications.

RECOMMENDATION 89 - Licensing MMDS

Canada should reject "first come, first served" as a basis for licensing multichannel, multipoint distribution services (MMDS) that overlap the Canada-United States border. The two countries should agree on arrangements that either restrict the range of MMDS signals to their respective countries, or follow the historic principle of awarding a fair share of frequencies to each country.

RESPONSE

The Government acknowledges the concerns raised by the Committee with respect to the licensing of multichannel, multipoint distribution services (MMDS). The restriction of the range of MMDS signals at the Canada-United States border or, alternatively, the principle of awarding a fair share of channels to each country, continue to be the basis of Canada's on-going negotiations with the United States.

RECOMMENDATION 90 - Development of Distribution Technologies

The Government should use its offices, including the power of direction to the CRTC proposed for inclusion in the new Broadcasting Act, to foster co-ordinated and complementary efforts among groups interested in developing distribution technology to further the objectives of the Canadian broadcasting system. Consultation and public participation, including CRTC hearings and review by the appropriate Parliamentary committee, should be part of the process.

RESPONSE

In the Committee's report, this recommendation follows a discussion of technological developments in the broadcasting and telecommunications field. The Government concurs with the Committee's desire to foster co-ordinated and complementary efforts among the various interested parties. Recognizing the potential for considerable development and growth in this area, the Government has framed the new Bill in language which is technology-neutral, to allow for continued technological development while ensuring the CRTC's ability to continue regulating "broadcasting" as defined under the proposed legislation. (See comment after Recommendation 54 of the Committee's Sixth Report and the policy statement for further discussion on this issue.) The Government agrees with the Committee that consultation, including public hearings by the CRTC, could make a useful contribution to the evolution of public policy-making in this important area.

RECOMMENDATION 91 - Common Carriers

Common carriers should not be allowed to hold broadcasting transmitting or broadcasting distributing licences, either directly or through affiliates.

RESPONSE

A Direction to the CRTC will be issued by the Governor-in-Council to prohibit federally-regulated telephone companies, and their subsidiaries, from holding broadcasting licences (which, of course, includes both programming undertakings and distribution undertakings). The Direction was published on May 28, 1988 in Part I of the Canada Gazette.

CBC ACCOUNTABILITY AND EFFICIENCY

RECOMMENDATION 92 - Multi-Year Corporate Plan

The CBC should be required to prepare a multi-year corporate plan setting out the Corporation's long-term objectives, priorities and intended use of financial resources. This plan should be formally tabled in Parliament and referred to the appropriate committee for comment. It should become the basis for a five-year funding-intention decision by government and should provide the resource framework within which the CBC's licence renewal applications to the CRTC are prepared.

RESPONSE

The Corporation will submit a Corporate Plan to the Government each year. A summary of the plan, along with five-year funding projections for the CBC, will be tabled in Parliament.

RECOMMENDATION 93 - Comprehensive Audits

Comprehensive audits of the CBC by the Auditor General should be required at least every five years and be tabled in Parliament and referred to the appropriate committee for study. The review of CBC's annual estimates should be used as a regular opportunity for Parliament to examine the degree to which any concerns identified in the comprehensive audit are being addressed.

RESPONSE

The Government agrees that the CBC requires a better framework to assure financial accountability. For this reason, the new Bill gives the CBC better control over its accounting through more efficient internal audit and the Auditor General would continue to be the CBC's auditor. Clause 61.(1) requires an annual auditor's report to be prepared. This is to be included (clause 70.(3)) in the CBC's annual report to Parliament. Clause 63.(2) provides for a comprehensive audit (special examination) to be undertaken at least once every five years. The auditor has the option, under clause 63.(9) to bring the findings of such an examination to the attention of Parliament.

RECOMMENDATION 94 - Information Provided to Parliament

Clearer and more detailed information should be provided to Parliament in the annual Estimates for the CBC, and the CBC's annual reports to Parliament should note and explain any changes in its allocation of resources from that proposed in the Estimates. Separate votes should be considered for major areas of CBC expenditures to reflect the Corporation's chief operating divisions and activities.

RESPONSE

The Government agrees that Parliament should be provided with clearer and more detailed information on CBC financial planning. Clause 70.(3) of the new Bill specifies the items that should be covered in the CBC's annual report. As noted in its comment to Recommendations 39 and 40 of the Committee's Sixth Report, the Government does not contemplate, at this time, a process whereby separate programming activities of the CBC would be the subject of discrete votes.

RECOMMENDATION 95 - Delegation of Authority

The CBC should review its internal operating and reporting structure, with a view to greater delegation of authority and the enhancing of its level of efficiency.

RESPONSE

The Government agrees that the CBC should make every effort to improve its internal management and efficiency. How this is actually achieved is a matter to be addressed by CBC management, who must, on a day-to-day basis, determine the most appropriate level of delegation within its corporate structure.

RECOMMENDATION 96 - Complaints and Comments from the Public

The CBC should establish an independent committee to review and propose corrective measures with respect to complaints and comments from the public regarding its news and information programming.

RESPONSE

The Government is in agreement with the intent of this recommendation. The CBC has traditionally been sensitive to public comments and complaints. In the context of the proposed All-News Channel, the Corporation has proposed a review board along the lines recommended by the Committee. However, it is the responsibility of CBC management to determine the best way to handle complaints and comments from the public on all aspects of its activities.

RECOMMENDATION 97 - Labour Relations

The government should establish a committee of inquiry into CBC labour-management relations with a comprehensive mandate to identify and make recommendations about obstacles to the efficient and harmonious operation of the Corporation.

RESPONSE

In general it is the practice of the Government to let labour-management issues be handled internally to all crown corporations and agencies, except in cases of clear emergency. The Government is not convinced that the labour-management situation at the CBC currently warrants the sort of inquiry the Committee proposes.

REVIEW OF PUBLIC AGENCIES AND PROGRAMS

RECOMMENDATION 98 - Legislation to Establish Telefilm as Agency

As soon as a new broadcasting act has been passed, legislation should formally establish Telefilm Canada as an arm's length agency of government and provide it with a mandate on which to base its administration of the Broadcast Fund. The legislation should make it clear that Telefilm Canada's support for television programming has as its objective the furthering of the goals of the Broadcasting Act through increased production of television programs made under the creative control of Canadians and intended primarily for Canadian audiences.

RESPONSE

New legislation is planned.

RECOMMENDATION 99 - The Role of NFB in Television

The National Film Act should not be amended, as the Task force proposed, to extend the Film Board's mandate to broadcasting. However, the Board's mandate as a producer should be amended to apply to videotape or other technical means for producing visual images, as well as to film.

RESPONSE

The Government is currently in the process of conducting a fundamental review of the National Film Board and the above recommendation will be considered in that context.

RECOMMENDATION 100 - New Satellite-to-cable Broadcasting Services

New satellite-to-cable broadcasting services should be created on a not-for-profit basis. These would be predominantly Canadian in content and character and would in their programming emphasize productions from all regions of Canada and would provide high quality Canadian programming in program areas not now well served by existing services, including the performing arts. In the case of the French-language service, the option of increasing the proportion of Canadian programming on the TV-5 service should be considered as an alternative to creating a new service.

The services should be funded by a reallocation of funds from the NFB and Telefilm Canada and a per subscriber charge to cable system operators of at least \$.60 the first year, \$.80 the second, and \$1.00 the third, with subsequent adjustments for inflation. The cost should include both the French and English-language services. The service in the language of the majority should be carried on basic service in systems which carry at least one other licensed specialty service on basic service. Since a substantial proportion of the funding for these services will be provided by the federal government, they should operate under a structure which can ensure full accountability for the use of the public funds involved.

RESPONSE

The Government agrees that there is a need for alternative programming services such as those recommended by the Committee. The new Bill enables the creation of such services (clauses 3.(1)(i) and (j)) and the Government is requesting the CRTC to conduct a public hearing to enable determination of some of the fundamental factors governing the development of such services including their relationships to existing services.

The Government concurs with the Committee's recommendation that such a service contain programming from all the regions of Canada and program areas not currently being provided by existing broadcasters, including the performing arts. The Government also foresees an important role for alternative programming services in providing drama and documentary programs with a multicultural emphasis to enable this reality of Canadian society to be more apparent to all Canadians. Regarding the possibility of the "Canadianization of TV-5", the Government agrees with the intent of this recommendation that different models and different solutions apply to the French-language market.

As to the sources of funding, the Government is prepared to contribute substantially to these initiatives through new funding and reallocation of existing funds. Other sources of funds will be examined by the CRTC, including the possibility of additional cable charges although possibly at lower levels than those suggested by the Committee, considering the additional costs already being absorbed by cable subscribers for new specialty services recently licensed by the CRTC.

RECOMMENDATION 101 - CBC Acquisition of Independent Productions

Rather than providing money separately to both the CBC and Telefilm Canada to assist in financing the same independent productions to be shown on the CBC, the combined amounts (including administrative savings) should be made available to the CBC on the provision that this funding be used only to acquire the right to exhibit independent Canadian productions. The amount provided would include both the amount the CBC now spends on such productions plus half of the total funds now included in the Broadcast Fund of Telefilm Canada (CFDC). The total amount should rise in future years to keep pace with increases in the Broadcast Fund.

RESPONSE

The current terms and conditions of the Broadcast Fund (contained in the Memorandum of Understanding between Telefilm Canada and Communications Canada) allow for a great deal of flexibility in an industry that is well known for its volatility. The Government sees no compelling reason to alter an arrangement that is serving both the needs of the industry and Canadian cultural objectives.

RECOMMENDATION 102 - Matching Contributions to Licence Fees

The Guidelines for the operation of the Broadcast Fund should help achieve the goal of a sound domestic market for indigenous production. Broadcast Fund involvement in television production should be altered so that support will be provided principally in the form of matching licence fee payments made by Canadian broadcasters. Support from the Fund should be provided principally to programs made primarily for Canadians by Canadians, and based on the expectation that such productions must recover most of their revenue in the Canadian market.

RESPONSE

The Government agrees that funds from the Canadian Broadcast Program Production Fund should be provided primarily, if not exclusively, for the production of programs made by Canadians for Canadians. Limiting Telefilm participation to matching licence fee payments could work against this overall cultural objective, which is at the basis of the whole program, because the projects most wanted from a cultural point of view may not warrant a large licence fee. Broadcast Fund financial participation in the production of any project for television will depend on a wide variety of factors, including the anticipated commercial impact of the project and whether or not it is likely to receive financing from other markets. Licence fee payments will also vary according to circumstances.

RECOMMENDATION 103 - Funding Criteria

In future, support through the Broadcast Fund for programs designed primarily for sale in foreign markets should be provided on the basis of profit-motivated investment, and the Fund's involvement in such projects should not account for a major portion of expenditures.

RESPONSE

The Broadcast Fund supports a wide variety of program types. Although its techniques are industrial, its purposes are cultural in that it is meant to enable Canadian audiences to see programs created primarily for them. To the extent that programs are designed primarily for sale in foreign markets, and that this orientation is reflected in the programming itself and in production arrangements, production financing would presumably be supported from sales in those markets and support from Telefilm would not be required. It was in line with this belief that the Government recently announced an additional support package, worth \$200 million over five years, aimed largely at productions intended primarily for the Canadian market.

Co-productions and co-ventures are, however, important in meeting broadcasting policy objectives provided, of course, that they ultimately serve cultural purposes.

RECOMMENDATION 104 - Evaluation of Funding Criteria

Telefilm should determine that projects supported by the Broadcast Fund are consistent with its mandate and eligibility criteria, and that those projects have the required commitment from a Canadian broadcaster to exhibit them. Creative control shall rest with the producer, subject only to the terms of the producer's agreement with the broadcaster.

RESPONSE

Good Canadian content in the Canadian broadcasting system is the product of creative tension between the broadcaster as a programmer and the producer. The Broadcast Fund's administration involves support to the independent production community and also enables broadcasters to obtain Canadian programming required under conditions of licence. Telefilm has to help to encourage and develop these projects in the ways that are most appropriate to the needs of these two principal groups of clients and consistent with its mandate from the Minister of Communications.

RECOMMENDATION 105 - Incentives for Canadian Production

Effective incentives should be provided in the tax system to promote investment in Canadian films and videotapes, sound recordings and syndicated audio programming. The incentives established should reflect Canadian cultural objectives.

RESPONSE

The issue of tax incentives for private investment in Canadian cultural industries has been under very active consideration in the context of tax reform. Although the Capital Cost Allowance incentive has been reduced by tax reform, it is still of value to investors, and the attractiveness of investment will be increased by planned adjustments in Telefilm's recoupment policies, as announced by the Minister of Communications on May 5, 1988.

SERVICE TO MINORITIES

NATIVE BROADCASTING

RECOMMENDATION 106 - CBC Aboriginal Language Services

The CBC should develop a long-term plan in consultation with the native population to accommodate its new responsibilities regarding the provision of aboriginal language services throughout Canada. The plan should include operational and management structures to accommodate this new responsibility.

The CBC should be given a special parliamentary appropriation to implement its plan, once it is approved.

The first priority of the CBC in relation to its native languages mandate should be to improve access for independent native language producers in all regions of Canada.

RESPONSE

The Government agrees with the Committee that programming reflecting the aboriginal cultures of Canada should be provided by both independent native communications societies and the CBC. It is not convinced, however, that the CBC should play the dominant role which the Committee suggests.

The Government has endorsed the recommendation of the Task Force that a satellite transponder be provided to facilitate northern native broadcasting and has announced funding of \$10 million over the next four years for this purpose. The Northern Native Broadcast Access Program has been made a permanent funding source to assist in the development of aboriginal-language programming. Moreover, the Government has announced its intention to review the needs of southern natives with respect to broadcasting services.

In its comment on Recommendation 37 of the Committee's Sixth Report, the Government noted that the CBC's mandate requires the Corporation to reflect Canada and its regions to both national and regional audiences. In regions like the North, where aboriginal peoples form a significant - even a majority - part of the population, the CBC would be expected to do some programming in aboriginal languages. In this respect, its role should be complementary to aboriginal- language broadcasters.

RECOMMENDATION 107 - CBC Aboriginal Language Services

The CBC should serve as the principal vehicle for the distribution of aboriginal language programming in regions throughout Canada.

RESPONSE

As noted in its response to the previous recommendation, the Government does not agree with the Committee's view of the primacy of CBC's role in providing aboriginal-language services.

RECOMMENDATION 108 - CBC Satellite Distribution System

The CBC should put in place a satellite distribution system dedicated to serving northern Canada. It should include additional ground stations and second transmitters where necessary, in order to accommodate increased levels of CBC northern regional programming and native language access programming.

RECOMMENDATION 109 - Distribution of Native Communication Services

Where possible, the CBC satellite distribution system dedicated to serving Canada's northern regions should accommodate the distribution requirements of native communications societies, including those located in the northern regions of the provinces. Funding for the installation of ground facilities should be made available in order to accomplish this objective.

RESPONSE

The Government agrees that there is a need to improve distribution services for northern programming and will spend \$10 million over the next four years to underwrite the cost of a satellite-delivered programming distribution system (dedicated transponder). The Government sees no need for the CBC to be primarily responsible for this service, Native people should play a strong role in northern programming distribution.

RECOMMENDATION 110 - Isolated Aboriginal Communities

The CBC should give special consideration to serving isolated aboriginal communities that request service, regardless of size, and its appropriation for capital expenditures should reflect the special needs of such communities for broadcasting service.

RESPONSE

The objectives of the new Bill make specific reference to aboriginal peoples and programming reflective of aboriginal cultures (clause 3.(1)(k)). In addition, the mandate for the CBC in the new Bill includes provisions on the extension of services (clause 3.(1)(n)(v)). It is up to the CBC to determine the most appropriate way to fulfil its mandate and the objectives of the Act. The Government will consider requests for capital funding on their merits and according to available resources.

RECOMMENDATION 111 - Other Elements of Broadcasting System

Other elements of the Canadian broadcasting system should also provide for the distribution of native programming, including programming in aboriginal languages, where that is appropriate and there is sufficient demand.

RESPONSE

The Government agrees generally with this recommendation. Clause 3.(1)(c)(iii) of the new Bill states that the Canadian broadcasting system should strive, through its operations and programming, to reflect the circumstances and aspirations of Canadian men and women, including the linguistic duality and multicultural nature of Canadian society and the special place of aboriginal peoples within that society. This provision applies to the broadcasting system as a whole.

RECOMMENDATION 112 - Native Broadcasting Policy

A general policy of native broadcasting should be established for the entire country. The federal government should consult with native people throughout Canada in the development of this policy. Representative native organizations should be given funding to conduct their own research in the regions and centres where native broadcasting needs and priorities have not been established.

Production funding should be provided to independent native communications societies in communities and regions where no native services currently exist. The funding should come from new sources so as not to diminish existing programs supporting native broadcasting in the North. Priority should be given to funding broadcasting services in aboriginal languages.

RESPONSE

The Government agrees with the Committee that there is a need to encourage the development of broadcasting services for southern natives and the Minister of Communications and the Secretary of State will be undertaking a detailed study of the issue. Native groups will be consulted as part of this process.

As regards funding, the Government will consider the matter in the light of the conclusions of its study and bearing in mind available resources.

RECOMMENDATION 113 - Native Community Radio

The criteria of existing federal programs supporting native broadcasting should be amended to allow for increased subsidies for native community radio. Any new federal program supporting native communications should include assistance for native community radio.

RESPONSE

The Government recognizes the importance of radio as a medium for community and minority-language programming. Accordingly, the Committee's recommendation will be taken into consideration in the ongoing review process of existing funding programs and in the development of any new funding programs.

RECOMMENDATION 114 - Evaluation of Programs

All programs in support of native broadcasting should be evaluated on a regular basis to ensure that the language and cultural goals of the programs are met.

The CRTC and the Secretary of State should ensure that native broadcasters produce distinctive programming that does not unfairly compete with private broadcasters serving the same market.

RESPONSE

Existing funding programs are evaluated from time to time on an ongoing basis. The Government believes that most native broadcasters produce programming which reflects their respective cultures. Nevertheless, the Government agrees that effective evaluation should make every effort to ensure that language and cultural goals are being met and will review its evaluation procedures in the light of this recommendation. With respect to the second part of this recommendation, it is the responsibility of the CRTC to regulate and supervise the broadcasting system so as to ensure that licensees fulfil the objectives of the Act and all appropriate regulations and conditions of license.

RECOMMENDATION 115 - Resources for Training

The federal government should ensure sufficient resources are made available to meet the present and future training requirements of the native broadcasting sector.

RESPONSE

The Government concurs that training is an important requirement for native broadcasters. The Committee's recommendation will be considered in the context of the Government's ongoing evaluation of existing and future training programs.

OFFICIAL LANGUAGE MINORITIES

RECOMMENDATION 116 - Cable Carriage

The CRTC should not exempt cable systems from its cable regulations related to the carriage of public broadcasting services when the result is reduced availability of public broadcasting services in their own language to significant official language minority communities, and should not permit the carriage of non-programming services to receive priority over carriage of Canadian programming services whose carriage is required under the regulations.

RESPONSE

The Government agrees with the intent of this recommendation. Canada's linguistic duality and the needs of official language minorities are reflected in several clauses of the new Bill. Clause 3.1(1)(b) recognizes that English- and French-language broadcasting operate under different conditions and have different requirements. Clause 3.1(1)(c)(iii) recognizes the linguistic duality of Canada. Clause 3.1(1)(h) recognizes the rights of Canadians to receive a range of broadcasting services in English and in French. Clause 3.1(1)(n)(iii) requires the CBC to reflect the particular needs of official language minorities. Moreover, clause 5.2(a) requires the CRTC to regulate and supervise the broadcasting system in a way that is readily adaptable to the different characteristics of English- and French-language broadcasting. These provisions give the CRTC the legislative authority necessary for it to require delivery of broadcasting services, in addition to the CBC and Radio Canada, to minority English- and French-language communities where appropriate and feasible.

RECOMMENDATION 117 - Program of Government Support

The Minister of Communications and the Government should establish a program of direct support to make a reasonable variety of French-language broadcasting signals available by satellite across the country.

RESPONSE

The Government has clearly stated its commitment to ensuring that the Canadian broadcasting system provides a range of broadcasting services in English and French to all Canadians. As noted in the response to the previous recommendation, the Bill addresses the needs of official language minorities in a number of ways and provides the CRTC with considerable legislative authority and discretion to improve the availability of services across the country. Before initiating public funding programs for this purpose, the Government would like to consider the impact of the new legislation on the existing situation.

RECOMMENDATION 118 - Review of CRTC Cable Carriage Policies

In conjunction with the provision of selective government financial assistance toward the cost of satellite distribution, the CRTC should review its policies on the carriage of broadcasting services on cable for the purpose of establishing a reasonable level of choice for official language minority communities. As part of the review process, the Commission should hold a public hearing and should carry out any research that may be helpful. The result should be incorporated into a CRTC policy statement on service to official language minorities.

RESPONSE

In the light of the changes to the Broadcasting Act noted in the previous recommendations, especially those noted under Recommendation 116, the Government concurs the CRTC should review its policies with respect to official language minorities as recommended by the Committee.

RECOMMENDATION 119 - Improve CBC Services

The necessary measures should be taken by the CRTC and the CBC itself to provide improved CBC service to both anglophone and francophone minority communities across Canada.

RESPONSE

The Government concurs with this recommendation. The Bill specifically requires the CBC to provide services to Canada's official language minorities and to fully reflect their needs (clauses 3.(1)(n)(iii) and (v)).

RECOMMENDATION 120 - Access to CBC for Community Broadcasters

We endorse the Task Force recommendation that the CBC should provide access, when circumstances permit, to official-language-minority community broadcasters.

RESPONSE

The Government agrees strongly that the CBC should be play a leading role in providing broadcasting services to official-language minority communities. For this reason, the Bill makes specific reference to the CBC's role in this regard in clause 3.(1)(n)(iii) of the Bill. The Government also recognizes the initiatives taken do date by the CBC in providing access to transmission facilities by community broadcasting organizations and encourages the Corporation to continue to expand this activity.

MULTICULTURAL MINORITIES

RECOMMENDATION 121 - CBC Corporate Plan on Representation

The CBC should, at regular intervals, prepare a plan setting out the goals the Corporation intends to achieve with respect to the representation and fair portrayal of multicultural minorities on English and French radio and television stations and networks. A timetable for the implementation of these goals should also be made available. The public should have access to this plan.

RESPONSE

It is the clear intention of the Government that the multicultural composition of Canada be reflected in broadcasting operations and programming. The CBC is expected to be exemplary in this respect. Clause 3.(1)(c)(iii) of the new Bill states that the Canadian broadcasting system as a whole and not just the CBC should strive, through its operations and programming, to reflect the circumstances and aspirations of Canadian men and women, the linguistic duality and multicultural nature of Canada and the special place of aboriginal peoples within that society.

RECOMMENDATIONS 122 - Secretary of State's Activities

We encourage the Department of Secretary of State in its efforts to promote the discussion and cooperation necessary to implement multiculturalism in mainstream broadcasting.

RESPONSE

The Department of the Secretary of State will continue its efforts to promote multiculturalism in every aspect of Canadian life and to assist Communications Canada in fostering full recognition of multiculturalism in the Canadian broadcasting system.

RECOMMENDATION 123 - Guidelines for Private Broadcasters

The CRTC should encourage the Canadian Association of Broadcasters to develop and acceptable set of guidelines relating to the representation, fair portrayal and stereotyping of minorities as soon as possible. The CRTC should ensure adherence to these guidelines by means of conditions of licence, where appropriate.

RESPONSE

The Government is confident that the Commission will consider all appropriate means of ensuring that the objectives of the Act set out in clause 3.(1)(c)(iii) are met.

RECOMMENDATION 124 - Brokerage

The Committee rejects the Task Force recommendation to licence groups who are not broadcasters for the purpose of brokerage. The Committee supports the development of an industry code for brokerage, as currently proposed by the CRTC.

RECOMMENDATION 125 - Ethnocultural Programming Service

Before licensing any new national satellite network providing ethnocultural programming, the CRTC should commission a comprehensive study of ethnocultural broadcasting. The scope of the study should include an examination of existing ethnic stations and networks, consideration of options for and the impact of a new national ethnic channel on existing and proposed ethnic services and on other non-ethnic broadcasters. The emphasis should be on economic feasibility and on determining the licensing policy and broadcasting structure most likely to maximize the contribution ethnic services can make to achieving the goals of Canadian broadcasting, including the provision of Canadian programming for ethnocultural groups in Canada.

RECOMMENDATION 126 - Access to Community Broadcasting Outlets

The Committee concurs with the CRTC's plan to review the issue of access by ethnocultural minority groups to community broadcasting outlets and encourages the Commission to ensure fair and reasonable access.

RESPONSE

The Government expects that these and other issues will be considered by the CRTC in implementing the new Bill's focus on multicultural broadcasting.

SERVICES TO THE PHYSICALLY DISABLED

RECOMMENDATION 127 - Closed Captioning on Conventional Networks

Within five years, 50 percent of all network programming on conventional television networks, including 50 percent of Canadian programs, should be available with closed captioning.

RECOMMENDATION 128 - NFB and Telefilm Productions

Productions financed in whole or in part by Telefilm or the National Film Board for broadcast in Canada should be captioned.

RECOMMENDATION 129 - Closed Captioning of Local Programs

At the forthcoming hearings on renewal of licenses for individual television stations, the CRTC should give particular attention to obtaining commitments for the captioning of local programming, particularly news shows, where it is feasible.

RESPONSE

The Government agrees with the thrust of these recommendations and this is reflected in Section 3.(1)(l) of the new Bill which states that programming accessible by disabled persons should be provided within the Canadian broadcasting system as resources become available for the purpose. It is up to the CRTC to determine the most appropriate way to implement this objective, including setting targets such as those proposed by the Committee. The Government notes that the NFB has recently committed itself to closed captioning all NFB productions both in English and French, in video format, before they are released for distribution. In addition, Telefilm Canada administers a program that provides financial assistance to have productions captioned; the program's annual budget is \$500,000.

RECOMMENDATION 130 - Cost of Decoders

Efforts should be made to reduce the cost of decoders, and to increase their availability to low-income users.

RESPONSE

The Government is supportive of initiatives that work toward increasing the availability of programming for the hearing impaired. This recommendation is worth exploring and the Government undertakes to give the matter full consideration, investigating both the private and public options suggested by the Committee in its report.

PATTERNS OF OWNERSHIP IN BROADCASTING

RECOMMENDATION 131 - Directive on Canadian Ownership

The government should clarify the provisions of its directive on Canadian ownership and control of broadcasting undertakings, particularly the requirements related to paid-up capital, in order to ensure that the directive is clear and effectively achieves its purpose of ensuring both ownership and control by Canadians.

RESPONSE

The Government is currently reviewing this direction and will issue such clarifications or amendments as might be required to ensure its ongoing effectiveness.

RECOMMENDATION 132 - Public Policy Hearings by CRTC

The CRTC should immediately start a process of preparing general policy and specific guidelines on ownership and corporate concentration in broadcasting. This should include research studies and, following their publication, public hearings. The inquiry, which could be conducted through a special CRTC committee, should examine issues of concern to broadcasting arising from concentration within media, across media, between media and non-media interests, and of vertical integration of ownership of successive stages in production, programming and distribution.

RECOMMENDATION 133 - English- and French-Language Markets

Attention should be given to the possibility of limiting broadcast owners to a certain share of market, but whatever guidelines are used, they must take into account the distinct needs of the French-language and English-language markets.

RESPONSE

The Government concurs that a policy hearing on the topic of ownership concentration in broadcasting would be both timely and useful. The appropriateness of establishing a policy could be determined following such a hearing. It is consistent with Government policy, as expressed in the new Bill that the CRTC regulate and supervise the broadcasting system in a manner that is readily adaptable to the different characteristics of English- and French-language broadcasting.

COPYRIGHT AND BROADCASTING POLICY

RECOMMENDATION 134 - Protection for Sound Recordings

The principle of independent protection for sound recordings as a category distinct from the original works they contain should be recognized in the Copyright Act.

RECOMMENDATION 135 - Right of Performers

The right of performers over their performances of a creative work should be recognized by the Copyright Act.

RECOMMENDATION 136 - Ephemeral Recording Exception

An ephemeral recording exception should be provided in the Copyright Act to cover the making of recordings by broadcasters who have obtained the right to broadcast such works for the following purposes: time zone requirements, to comply with CRTC regulations, archival considerations, and, at least in regard to sound recordings, for the pre-recording of works for later transmission.

RESPONSE

The copyright issues raised by the Committee in these recommendations are to be addressed in Phase 2 of the Government's on-going revisions to copyright legislation. The Committee's recommendations are welcome contributions to this process.

RECOMMENDATION 137 - Definition of Local Programming

The definition of a "local" broadcast signal should be left to regulations under the new Copyright Act. The definition should be able to take into account actual viewing potential using off-air antenna and should not be exclusively based on theoretical criteria.

RESPONSE

The Free Trade Implementation Bill (C-130) already provides for the definitions of "local" and "distant" broadcast signals to be made by regulation. The criteria for determining these definitions suggested by the Committee will be given due consideration in drafting the regulations.

RECOMMENDATION 138 - Royalties for Retransmission

The level and structure of royalties for retransmission rights in small and isolated communities should take into account their unique situation, including clearances for distant Canadian network signals, and should not be set on the basis of a percentage of subscriber fees.

RESPONSE

The Free Trade Implementation Bill (C-130) ensures that small retransmission systems will be granted a "preferential rate" by the Copyright Appeal Board when that body approves tariffs for retransmission.

RECOMMENDATION 139 - Market Differentiation

A recognition of the importance of market differentiation and the protection of exclusive program rights for the achievement of Canadian broadcasting policy should be codified in section 3 of the Broadcasting Act, as a part of the broadcasting policy for Canada.

RESPONSE

The Government recognizes the importance of market differentiation to the operation of the broadcasting system, and the CRTC's role in creating policies and measures that enable local licensees of copyright programs to exploit fully the commercial value of their licence(s). However, the Government considers that the CRTC has sufficient authority to play this role in the future without the legislative provision the Committee suggests.

RECOMMENDATION 140 - Importation of U.S. Satellite Services

The importation of further American satellite services in Canada should not be permitted until a full study is made of the implications of such importation for the financing of Canadian programs, the autonomy of Canadian markets and the protection of Canadian networks and stations and the rights they wish to acquire.

RECOMMENDATION 141 - Program Substitution Rules

The Commission should strengthen and enhance its program substitution rules so as to protect the exclusivity of the rights held by local Canadian broadcast licensees.

RECOMMENDATION 142 - Importation of U.S. Signals

The Commission should deny permission to import American signals whenever the signal provider acquires both American and Canadian rights to its programming and precludes Canadian broadcast licensees from acquiring exclusive Canadian rights to such programs.

RESPONSE

The Government is aware of the benefits of ensuring that separate Canadian rights exist for the exhibition of broadcast programming and feels strongly that Canadian broadcasters must continue to have the opportunity to bid for Canadian rights. The Government is confident that the CRTC will give due consideration to the Committee's recommendations in this regard.

RECOMMENDATION 143 - Research

The CRTC should be provided with the additional resources it requires to carry out its regulatory functions on the basis of (improved or more adequate) independent research and analysis.

RESPONSE

The Government agrees that the CRTC should undertake independent research and analysis in the context of its regulation and supervision of the broadcasting system. As noted earlier, clause 14 of the new Bill specifically authorizes the Commission to conduct research in any area of broadcasting. The CRTC applied for and received additional funding of \$1.5 million for research in its 1988-89 budget.

II. Annex: Further Comments on the Recommendations of the Standing Committee's Fifth and Sixth Reports

Part A - Recommendations of the Fifth Report

RECOMMENDATION 1 - Status of Cable

The hybrid status of cable television should continue to be reflected in broadcasting law and regulatory policy, with cable companies recognized as an integral part of the Canadian broadcasting system and expected to contribute to achieving the goals of broadcasting policy as set out in the Act.

COMMENT:

Agreed. See the new Bill, clause 3.(1)(q).

The role of "distribution undertakings", including cable operations, has been defined along the lines suggested by the Committee but with greater latitude for program origination than proposed by the Committee in its Sixth Report. In this respect, the new Bill provides for a package of measures to ensure that conflicts of interest can be resolved in the public interest and will not be detrimental to the interests of licensed Canadian programming services. The expectations of distribution undertakings in clause 3.(1)(q)(iii) require them to provide reasonable access. Clause 10.(1)(h) gives the CRTC the power to resolve any disputes arising between programming undertakings and distribution undertakings about the carriage of programming. Under clause 9.(1)(h), the CRTC can require carriage of specified services.

For more detailed comments on the Committee's recommendations related to cable and other broadcasting distribution systems, see the Comment after Recommendations 48 to 63 of the Committee's Sixth Report below.

RECOMMENDATION 2 - Alternative Programming

i) The Minister of Communications should take the lead in convening a meeting of the principal interested parties, including the provincial governments and program suppliers, both public and private, to consider the establishment of new not-for-profit Canadian satellite-to-cable services in French and English. In developing these proposed services the programming emphasis should be on providing a national showcase for productions from all regions of Canada, providing high quality Canadian children's and youth programs and offering other categories of Canadian programming, such as performing arts productions, which are not well provided for through existing television services. While the services should be predominantly Canadian, they should also carry non-Canadian programming not readily available from other broadcasters. Subject to the development of specific proposals for these new services which could pursue these objectives effectively, public policy related to the development of specialty programming services should give priority to their implementation and carriage in Canadian cable systems.

ii) All Committee members agree that ideally these services should be provided on a non-commercial basis - not just because this is consistent with the nature of the proposed services, but because the Canadian television advertising market is highly fragmented. However, some members believe that in order for the services to provide as much high quality Canadian programming as possible, the option of a least accepting sponsorship revenue on a limited basis should not be foreclosed. Certainly the programs offered should not be interrupted at all by messages from sponsors.

COMMENT:

The Government agrees that alternative programming in English and French should be made available. See the new Bill, clauses 3.(1)(i) and (j) and the policy statement.

These clauses of the Bill enable the creation of alternative programming services such as described by the Committee and provide a mandate for such services. The policy paper further elaborates on the Government's intentions with respect to these services.

RECOMMENDATIONS 3 - 9 - Specialty Television Services

NOTE: An overall comment follows recommendations 3 to 9.

RECOMMENDATION 3 - Leave Options Open

If the CRTC does not have before it when applications are filed, proposals which adequately respond to the needs identified above and are carefully developed, based on wide consultation across Canada, then the Commission should ensure that the decisions it makes leave open the option of establishing these services later, ensuring that there still will be adequate channel capacity and scope for any appropriate charges.

RECOMMENDATION 4 - Carriage of Specialty Services

The CRTC should not require the carriage of these services as part of basic cable service in every cable system in Canada, since this approach would have an undesirable impact on cable systems with a limited number of channels. Instead the Commission's policy should link the carriage of these services to the carriage of other licensed Canadian specialty services with a view to ensuring that they reach enough households to have the resources necessary to perform their programming function.

RECOMMENDATION 5 - Other Canadian Specialty Services

The CRTC should consider the carriage of other Canadian specialty services on basic cable on a case by case basis, taking into account the impact of such decisions on licensed pay television and conventional broadcasting services, but should not refuse in principle to permit such carriage.

RECOMMENDATION 6 - Canadian Content

Any Canadian specialized service licensed for carriage on basic service should meet the same Canadian content requirement as applies to conventional broadcasters.

RECOMMENDATION 7 - Discretionary Tier Carriage

Any licensed Canadian specialty services carried on a discretionary tier should receive priority of carriage within any discretionary tier of services, through a continuation of existing or amended packaging or linkage rules. Such rules are necessary and appropriate in view of the conditions of licence such services must comply with concerning the financing and exhibition of Canadian programs.

RECOMMENDATION 8 - Cable Ownership of Specialty Services

Unless the Commission can satisfy the concerns of existing and potential licensees that there will be fair and equitable treatment, the Commission should not permit cable ownership of licensed pay or specialty services.

RECOMMENDATION 9 - Non-Canadian Specialty Services

The carriage of non-Canadian specialty services which would compete directly with licensed Canadian services should continue to be prohibited, since it is not compatible with the existence of Canadian specialty services which can contribute to achieving the goals of broadcasting policy.

COMMENT: - Recommendations 3 - 9

Recommendations 3 to 9 were addressed to the Canadian Radio Television and Telecommunications Commission with respect to its consideration, during the Spring and Summer of 1987, of licence applications for specialty television services delivered by cable. As noted in the Government's August 1987 Response to the Committee's Fifth and Sixth Reports, the Commission was able to take these recommendations into account in reaching its decisions.

RECOMMENDATION 10 - Power of Policy Direction

The Governor-in-Council should be empowered to issue binding directions to the CRTC expressly restricted to broad policy matters in furtherance of the objectives of the Broadcasting Act. The directions should expressly refer to the specific objectives in the Act which they seek to further.

COMMENT:

Agreed. See the new Bill, clauses 7 and 8.

Further to the Government's August 1987 response to the Committee, the proposed new Act contains a power of policy direction along the lines recommended.

Related power

The Government notes, however, that the Standing Committee made no recommendation regarding a related proposal contained in the former Bill C-20. This provision would have provided the Governor-in-Council with the power to require the Commission to hold hearings or to make reports on any matter within its jurisdiction. Such a provision has been included in the proposed new Act. The Government would benefit from this power by being able to draw on the CRTC's experience and expertise. Under this provision, such requests would be made only after consultation with the Commission.

RECOMMENDATION 11 - Power of Policy Direction

The CRTC should be entitled to request that the Governor-in-Council issue a direction on a specific matter.

COMMENT:

Agreed but not required in legislation.

It is assumed that the CRTC or any other person, could petition the Governor-in-Council to request that a direction be issued. Nevertheless, the Governor-in-Council should retain complete flexibility to consider such requests, and to issue directions only when it felt it was timely and appropriate.

RECOMMENDATION 12 - Power of Policy Direction

Before coming into effect, proposed directions should be tabled in the House of Commons and referred to an appropriate committee of the House for consideration. The committee should consult with interested parties, including the CRTC, and should be required to report on the proposed direction within forty sitting days from the date on which the reference to the Committee is made.

COMMENT:

Agreed. See the new Bill, clauses 7.(5), 7.(6) and 8.(2).

The Government agrees with the thrust of this recommendation: Parliament, the CRTC, and other interested parties should have sufficient opportunity to study and comment on any policy direction that may be proposed. The Bill provides that a policy direction would not become effective until forty sitting days after it has been tabled in the House of Commons - in its original or amended form. Upon tabling, it would automatically be referred to a House committee, which would have the opportunity to report within the forty days but would not be required to do so. (This is a small variation on the Committee's proposal.)

RECOMMENDATION 13 - Power of Policy Direction

Directions should not have a retroactive effect and should not be issued in respect of a particular licence.

COMMENT:

Agreed. See the new Bill, clauses 7.(2) (3) and (4).

The Bill contains a clause along the lines recommended by the Committee. Moreover, the clause in the new legislation goes further by precluding issuance of a direction under number of other circumstances so as to avoid interference with licensing matters which are under active consideration.

RECOMMENDATIONS 14 - 17 - Power to Review CRTC Decisions

NOTE: A collective COMMENT follows recommendations 14 to 17.

RECOMMENDATION 14 - Eliminate Power to Set Aside

The present power of the Governor-in-Council to set aside decisions or refer them back to the CRTC should be eliminated, and a limited power of review should be substituted for it.

RECOMMENDATION 15 - Limited Power to Review

The power of review should be limited to the following cases only:

i) where the Governor-in-Council has determined that the CRTC, in making its decision, has misinterpreted or ignored a direction; or

(ii) where the Governor-in-Council has determined that the effect of a CRTC decision is of overriding national importance with respect to the interpretation of the objectives of the Act.

RECOMMENDATION 16 - Notice of Review

Notice of the review should be given to all interested parties, and parties should have a reasonable opportunity to present their case to Cabinet in writing.

RECOMMENDATION 17 - Reason for Decision

Where a determination is made to set aside a decision or to refer it back to the CRTC, reasons should be given.

COMMENT: - Recommendations 14 - 17

As noted in its August 1987 Response, the Government agrees that the review power should be limited. See the new Bill, clauses 27 and 28.

Section 23(1) of the present Act is broadly cast. The government concurred that narrowing of the section's scope was appropriate in light of the inclusion of a power of policy direction. The Government agrees that the review power should be limited to cases where the CRTC has derogated from the objectives of the Act or from a policy direction issued to the Commission. The clause has been further amended to specify the period during which petitions for review must be filed and to extend the period during which the Governor-in-Council may act, so as to avoid the procedural problems inherent in the present Act.

RECOMMENDATIONS 18 - 21 - Radio Act

NOTE: A collective Comment follows recommendations 18 to 21.

RECOMMENDATION 18 - Authorization

Section 9(2) of the Radio Act should be amended to require that authorization be obtained for the reception and use of radiocommunication, except where transmissions are by a broadcasting undertaking and are intended primarily for the direct reception by the general public without further authorization or without the payment of a charge therefore.

RECOMMENDATION 19 - Penalties for Breach of Act

The legislation should incorporate the principles of section 705 (a) of the U.S. Communications Act: that there be a distinction between persons who breach the section for purposes of direct or indirect commercial advantage or private financial gain, who would be subject to serious penal sanctions and civil remedies, and others, who would be subject to lesser penalties.

RECOMMENDATION 20 - Right to Private Legal Action

The legislation should permit aggrieved persons to enforce the section through private legal action, including a cause of action in damages and a claim of relief by injunction against anyone taking a service without authorization.

RECOMMENDATION 21 - Meaning of Term "Authorization"

The legislation should make it clear that the term "authorization" means an authorization to receive and utilize a radiocommunication at the location and for the purpose for which it was granted.

COMMENT: - Recommendations 18 - 21

Agreed. See the new Bill, clause 82.

Further to the Government's August 1987 Response, legislative provisions along the lines recommended by the Committee were incorporated in the Bill with the consequential amendments to the Radio Act. The Government notes that it is currently an offence under the Criminal Code to obtain a telecommunications service (such as cable service) without payment.



Part B - Recommendations of the Sixth Report

LEGISLATIVE ASSUMPTIONS

RECOMMENDATION 1 - Principles and Objectives

The Broadcasting Act should continue to state the fundamental principles and objectives upon which Canadian broadcasting policy is based. This policy statement should be the basis for decisions by the government and its cultural agencies, particularly the CBC, and for all decisions by the broadcasting regulatory authority respecting the undertakings that make up the broadcasting system.

COMMENT:

Agreed. See the new Bill, clause 3.

The Government concurs that it is highly desirable to follow the model established by the 1968 Act and imbed a policy statement in the Act to guide the CRTC, the CBC, and the rest of the system in their respective operations. The new Bill includes a clause on the broadcasting policy for Canada which incorporates many of the ideas proposed by the Committee in the following recommendations.

RECOMMENDATION 2 - Use of Radio Frequencies

The Broadcasting Act should continue to state that broadcasting undertakings in Canada make use of radio frequencies that are public property and should make it clear that, as a result, all persons licensed to operate broadcasting undertakings are responsible to the Canadian public pursuant to the broadcasting policy objectives established in the Act.

COMMENT:

Agreed with modifications. See the new Bill, clause 3.(1)(a).

There is no question that radio frequencies are public property in Canada and will continue to be regulated and supervised in the public interest. In preparing an Act that will guide the system into the 21st century, however, it should not be assumed that all future programming services will choose to use hertzian waves in their operations.

Given this situation, the Bill contains a statement regarding the public character of radio frequencies in Canada but does not try to assert that all components of the "broadcasting system" make use of them. It further states that, through its programming, the Canadian broadcasting system provides a public service essential to the maintenance and enhancement of national identity and cultural sovereignty (clause 3.(1)(a)).

RECOMMENDATION 3 - The Broadcasting System

The Act should provide for the Canadian broadcasting system, comprising public, private and community broadcasting elements, to be regulated by a single regulatory agency, with each broadcasting undertaking contributing in an appropriate and significant way to the achievement of the objectives established for the system.

COMMENT:

Agreed except with respect to community broadcasting. See the new Bill, clauses 3.1(a), 3.1(d) and 3.2).

RECOMMENDATION 4 - "Community Broadcasting"

The Act should incorporate a definition of community broadcasting and identify appropriate objectives and principles for its operation.

COMMENT:

Not addressed precisely as recommended.

Although the Bill does not directly recognize community broadcasting, it does recognize the importance of local programming (clause 3.1(g)(ii)). This will allow the CRTC to continue requiring cable operators to provide community channels and FM stations to allocate community access time. More generally, it will provide a legislative basis for the CRTC to encourage the further development of community broadcasting.

The major distinguishing features of community broadcasting are, first and foremost, the local character of programming and secondly, its not-for-profit or cooperative operations. The Bill focusses on the nature of the programming - a central concern in the new Act. The provision of locally produced programming is of tremendous importance whether it is provided through the "community channel" on the local cable system, through a cooperative radio or television station or through the local conventional broadcasting station.

RECOMMENDATION 5 - Canadian Ownership

The Act should state that all broadcasting undertakings must be at least 80 per cent owned and effectively controlled by Canadians and that no single foreign shareholder may own more than 10 per cent of the shares in any broadcasting undertaking in Canada.

COMMENT:

Agreed in principle, but not addressed precisely as recommended. See the new Bill, clause 3.(1)(c)(ii).

The Government agrees with the thrust of this recommendation but does not see the need for the legislation itself to be so specific. Accordingly, the Bill retains the wording of Section 3(b) of the existing Act which states that "the Canadian broadcasting system should be effectively owned and controlled by Canadians". It also provides the Governor-in-Council with a specific power to make orders to give effect to this policy goal (clause 25).

Currently, this policy is enforced by way of an Order-in-Council issued under authority of another section of the Act. In summary, it requires 80% Canadian ownership but, to avoid misinterpretation, it is very detailed and complex. Imbedding such detailed provisions into the legislation would make it rigid and extremely difficult to change in the face of changing circumstances. The existing Order-in-Council will be carried over and remain in force under the new legislation.

RECOMMENDATION 6 - Right to Receive Broadcasting Services

The Act should continue to recognize the right of persons to receive broadcasting programs and services, subject only to generally applicable statutes and regulations. However, the new legislation should also make it clear that, in the case of broadcasting services such as cable television or discretionary services for which a charge is made, this right is conditional on payment of the appropriate charge.

COMMENT:

Agreed with modifications. See the new Bill, clause 3.(1)(h).

The Bill states that a range of broadcasting services in English and French should be extended to all Canadians as resources become available (clause 3.(1)(h)). In the Government's view, this provision recognizes the public's entitlement to receive programs and services without placing a continuing and unspecified financial burden on the public purse. The clause also acknowledges the on-going substantive role played by the public sector in the extension of broadcasting services. (See also Comment after Recommendation 26, below.)

As regards services requiring payment of a subscription fee for lawful reception: The Government has already agreed with the Standing Committee's recommendation contained in their Fifth Report regarding the unauthorized reception of certain radiocommunication signals. (See Comments on recommendations 18-21, Fifth Report, above.) In addition, the definition proposed for "subscription programming signal" in the amendments to the Radio Act under clause 81 of the Bill recognizes the possibility that these services may require a subscription fee. In the Government's view, no further provisions of this nature are needed in the Act.

RECOMMENDATION 7 - Responsibility for Programs

The Act should state that broadcasting undertakings are responsible for the programs they broadcast but should provide an exemption from such responsibility for cable, satellite or any other distribution undertaking where that undertaking has no decision-making control over the content of the programming being redistributed and no contractual relationship with the originator of the programming service.

COMMENT:

The new Bill contains a clause on the responsibility of broadcasting undertakings for programs (clause 3.(1)(f)).

PRINCIPAL LEGISLATIVE DEFINITIONS

RECOMMENDATION 8 - "Scope of the Act"

The Committee endorses the Task Force recommendations:

(a) That the Act should cover all undertakings involved in broadcasting in the widest sense, this is, those that decide what programs to carry, as well as those that are involved in program dissemination to the public and thus in determining program accessibility to Canadians; and

(b) That the Act should broaden the definition of broadcasting and related concepts to cover all types of program reception and distribution whether by Hertzian waves or through any other technology.

COMMENT:

Agreed in principle. See the new Bill, clause 2. (Definitions) and clause 3.(1)(a).

The Government agrees with what is understood to be the thrust of this recommendation. Through a careful review and updating of legislative definitions, all culturally significant forms of programming origination and dissemination within "the Canadian broadcasting system" have been captured in the proposed legislation. The concern expressed in part (b) of this recommendation was approached with caution however, so as to avoid capturing certain technologies which were not intended to be governed by the Act. For example, the expression "through any other technology" used by the Committee might have placed program distribution destined for use in VCRs under this Act - an interpretation which would have been clearly unintended.

Note: See also Comment after Recommendations 9 and 10 on the definition of "Broadcasting"

RECOMMENDATION 9 - "Broadcasting"

The term "broadcasting" should be defined so as to extend to any radiocommunication in which the transmissions are intended for reception by the public, including not only conventional radio and television stations but also satellite operations, where the signals are intended to be received only by cable television systems or other distribution undertakings that redistribute such signals to their subscribers.

RECOMMENDATION 10 - "Broadcasting"

The term "broadcasting" should be defined so as to extend to pay television, specialty and other program services intended for reception by the public, where the signals are scrambled and the service is intended to be received only by members of the public paying for such services.

COMMENT:

Agreed. See the new Bill, clause 2.(1).

The Government agrees with the proposals in Recommendation 9 and in Recommendation 10. It is no longer desirable or practicable to confine the definitions to strictly the reception and transmission of radiocommunications. Taking into account the technological advances already in the system, the Bill introduces a new generic "technology neutral" definition of broadcasting which covers all "programming services". This new term is inclusive enough to capture pay television, specialty services and conventional broadcasting services. (See Comment after Recommendation 54 for a detailed discussion of the "technology neutral" aspect of the new Bill.)

RECOMMENDATION 11 - "Broadcasting Undertaking"

The Act should state that any person who transmits or distributes by means of telecommunication, other than solely as a telecommunications common carrier, any programming received by radiocommunication, should be considered to be carrying on a broadcasting undertaking.

COMMENT:

Agreed. See the new Bill, clause 4.(4).

The new definitions capture the intent of this recommendation. Moreover, clause 4.(4) provides specific exclusion from the Act for telecommunications carriers acting solely in that capacity.

RECOMMENDATION 12 - "Broadcasting Undertaking"

A person should be considered to be carrying on a broadcasting undertaking under the Act regardless of whether the undertaking is carried on for consideration or profit.

COMMENT:

Agreed. See the new Bill, clause 4.(3).

The Government agrees with this recommendation because, with respect to the objectives of the Act, nothing turns on whether a given operation is being conducted for profit or consideration.

RECOMMENDATION 13 - CRTC Power to Exempt from Licensing

The power of the CRTC to exempt classes of broadcasting undertakings from the requirement that a licence be obtained should be expanded to include broadcasting transmitting undertakings as well as broadcasting receiving undertakings. However, the power to exempt should be exercisable only where the Commission finds that the exemption will have no significant adverse effect on the achievement of the policy objectives of the Act.

RECOMMENDATION 14 - CRTC Power to Exempt from Licensing

The power to exempt undertakings from the requirement to obtain a licence should be subject to a right to impose terms and conditions, and regulations applicable to licensees should also be able to be applied to exempted persons. This will permit the CRTC, for example, when exempting MATV systems, to require such systems to meet the same obligations or requirements related to the carriage of services or any other matters as would apply to cable television systems or other comparable licensed undertakings.

COMMENT:

Agreed. See the new Bill, clause 9.(2).

The Bill provides for the CRTC to grant exemptions from the requirement to obtain a broadcasting license to certain types of broadcasting undertakings. It also provides the CRTC with the power to apply certain terms and conditions to such exemptions, as recommended by the Committee. (See Comment after Recommendation 54 for further discussion of this issue.)

RECOMMENDATION 15 - "Distribution Undertaking"

The term "distribution undertaking" should be defined in the new legislation to mean a broadcasting undertaking that provides a service consisting in whole or in part of the distribution to the public of programming services originated by one or more broadcasters or network operators.

COMMENT:

Agreed with modifications. See the new Bill, clause 2 (Definitions) and clause 3.(1)(q).

The Government agrees with the thrust of this recommendation although the wording in the Bill differs in light of other new definitions. The intention was to create a technology neutral definition that would capture all "distribution undertakings" including conventional cable systems, some satellite direct-to-home services, "mini cable systems" serving a restricted geographic area such as SMATV systems in apartment buildings or condominium complexes, and "wireless cable systems" such as MMDS and rebroadcasters operating in remote areas. To this end, the definition focusses on the activity undertaken (ie. the reception and retransmission of programming services of others) rather than the technology used to carry on the activity.

RECOMMENDATION 16 - "Network Operation"

The Act should define the term "network operation" so as to apply not only to conventional radio and television networks (where there is a delegation of program responsibility from the affiliate to the network), but also to satellite- to-cable networks or other operations where the supplier of a program service gives a right to two or more cable television systems or other distributors to market or exhibit the program service to its subscribers or customers.

COMMENT:

Partially accepted. See the new Bill, clause 2.

The operation of conventional radio and television networks, where there is a delegation of control from an affiliate to a network, is covered by the definition of "network" in Clause 2 of the Bill as suggested in the first part of this recommendation.

With respect to satellite-to-cable networks and other operations, the definition of the new term "programming service" in the Bill makes it unnecessary to expand the definition of the term "network" as recommended.

RECOMMENDATION 17 - Licensing of Network Operations

All network operations that deliver a program service on a contracted basis to members of the Canadian public, whether directly or through distribution undertakings or other intermediaries, should require a licence from the CRTC.

COMMENT:

Canadian network operations require licensing under both the current Act and the new Bill. Implementing this recommendation would have required the licensing of foreign broadcasters (mostly American) whose signals are received and distributed in Canada. Most of these services do not have a business presence in Canada and operate under American law. It is doubtful whether it would be legally possible to require these services to submit to licensing by the CRTC because Canada cannot extend its laws beyond its territory.

Accordingly, clause 10.(1)(g) of the Bill specifically authorizes the CRTC to make rules and regulations applicable to the reception and distribution of any foreign or other "programming services" by "distribution undertakings" in Canada on such terms and conditions as the CRTC deems necessary and reasonable to achieve the objectives stated by Parliament in the Act.

RECOMMENDATION 18 - "Program" and "Programming"

The term "program" and "programming" should be defined broadly in the Act so as to cover all forms of audio and video content, including entertainment, information and advertising, disseminated to the public over broadcasting undertakings.

COMMENT:

Agreed. See the new Bill, clause 2.

The Government concurs that there should be a definition of the term "program" in the new Act and this new term is among the most important in the Bill. The proposed definition of "program" is, however, somewhat narrower than the Committee recommended so as to distinguish it from telecommunications services and information/data services. By including this term, it is hoped that the CRTC's regulatory attention will be focussed on the dissemination of programming of cultural significance to the Canadian public.

RECOMMENDATION 19 - Application of the Act

The Broadcasting Act should be amended as set out in Section 2(2) of the Radio Act so that the Act applies to Her Majesty in right of Canada and of each province.

COMMENT:

Agreed. See the new Bill, clause 4.(1).

The Standing Committee has pointed out an anomaly that has previously been raised by the Standing Joint Committee of the Senate and the House of Commons on Regulations and other Statutory Instruments. Presumably, the drafters of the present Broadcasting Act did not envisage the granting of broadcasting licences to the provincial governments, municipalities or their agents as has, in fact, occurred.

In the circumstances, the Government agrees that it would be desirable to include in the new Act a provision similar to the present section 2(2) of the Radio Act which would have the effect of binding the Crown in right of Canada and of each province.

OBJECTIVES FOR THE CANADIAN BROADCASTING SYSTEM

RECOMMENDATION 20 - Safeguard and Enrich

The Act should continue to state that the Canadian broadcasting system should safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada.

COMMENT:

Agreed. See the new Bill, clause 3.(1)(c)(i).

RECOMMENDATION 21 - Needs of Both Sexes

The Act should provide that the Canadian broadcasting system should serve the needs and interests of both sexes.

COMMENT:

Agreed. See the new Bill, clause 3.(1)(c)(iii).

RECOMMENDATION 22 - Stimulate Canadian Consciousness

The Canadian broadcasting system should play an active role in stimulating a Canadian consciousness and should serve the special needs of each geographic region and both official language groups. By contributing actively to the exchange of information and expression among the regions, and between French and English-speaking Canadians, the system should acquaint all Canadians with the traditions, values, practices and aspirations of each region of Canada.

COMMENT:

Agreed. See the new Bill, clauses 3.(1)(c)(iii), 3.(1)(d) and 3.(1)(g). Also the CBC mandate in clauses 3.(1)(m) and (n).

RECOMMENDATION 23 - Canadian Expression

The Canadian broadcasting system should encourage the development of Canadian expression, providing a wide range of programming that reflects Canadian attitudes, opinions, ideas, values and artistic creativity, displaying Canadian talent in entertainment programming, and offering information and analysis concerning Canada and other countries from a Canadian point of view.

COMMENT:

Agreed. The new Bill specifies that each element of the Canadian broadcasting system shall contribute in an appropriate manner to the creation and presentation of Canadian programming, making maximum use of Canadian creative and other resources (clause 3.(1)(d)). It further states that the programming provided by the Canadian broadcasting system should "be drawn from local, regional, national and international sources (clause 3.(1)(g)(ii)).

RECOMMENDATION 24 - Balanced Representation of Society

The programming carried by the system should provide a balanced representation of Canadian society, reflecting its multicultural and bilingual realities, its aboriginal peoples and the composition of its population with respect to sex, age, race, national or ethnic origin, colour, religion, and mental or physical handicaps.

COMMENT:

Agreed. See the new Bill, clause 3.(1)(c)(iii).

This recommendation has been accepted with only minor alterations. It is the clear intention of the Government that the multicultural composition of Canada be reflected in broadcasting operations and programming. The Bill's new provision goes much further than the present Act in responding to representation concerns, and encouraging fairer and more representative employment practices.

It will encourage the CRTC to consider such matters in the context of overall programming content, and employment equity, at license renewal times. It does not, however, go so far as to entrench rights which would require the CRTC to interfere in the content of individual programs. It must be recalled that individuals who feel discriminated against have extensive rights under the Charter which they can exercise regardless of the wording of the Broadcasting Act.

Moreover, three of the specific "access" concerns, a broader range of services for remote and underserved communities (clause 3.(1)(h)), broadcasting reflecting aboriginal cultures (clause 3.(1)(k)), and better services for disabled Canadians (clause 3.(1)(l)), have been included in the Act as specific new provisions and addressed in policy initiatives. The Government also foresees an important role for alternative programming services in providing drama and documentary programs with a multicultural emphasis to enable this reality of Canadian society to be more apparent to all Canadians.

RECOMMENDATION 25 - Range of Programming

The Canadian broadcasting system should offer a range of programming that is varied and comprehensive, providing a balance of information, enlightenment and entertainment for people of different ages, interests and tastes.

COMMENT:

Agreed. See the new Bill, clause 3.(1)(g)(i).

RECOMMENDATION 26 - Entitlement to Services

The Act should reaffirm that all Canadians are entitled to Canadian broadcasting services in French and in English, with this right being implemented if necessary by means of concerted action by the public sector.

COMMENT:

Agreed but without requiring concerted action by the public sector, which would have placed a continuing and unspecified financial burden on the public purse. Rather, clause 3.(1)(h) of the Bill contains the phrase as resources become available, recognizing the on-going, substantive, role played by the private sector in extension of broadcasting services. In addition, the Bill recognizes the different characters of French and English language broadcasting and strengthens the CBC's role in providing services to official language minorities (clause 3.(1)(n)(iii)).

RECOMMENDATION 27 - Aboriginal Peoples

The Broadcasting Act should include the right of aboriginal peoples to broadcasting services in representative native languages, where numbers warrant and as public funds become available.

COMMENT:

Clause 3.(1)(k) of the new Bill specifies that programming reflecting the aboriginal cultures of Canada should be provided as resources become available. The Government has also committed \$10 million over the next four years to provide a distribution system to facilitate northern native broadcasting.

RECOMMENDATION 28 - Right of Access

The Broadcasting Act should not include a specific right of access for all Canadians to the broadcasting system, as access is provided for adequately and realistically through other existing and proposed provisions in the legislation.

COMMENT:

Agreed.

RECOMMENDATION 29 - Predominantly Canadian

The Act should stipulate that, except as provided for in Recommendation 30, the programming provided by each broadcaster and network operator should be predominantly Canadian, and each broadcaster and network operator should use predominantly Canadian creative and other resources.

COMMENT:

The Government agrees with the concern expressed in this recommendation that the Canadian broadcasting system should be recognizably, and even predominantly, Canadian. The new Bill, requires that each element of the Canadian broadcasting system shall contribute in an appropriate manner to the creation and presentation of Canadian programming, making maximum use of Canadian creative and other resources (clause 3.(1)(d)). It also requires that the CBC's programming be "predominantly and distinctively Canadian" (clause 3.(1)(n)(i)).

The 1968 Act addressed this issue in two ways. Section 3.(d) states that "the programming provided by each broadcaster should be of high standard, using predominantly Canadian creative and other resources". Secondly, the mandate for the CBC in Section 3.(f) requires the Corporation's programming to be "predominantly Canadian in content and character. The phrasing of s. 3.(d), of the 1968 Act makes it applicable only to broadcasting transmitting undertakings and not to broadcasting receiving undertakings, such as cable operators, nor to networks.

Given the range of programming services now available through broadcast media, an overall requirement for predominantly Canadian programming such as the one proposed by the Committee could unduly constrain the ability of the broadcasting system to provide Canadians with as broad a range of services as possible.

For example, TV-5 is an available French-language service which is not predominantly Canadian but which nevertheless helps fill a gap in French-language programming. One could imagine the licensing of a similar English-language service or other specialty services which would not meet the "predominantly Canadian" criteria but which would nonetheless make useful additions to the range of available programming services.

The language in the new Act thus expands the application of the new clause while the phrase "making maximum use of Canadian creative and other resources" allows sufficient flexibility to take into account the new range of services available in the system. Overall, the new clause will impose greater statutory requirement across the whole system for the use of Canadian creative and other resources.

In addition to this general provision, the Government has included in the Bill a number of additional provisions to reinforce this important point. At the same time, the CRTC has room to manoeuvre to allow a broad range of non-Canadian services without being limited to specific criteria for exemptions such as those proposed by the Committee in the following recommendation.

Other provisions of the Bill which ensure a recognizably Canadian system fall under clause 3.(1) and include:

- c) The Canadian broadcasting system should:
 - i) serve to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada, ...
 - iii) strive, through its operations and programming, to reflect the circumstances and aspirations of Canadian men and women, including the linguistic duality and multicultural nature of Canadian society and the special place of aboriginal peoples within that society...
- g) The programming provided by the Canadian broadcasting system should ...
 - ii) be drawn from local, regional, national and international sources

It would be difficult for Canadian broadcasters to fulfill these objectives without presenting a predominant proportion of Canadian programming using predominantly Canadian creative and other resources. Non-Canadian programming services, however, would be integrated into this system in a complementary way and under such conditions as the CRTC deems necessary to meet the objectives of the Act (new Bill clause 10.(1)(g)).

RECOMMENDATION 30 - Exemptions

The Act should provide that the Commission may enact regulations exempting classes of broadcasters and network operators from the policy expressed in Recommendation 29, but requiring such broadcasters and network operators to use Canadian creative and other resources commensurate with their abilities, where

- (a) the programming service is of specialized interest to only a limited segment of the public;
- (b) the programming service is transmitted only to persons in remote areas in order to provide service commensurate with that available in urban areas; or
- (c) the programming service is distributed only on a discretionary basis to subscribers in return for payment additional to payments made in respect of the provision of basic service by a broadcasting distribution undertaking.

COMMENT:

The legislative language summarized in the preceding Comment should allow the CRTC the flexibility to ensure that all licensees make maximum use of Canadian creative and other resources.

RECOMMENDATION 31 - Balanced Expression of Differing Views

The Broadcasting Act should include a provision that the programming of each broadcaster, network operator, and community channel operator should provide a reasonable and balanced opportunity for the expression of differing views on matters of public concern.

COMMENT:

Clause 3.(1)(g)(iv) of the new Bill requires that the programming provided by the broadcasting system provide such opportunity.

RECOMMENDATION 32 - High Standard

The Broadcasting Act continue to state that the programming provided by each broadcaster and on each community channel should be of high standard.

COMMENT:

Clause 3.(1)(e) of the new Bill requires that the programming provided by the Canadian broadcasting system should be of high standard.

RECOMMENDATION 33 - Closed Captioning

The new Act should specifically bind the CRTC to ensure that within five years of the passage of new broadcasting legislation at least fifty per cent of national television programming on conventional networks such as CBC, CTV, and TVA will be available with closed captioning or other means whereby the programs can be understood by the hearing impaired; and that other television broadcasters provide a significant and reasonable proportion of their programming with closed captions or comparable means to provide access to the hearing impaired.

COMMENT:

The Bill states that programming accessible to disabled persons should be provided within the Canadian broadcasting system (clause 3.(1)(l)). The more general wording will invite the CRTC to set and raise, in the light of evolving technologies, requirements for programming which is closed-captioned or otherwise made accessible by disabled persons.

LEGISLATIVE PROVISIONS RELATED TO THE CBC

RECOMMENDATION 34 - Range of Programming

The Act should require that the CBC cover the whole range of Canadian programming in fair proportion, providing a balance of Canadian programming of information, enlightenment and entertainment for people of differing ages, interests and tastes, while offering Canadians the best of foreign radio and television programming.

RECOMMENDATION 35 - Predominantly Canadian

The service provided to Canadians by the Corporation should be predominantly Canadian in content and character, in English and French, serving the special needs of the geographic regions, and contributing actively to the flow and exchange of information and expression among Canadians living in all geographic regions.

COMMENT:

Agreed. The mandate has been focussed to reflect a truly Canadian orientation.

The broadcast environment has changed radically since the CBC's mandate was set out in the 1968 Act and a wide range of programming is now available from other private and public broadcasters. The Bill alters the CBC's mandate to reflect this new reality and to adopt a truly Canadian focus. Accordingly, the new CBC mandate in clause 3.(1) of the Bill reads as follows:

(m) the Canadian Broadcasting Corporation, as the national public broadcaster, should provide radio and television services incorporating a wide range of information and entertainment programming;

(n) the programming provided by the Canadian Broadcasting Corporation should

- (i) be predominantly and distinctively Canadian,
- (ii) reflect Canada and its regions to national and regional audiences,
- (iii) be in English and French, reflecting the different needs and circumstances of each official language community, including the particular needs and circumstances of English and French linguistic minorities,
- (iv) contribute to shared national consciousness and identity, and
- (v) be made available throughout Canada by the most appropriate and efficient means and as resources become available for the purpose;

The CBC must also, of course, meet the general standards set out in the other clauses of 3.(1) for the Canadian broadcasting system.

RECOMMENDATION 36 - National Unity

The requirement that the CBC contribute to national unity should not be included in a future Act but should be replaced by a more socially oriented provision, for example, that the CBC contribute to the development of national consciousness.

COMMENT:

Agreed. See the new Bill, clause 3.(1)(n)(iv).

The proposed legislation states that the national broadcasting service should, through its programming, contribute to shared national consciousness and identity.

RECOMMENDATION 37 - Aboriginal Languages

The Broadcasting Act should provide for the CBC to offer service in aboriginal languages considered to be representative, where numbers warrant and to the extent public funds permit.

COMMENT:

This recommendation has been addressed in two ways. First, clause 3.(1)(c)(iii) of the Bill requires that all broadcasters reflect Canadian society, including the special place of aboriginal peoples. Secondly, the CBC's mandate requires that the corporation reflect Canada and its regions to national and regional audiences (clause 3.(1)(n)(ii)). In regions like the North, where aboriginal peoples form a significant - even a majority - part of the population, the CBC would naturally continue to do some programming in aboriginal languages.

RECOMMENDATION 38 - Non-Mandated Services

The three main non-mandated services -- the Parliamentary Television Network, Radio-Canada International and the Northern Service -- should be written into the broadcasting legislation, either within the mandate of the CBC or in some other appropriate context, in order to confer official recognition and continuity of service.

COMMENT:

Agreed, except with respect to the House of Commons channel. The "non-mandated services" have been dealt with in the following ways:

(a) In the case of Radio Canada International, a general reference to international services in clause 45.(2) of the new Bill recognizes this service. Moreover, the existing Order-in-Council (OIC) gives RCI full legal status and defines its relations with the Department of External Affairs. This OIC will remain in force under the new Act.

(b) In the case of CBC's Northern Service, the CBC's mandate in clause 3.(1)(n)(ii) of the Bill requires the Corporation to reflect Canada and its regions to both national and regional audiences. The Government believes that the Northern Service should be seen as a region, with programming which reflects the North to both national and Northern audiences.

(c) In the case of the House of Commons channel, the CBC can perform this function as long as it wishes to without special reference in its mandate. It is the prerogative of the Speaker to make the arrangements considered to be most appropriate for the service.

RECOMMENDATION 39 - Cost of Parliamentary TV Network

The cost of providing the Parliamentary Television Network should be borne by the Speaker of the House of Commons with the Speaker responsible for determining the scope and nature of that service. The CBC should be compensated in full for continued use of its technical and human resources.

RECOMMENDATION 40 - Funding for Radio Canada International

The funds for the operation of the service of Radio-Canada International should be voted separately within the funding of the CBC. The CBC should continue to operate the service with full editorial independence. The Department of External Affairs should continue to provide advice concerning the countries to be served by RCI and the languages in which RCI should broadcast.

COMMENT:

The Government does not contemplate, at this time, a process whereby separate programming activities of the CBC would be the subject of discrete votes. The recommendation concerning the continuance of the editorial independence of the CBC in the operation of RCI and the advice to be provided by External Affairs, is accepted. The present arrangements will be continued through the existing Order in Council which will remain in force under the new Act.

RECOMMENDATION 41 - Extension of Services

The Act should continue to state that the services of the CBC should be extended to all parts of Canada, as public funds become available.

COMMENT:

Agreed. See the new Bill, clause 3.(1)(n)(v).

While extension of CBC services to all Canadians should remain an objective, it is important that the CBC be encouraged to take advantage of new and developing technologies wherever possible to reduce its equipment costs. Accordingly, the proposed Act provides that the services be available throughout Canada by the most appropriate and efficient means and as resources become available for the purpose. The term "resources" would make it clear that other CBC revenues, such as commercial revenue earned by the Corporation, could also be used to extend service.

RECOMMENDATION 42 - Licence Renewal and Funding

The CBC licence renewal process should be preceded by a statement from the government on the extent of funding it intends to provide over the pending CBC licence period. It should also be preceded by the CBC's plans for the licence period, including its promise of performance to the Commission. On this basis, as well as the public comment provided through a full licence renewal hearing and its overall view of the content of the Canadian broadcasting system as a whole, the CRTC would then attach to the CBC's licence such conditions as it deemed appropriate.

RECOMMENDATION 43 - Licence Renewal and Funding

The public subsidy granted CBC should be calculated and announced publicly to cover the same period as the CBC's station and network licences. In return the CBC should be expected to manage its resource base over this financing period without requesting any adjustments for either earned revenue shortfalls or fluctuations in the cost of doing business.

COMMENT:

The Government concurs that the CBC requires a more solid basis for financial planning to coincide with its licence period. Accordingly, the Government proposes to table, each year, in the House of Commons, a five-year financial planning framework for the CBC including its forecast of future revenues and government appropriations. (New Bill, clause 54.)

This arrangement would display the CBC's planning basis and permit a much more informed discussion of the Corporation's plans. It would also enable the CRTC to evaluate the CBC's plans much more effectively at licence renewal time.

RECOMMENDATION 44 - Selection of Board Members

In selecting the members of the CBC's Board of Directors, the government's decisions should reflect the representation in the population of men and women, both official language groups, and minority groups, as well as the regions of Canada.

COMMENT:

Agreed.

RECOMMENDATION 45 - Ombudsman

Action should not be taken to create an office of CBC Ombudsman. Instead the CBC should strengthen its existing process for handling complaints, including both the recognition and reporting of complaints within CBC's programming and the administrative process for replying to and dealing with complaints.

COMMENT:

The Government will not take action to create such an office. The CBC will continue to be responsible for its own process of handling complaints.

RECOMMENDATION 46 - Paramount Consideration

The Act should continue to state that where any conflict arises between the objectives of the national broadcasting service and the interests of the private element of the Canadian broadcasting system, it shall be resolved in the public interest, but paramount consideration shall be given to the objectives of the national broadcasting services.

COMMENT:

Agreed. See the new Bill, clause 3.(1)(o).

Wording slightly modified.

PROVINCIAL BROADCASTING SERVICES

RECOMMENDATION 47 - Licensing Educational Broadcasting

The Broadcasting Act should make provision for licensing by the CRTC of educational broadcasting services established by provincial governments, and such services should be regarded as an integral part of the Canadian broadcasting system.

COMMENT:

See the new Bill, clause 3.(1)(g)(iii).

The provision cited above states simply that the programming provided by the Canadian broadcasting system should include educational programs. There is no agreement among provincial governments and broadcasters regarding a more specific reference in the new Act and the existing arrangement, which defines what constitutes "educational broadcasting" through an Order in Council (OIC), remains workable. The Government remains open to discussion regarding the existing definition of "educational broadcasting" under the OIC.

CABLE TELEVISION AND OTHER BROADCASTING DISTRIBUTION UNDERTAKINGS

RECOMMENDATION 48 - Separate Definition

As noted in Recommendation 15, broadcasting undertakings that provide a service consisting in whole or in part of the distribution to the public of programming services originated by one or more broadcasters or network operators should be defined separately in the Act as "distribution undertakings".

COMMENT:

Agreed. See the new Bill, clauses 2 and 3.(1)(q).

RECOMMENDATION 49 - Integral Part of Broadcasting System

Distribution undertakings should be recognized as an integral part of the Canadian broadcasting system and should be subject to regulatory requirements based on their unique characteristics.

COMMENT:

Agreed. See the new Bill, clause 3.(1)(q).

RECOMMENDATION 50 - Community Access Channels

Distribution undertakings should continue to be permitted in the new Act to operate and take responsibility for local community access channels.

COMMENT:

Agreed. See the new Bill, clause 3.(1)(q)(iv).

RECOMMENDATION 51 - Interest in Programming Services

The Act should provide that no distribution undertaking may have an ownership interest in, or in common ownership with, a pay television, specialty or any other network programming service distributed on such undertaking on the basis of a contractual relationship between the licensed network and the distribution undertaking, or where the consent of the network or the distribution undertaking is required for carriage.

COMMENT:

While the Government agrees with many aspects of the Committee's view of the role of distribution undertakings, it has chosen not to preclude them from playing a wider role in the broadcasting system than the Committee recommends. (See the new Bill, clause 3.(1)(q)) The Government's reasons are as follows.

Since 1968, distribution undertakings have evolved beyond distribution to play an increasing role in programming. In essence, the Committee has recommended that their role be restricted to that of a packager-retailer-distributor of other entities' programming. However, restricting distribution undertakings could limit the potential resources available for Canadian programming.

Accordingly, the Bill encourages distribution undertakings to evolve as a packager-retailer-distributors of programming, while, at the same time, recognizing the possibility for an expanded role in programming (clause 3.(1)(q)). To address potential conflicts of interest, the CRTC has been provided with express authority to arbitrate disputes between distribution undertakings and programming services, and indeed to require carriage (clause 10.(1)(h) and 9.(1)(h)).

The power to audit to ensure compliance with such conditions as cost-separation and the power to arbitrate conditions of carriage of specialty services are described among the additional powers recommended for the CRTC in the section of these recommendations dealing with the CRTC (recommendations 64-86).

RECOMMENDATION 52 - Affiliation Agreements with Networks

The CRTC should be given the power to arbitrate the terms and conditions contained in affiliation agreements between distribution undertakings and network operators.

COMMENT:

Agreed. See the new Bill, clause 10.(1)(f).

RECOMMENDATION 53 - "Non-Programming" Services Definition

"Non-programming" services should be defined so as not to overlap with the definition of "programming" proposed in Recommendation 18.

COMMENT:

Not accepted - unnecessary under new definitions.

RECOMMENDATION 54 - Distribution of "Non-Programming" Services

Distribution undertakings should be permitted to distribute or originate non-programming services, subject to carriage priority to programming services and provided appropriate cost separations are maintained.

COMMENT:

Agreed. The new Bill does not preclude carriage of such services and provides a legislative framework for determining whether they are to be regulated under the Broadcasting Act. In addition, the role of distribution undertakings described under clause 3.(1)(q) of the Bill gives priority to the carriage of Canadian programming services and requires efficient delivery of programming at reasonable rates.

This issue touches upon a basic concept introduced in this Bill. For the first time, it is the nature of the activity rather than the technological mode of delivery which determines what is considered broadcasting and is therefore subject to regulation. To achieve this end, the wording of the Bill has been made "technology-neutral" and related definitions and roles have been adjusted accordingly.

In keeping with this approach, the language of the proposed Broadcasting Act is framed in such a way that it:

(a) permits "broadcasters" to use any technologies, including technologies other than radiocommunications, for the delivery of programming, and

(b) permits others to use any technologies, including radiocommunications, for non-broadcasting purposes without being unduly subject to broadcasting regulation.

With respect to (a), the Bill defines "broadcasting" so as to encompass any transmission of programs by radio waves or other means of telecommunication

....

With respect to (b), the Bill provides four stages at which activities not essential to the achievement of the broadcasting goals established in section 3 of the Act can be removed from the regulatory authority of the CRTC.

First, those features of the activity which can safely be left to the discretion of a court to interpret are spelled out in the Definitions clause of the Bill (clause 2). Activities excluded by the definitions are:

- (a) any transmission or retransmission of programs not intended for reception by the public by means of a broadcasting receiving apparatus (e.g., teleconferencing);
- (b) any transmission or retransmission of programs which occurs solely as a result of a demand of the consumer (e.g. on demand electronic delivery of movies from the corner video store);
- (c) any transmission of programs solely for display or performance in a public place (e.g. championship fights shown in arenas);
- (d) any transmission of programming which is predominantly or exclusively text and numbers (e.g., stock market quotes).

Second, the Commission will be required to exclude from the requirement to hold a broadcasting licence those classes of undertakings which, while technically within the Act by virtue of the definitions, do not, in the Commission's opinion, contribute in a material manner to the implementation of the Broadcasting Policy set out in clause 3 of the Bill. (See new Bill, clause 9.(2).)

Third, the Commission will have the discretion to exempt classes of broadcasting undertakings from the requirement of holding a licence. (New Bill clause 9.(2)) Things it is likely to exclude include low powered transmissions for tourists in parks, classified ads channels on cable, etc.

Fourth, the Commission will be required to regulate and supervise the broadcasting system in a manner which does not inhibit the development of new information services, and which exempts such services from regulation wherever possible. (New Bill clauses 5.(2)(e) and (f))

Finally, the Government may, under clause 26, require the Commission to exclude any particular class of undertakings from the operation of all or part of the Act.

This staged approach means that many activities which would formerly have fallen within the Act will be excluded automatically, by operation of law (stage 1), others will be excluded automatically according to the Commission's definition of excluded classes (stage 2), still others will be excluded by the Commission on a case-by-case basis (stage 3), and if it should happen that any particular activity continues to be regulated by the Commission which the Governor-in-Council determines should be excluded, that class may be excluded by order.

RECOMMENDATION 55 - "Non-Programming" Services Access

Equitable non-discriminatory access should be provided by distribution undertakings to third parties wishing to offer non-programming services.

COMMENT:

Regulation, where applicable under the Act, is up to the CRTC to determine. Services which do not fall under the Act remain unregulated.

RECOMMENDATION 56 - Advertising

Distribution undertakings should not be allowed to compete directly for advertising revenue with licensed broadcasters or network operators. Any involvement by distribution undertakings should continue to be limited and specialized in its nature, with the resulting revenues used to support their community channel.

COMMENT:

Subject to CRTC regulation. Not addressed in the new Bill.

RECOMMENDATION 57 - Conditions of Carriage

The Commission should continue to have the power to establish conditions respecting the carriage of programming services by distribution undertakings.

COMMENT:

Agreed. See the new Bill, clause 9.(1)(h).

RECOMMENDATION 58 - Role of "Distribution Undertakings"

The Act should be drafted so as to define the essential role of distribution undertakings as that of distributing Canadian radio and television services in French and English, both public and private, with first priority given to public-sector Canadian services, followed by private Canadian services. With the exception of the "three-plus-one" services already carried, the Act should make provision for the carriage of foreign radio and television services only when the programming they provide is complementary to that available from licensed Canadian broadcasters and network operators. The Act should also provide for priority to be given to the carriage of services in French in distribution undertakings that serve primarily francophone subscribers.

COMMENT:

The Government concurs with the emphasis on Canadian services. See the new Bill, clause 3.(1)(q) on the role of "distribution undertakings"; clause 10.(1)(g), authorizing the CRTC to make rules and regulations regarding the reception and distribution of all "programming services" (which includes foreign services) by "distribution undertakings"; and clause 5.(2)(a) which requires the CRTC to take into account the different characteristics of English- and French-language broadcasting. The prohibition of foreign radio and television services other than those whose programming is complementary to that available from Canadian broadcasters has not been included in the legislation since it would unduly restrict Canadians' access to a range of international broadcasting services.

As regards carriage priorities, the new Bill provides for a package of measures to ensure that conflicts of interest can be resolved in the public interest and will not be detrimental to the interests of licensed Canadian programming services. The expectations of distribution undertakings in clause 3.(1)(q)(iii) require them to provide reasonable access. Clause 10.(1)(h) gives the CRTC the power to resolve any disputes arising between programming undertakings and distribution undertakings about the carriage of programming. Under clause 9.(1)(h), the CRTC can require carriage of specified services.

RECOMMENDATION 59 - Terms and Conditions of Service

The Commission should be given the explicit power to determine the terms and conditions under which distribution undertakings provide service to the public.

COMMENT:

Agreed. Covered by general regulatory powers, the new Bill, clauses 9 and 10 and role of "distribution undertakings", clause 3.(1)(q).

RECOMMENDATION 60 - Regulation of Fees

Provision should be made for the Commission to ensure that the fees charged by distribution undertakings to the public are equitable, having regard to the responsibilities of such undertakings as part of the Canadian broadcasting system.

COMMENT:

Agreed. See the new Bill, clause 3.(1)(q). The role assigned to distribution undertakings in the Bill makes specific reference to the provision of services at reasonable rates and in an efficient manner. In addition, clause 9.(1)(h) of the new Bill allows the CRTC to require licensee authorized to carry on any broadcasting distribution undertaking to carry, on such terms and conditions as the Commission deems appropriate, programming services specified by the Commission.

RECOMMENDATION 61 - Financial Data and Cost Separations

The Act should continue to provide a basis for the Commission to require that distribution undertakings file both balance sheet and operating data on a system-by-system basis and carry out full cost separations as a basis for the fair allocation of costs to basic, discretionary and other services.

COMMENT:

Agreed. Clause 9 of the new Bill gives the CRTC extensive powers with respect to individual licensees. In addition, the Commission has been given the power to audit. See the new Bill, clauses 11.(1)(i) and (j).

RECOMMENDATION 62 - Deregulation of "Non-Programming" Services

The Commission should be permitted to deregulate the provision of non-programming services by distribution undertakings, subject to the terms of Recommendations 54 and 55 above.

COMMENT:

Agreed. The new definitions exclude "non-programming" services from the Act in general and the CRTC also has the power to exempt specific services from licensing. See detailed Comment after Recommendation 54, above.

RECOMMENDATION 63 - Fees for Discretionary Services

The Commission should be permitted to deregulate the rates charged by distribution undertakings to the public for discretionary programming services, subject to the terms of Recommendations 51 and 52 above.

COMMENT:

Agreed. The CRTC has the authority to regulate or deregulate the rates charged for particular services under the current Broadcasting Act and under clause 3.(1)(q)(ii) of the new Bill.

REGULATION OF CANADIAN BROADCASTING SYSTEM: THE CRTC

NOTE: Recommendations 64 to 86 have been given short COMMENTS and an overall COMMENT follows recommendation 86.

RECOMMENDATION 64 - Regulating the Structure of the System

As well as providing for the CRTC to regulate and supervise all aspects of the Canadian broadcasting system with a view to implementing all the relevant provisions of the Act, the new Act should explicitly mandate the Commission to ensure, through its licensing decisions, that the structure of the system is consistent with the achievement of the goals established in the Act.

COMMENT:

The Bill empowers the CRTC to regulate and supervise the Canadian broadcasting system in accordance with the policy and objectives set out in the Act. This mandate implicitly requires that the Commission have an overall view of the system as well as making detailed licensing decisions. At the same time, the structure of the system is affected by considerations such as the budget and mandate of the CBC, for example, which are matters of government policy. The government believes that the Bill provides the CRTC with sufficient powers to fulfil its mandate without an explicit clause to this effect.

RECOMMENDATION 65 - Recognition of Linguistic Distinctiveness

The Act should provide for the CRTC to take into consideration the distinctive characters of French and English broadcasting when implementing broadcasting policy.

COMMENT:

Agreed. Clause 3.(1)(b) of the new Bill recognizes, for the first time, that English and French language broadcasting operate under different conditions and have different requirements. Moreover, clause 5.(2)(a) requires that CRTC regulate and supervise the Canadian broadcasting system in a manner that is readily adaptable to the different characteristics of English and French language broadcasting.

RECOMMENDATION 66 - Selection of Commissioners

In selecting the members of the Canadian Radio-television and Telecommunications Commission, the government's decisions should reflect the representation in the population of men and women, both official language groups, and the regions of Canada, as well as groups within the population.

COMMENT:

Agreed.

RECOMMENDATION 67 - Part-Time Commissioners

The office of part-time Commissioner should be eliminated and the number of Commissioners increased to 12.

COMMENT:

Although elimination of part-time Commissioners was considered, it was decided to increase the number of full-time Commissioners to 13, and maintain six part-time members in addition to the new full-time members. The part-time members will have the same authority and powers as full-time members. This will allow for more effective representation of regional interests within the Commission. (See the new Bill, clauses 75, 76, 77.)

RECOMMENDATION 68 - Regional Offices

At least one full-time Commissioner should be situated in each of the selected regional offices and should supervise the Commission's work related to licensees in the region and be involved in decisions related to such licensees.

COMMENT:

The Bill will enable the Governor in Council to designate full-time members of the Commission to reside in the regions served by regional offices. See the new Bill, clauses 76 and 77.

RECOMMENDATION 69 - Commissioners' Term of Office

The term of office for a Commissioner should continue to be seven years.

COMMENT:

The terms of office proposed are 5 years for full-time Commissioners and three years for part-time Commissioners, in accordance with government policy. (New Bill, clause 75)

RECOMMENDATION 70 - Regulatory Powers

The Committee endorses the following recommendations:

The Broadcasting Act should keep the CRTC's extensive powers to make regulations on all matters within its jurisdiction.

Regulatory instruments should be drafted clearly and simply in English and French.

Regulation should be reviewed regularly to ensure that the burdens do not outweigh the potential benefits, keeping in mind the broadcasting principles enacted by Parliament.

COMMENT:

Agreed. The first of these three sub-recommendations is reflected in the new Bill, Clause 10, and the third is reflected in clause 5.(2)(f). The Government concurs with the second sub-recommendation. The proposal for clear and simple drafting is indirectly reflected in Clause 5.(2)(f). As regards both official languages, the Commission is covered by the requirements of the Official Languages Act. The Government notes that the Commission already has an excellent record with respect to the last two sub-recommendations.

RECOMMENDATION 71 - Conditions of Licence

The Broadcasting Act should continue to provide for broad CRTC powers to set conditions of licence on each licensee, including conditions that oblige the licensee to spend specified amounts for specified purposes.

COMMENT:

Agreed. The new Bill provides for broad powers to set conditions of licence under clause 9. In addition, failure to respect a condition of licence has been made an offence under clause 33. Moreover, Clause 11 allows the Commission to implement a performance incentive plan approach to regulation which could ensure a real contribution on the part of licensees to the programming objectives of the Act.

RECOMMENDATION 72 - Women and Minorities' Employment

The Broadcasting Act should include provisions designed to increase significantly the number of women and minority groups at all levels within broadcasting undertakings, until such time as equitable representation is achieved. These provisions should be based on the Employment Equity Act. In addition, they should apply to all licensees, though taking into consideration the nature of their operations, and involve consideration of employment practices affecting both salaried and contract workers. The CRTC should be empowered to enforce these provisions, and in particular to implement employment equity through conditions of licence.

COMMENT:

Agreed. See the new Bill, clause 3.(1)(c)(iii). This clause requires the broadcasting system to "strive, through its operations and programming, to reflect the existing circumstances and aspirations of Canadian men and women, including the linguistic duality and multicultural nature of Canadian society and the special place of aboriginal peoples within that society". The use of the word "operations" in this clause enables the CRTC to pursue employment equity goals through its regulations and conditions of licence. The Employment Equity Act applies to broadcasting undertakings having more than 100 employees.

RECOMMENDATION 73 - Use of Regulations and Conditions

In regulating the broadcasting system in a way that ensures that all components contribute to meeting the objectives of the Broadcasting Act, both regulations and conditions of licence should be used. However, the CRTC should continue to make greater use of conditions of licence appropriate to the circumstances of individual licensees.

COMMENT:

Both regulations and conditions of licence are provided for. At the same time, the Bill provides for a new form of regulation through the Performance Incentive Plan, which could reduce the need for the more intrusive mechanism of conditions of licence. (See the new Bill, clauses 9, 10 and 11.) Use of these measures is left to the discretion of the CRTC.

RECOMMENDATION 74 - Self-Regulation

The majority of the Committee recommends that self-regulation be used when doing so is consistent with the public interest. Where possible the Commission should identify those areas where it is inclined to set conditions and the guidelines it intends to use in imposing conditions.

COMMENT:

Agreed but not stipulated in the Bill.

RECOMMENDATION 75 - Compliance Measures

Failure to comply with a condition of licence should be included as an offence under the Broadcasting Act. The offender should be liable to a fine set at a level that would make compliance more economic than non-compliance. The CRTC should make more frequent use of its power to award or renew licences for short terms. Where a licensee has a history of non-compliance with regulations or conditions of licence, the Commission should be required to use its power to call for new applicants at the time of licence renewal.

COMMENT:

Agreed. This and other additional compliance measures have been included in the proposed new Act. See the new Bill, clauses 9, 11, 12, 13, 32, 33 and the "Overall Comment" following Recommendation 86.

RECOMMENDATION 76 - Issuance of Policy Statements

The Broadcasting Act should confer on the CRTC, as an express statutory power, the authority to develop and issue policy statements.

COMMENT:

Agreed. See the new Bill, clause 6.

RECOMMENDATION 77 - Cross-Examination

The CRTC should authorize cross-examination by parties with opposing interests upon the request of an intervener, or of an applicant who wishes to cross-examine another applicant, where contradictory statements of fact have been made.

COMMENT:

This recommendation is addressed to the Commission. The Government notes that the Bill permits such cross-examination. See the new Bill, clauses 20.(b).

RECOMMENDATION 78 - Applicants' Right to Information

The CRTC should respect the rights of all parties to all useful information on applicants and licensees and should drop existing confidentiality practices that hinder the evaluation of applications at public hearings and are not necessary as a protection of legitimately private information that is not directly relevant to the assessment of the application.

COMMENT:

The Bill gives the Commission full discretion in this respect.

RECOMMENDATION 79 - Commissioners Who Hear Decide

Decisions on applications should be made by the Commissioners who hear the applications. As a result, the Broadcasting Act should eliminate those provisions requiring that decisions concerning the issuance, amendment and renewal of licences be made by all full-time members only, in consultation with part-time (non-voting) members.

COMMENT:

Agreed. See the new Bill, clause 19.(2) and (3). Clause 19 of the new Bill enables the Chairman of the Commission to establish panels of not fewer than three Commissioners to hear licensing matters. The Commissioners who hear licensing matters will decide those matters. Both full and part-time members have full voting powers in this respect.

RECOMMENDATION 80 - Funding of Intervenors

The Act should not make provision for funding through the CRTC of intervenors who participate in Commission hearings.

COMMENT:

Agreed.

RECOMMENDATION 81 - Public Advocate

The Committee does not support the Task Force recommendation with respect to the creation of the Office of Public Advocate. The Committee does, however, support the functions that the office was designed to serve.

COMMENT:

Agreed.

RECOMMENDATION 82 - Complaints

The CRTC should develop an effective centralized procedure for handling complaints. Records of complaints and actions taken should be kept and included in the Commission's Annual Report to Parliament.

COMMENT:

The Commission is responsible for developing effective procedures for handling complaints.

RECOMMENDATION 83 - Development of Research

The Department of Communications and the CRTC should support the development of research in communications-related disciplines on all aspects of Canadian broadcasting, especially regulatory policies and methods.

COMMENT:

Agreed. The CRTC applied for and received an additional \$1.5 million for research in its 1988-89 budget.

RECOMMENDATION 84 - Industry Database

In order to be able to carry out independent assessments of the broadcasting industry, the CRTC should reactivate its research department and consult specialists in all appropriate disciplines to establish and maintain a meaningful and up-to-date database on the broadcasting industry.

COMMENT:

Agreed. See also the Comment after the following recommendation.

RECOMMENDATION 85 - Database on Decisions

The government and the CRTC should work together to establish a readily accessible database on regulatory and self-regulatory processes and decisions.

COMMENT:

The Government and the CRTC continue to explore the most practical means of making relevant material readily accessible.

RECOMMENDATION 86 - Annual Report

The new Broadcasting Act should contain provisions requiring the Commission's Annual Report to:

- (a) identify the mandate and objectives of the Commission;
- (b) set out the Commission's interpretation of the mandate and objectives;
- (c) describe the plans the Commission has to achieve its objectives; and
- (d) set out the Commission's major activities during the year and explain how they are relevant to the Commission's plan and how they help achieve the objectives.

COMMENT:

The CRTC Act is being amended, under clause 78 of the new Bill, to add a clause requiring an Annual Report from the CRTC in such form as the Minister may direct. This allows sufficient flexibility to accommodate particular needs and concerns as they arise.

OVERALL COMMENT: - Recommendations 64 - 86

In summary, the Committee's recommendations with respect to the CRTC have essentially been adopted. However, matters pertaining more properly to management and practice, such as cross-examination, confidentiality requirements, and complaint procedures, have been left to the Commission itself to take under advisement. In addition to the specific alterations noted above, the government would mention the following:

Additional or amended powers in the Bill include:

New compliance mechanisms: power to establish and collect performance-based fees, which would permit implementation of the Performance Incentive Program; mandatory orders; power to audit; power to arbitrate carriage disputes.

Existing compliance mechanisms have been carried forward but amended to create two new offences: violation of a condition of license and violation of a condition of exemption from licensing would become offences in addition to violation of a regulation.

Furthermore, the maximum fines have been increased to \$250,000 for a first offence and \$500,000 for each subsequent offence. The Commission would continue to have the power to revoke or suspend a license.

The CRTC has been given the power to delegate routine matters to committees of commissioners to implement the "he who hears decides" principle.